MONITORING N.S.W. COMMUNITY SERVICE ORDERS (FINE DEFAULT) AMENDMENT ACT, 1987: WEIGHING THE CONSEQUENCES

Dr Angela Gorta
Chief Research Officer
N.S.W. Department of Corrective Services

Paper to be presented at the Sixth Annual Conference of the Australian and New Zealand Society of Criminology.
Sydney, 24-26 September 1990.
This morning I intend to describe the results of a series of studies monitoring the operation of the N.S.W. Community Service Order (Fine Default) legislation during the first two years of its operation. Although this legislation was amended earlier this year, the findings of this research raise important general issues concerning the treatment of fine defaulters.

Before I get into the body of the paper proper I would like to acknowledge the contribution of Kylie Miller who worked with me on this project and was, in fact, responsible for the majority of the data collection. Kylie is currently travelling the world, and from all reports, having a great time.

It goes without saying, that fines are an important topic of investigation because of the frequency with which they are handed down. The fine is the most frequently used non-custodial sentencing option in NSW and as such is awarded to a wide range of persons: some of whom can afford to pay, others who cannot; some of whom are willing to pay, others who are not.

Overhead 1

Prior to the introduction of the fine default scheme the only alternative to paying the fine was serving time in gaol. Fine defaulters constituted close to half of the sentenced prison receptions in NSW in the years 1982-86.
This overhead shows the number of fine defaulters received into N.S.W. gaols in various years, and the percentage of the sentenced prisoner receptions they constituted.

The imprisonment of fine defaulters has been a matter of longstanding debate. There have been numerous legislative changes.

**Overhead 2**

The daily "cut-out" rate for default imprisonment has increased over the years. In 1931, an imprisonment equivalent of $1/day was introduced. This increased to $2/day thirty-six years later in 1967, $5/day four years later in 1971, $25 in 1978 and the current $50/day fine cut out rate was introduced in 1986 (Muir Report, 1988). Other reforms introduced at the same time included: the Justice to consider the defendant's means before fining him or her, time to pay be allowed, and greater flexibility in the issuing and execution of commitment warrants.

These reforms, however, still did not stop the entry of over two and a half thousand fine defaulters into gaol in 1987. Following the highly publicised attack on Jamie Partlic in November, 1987 attention was focussed on the plight of imprisoned fine defaulters and in response a number of Acts were passed in parliament in November-December, 1987.

The cancellation of driving licences or motor vehicle registration was introduced on 1st January, 1988 in lieu of imprisonment for the non-payment of traffic and parking fines.
This was to be a real incentive for the payment of traffic fines as well as eliminating the possibility of cutting out parking and traffic fines in gaol.

Also between 1st January, 1988, and 8th February, 1990, under the Community Service Orders (Fine Default) Amendment Act 1987, offenders who were fined in court and defaulted on payment of the fine were automatically issued with a Community Service Order.

It is this fine default scheme in which fine defaulters were automatically issued with Community Service Orders which is the focus of today's paper.

In the past fines had been "cut-out" concurrently in gaol. Since January 1988, fines worked out by community service and fines "cut-out" in gaol are combined consecutively. This is intended to deter offenders from accumulating a large number of fines and to encourage them to pay fines promptly.

Before we proceed, however, it should be noted that the Community Service (Fine Default) Scheme which is the subject of my paper today, was amended earlier this year. The Fine Enforcement Legislation (Amendment) Act, 1989 which commenced on 9th February, 1990, abolished the automatic issuing of fine default orders. Instead, once the fine is defaulted, a warrant is to be issued and notice served. The police will give the fine defaul-
ter seven days' notice to pay the fine or apply to the court for a fine default order. If neither option is utilized the warrant may be executed and the fine defaulter imprisoned.

Returning to the discussion of the Community Service Order (Fine Default) Scheme - Mr John Akister, Minister for Corrective Services in 1987, claimed that "the scheme is based on three premises:

. first, that from 1st January (1988) no one will have to go to gaol for fine default;
. second, that payment of fines is maximized, and
. third, that this alternative is not a soft option."

The operation of the scheme was fairly complex.

Overhead 3

A copy of the order was sent to the Probation and Parole Service and entered into the Departmental computerised Offender Record System. The fine defaulter was instructed to report to the Probation and Parole office within 28 days of the Community Service Order (Fine Default) being issued.

If the fine defaulter completed the allocated hours, or if 12 months elapsed, the fine was discharged. If the fine defaulter failed to register within 28 days or they registered but did not turn up for work then the Community Service Organiser would breach them. The court would then write to the offender seeking an explanation for the breach. If no response was received by
the court, or an unsatisfactory explanation was received, the court would issue a commitment warrant for the offender. When the fine defaulter was apprehended by the police, the policeman was required to give the offender another 7 days to contact the court to apply for a reissue of a Community Service Order. If this was done, the court would rescind the warrant and issue another Community Service Order. Otherwise, the police would attempt to serve the warrant after the seven day period had expired. At any time, the offender was allowed to pay the fine. If the warrant is executed, fines are "cut-out" accumulatively in gaol at the rate of $50/day.

The evaluation of the fine default scheme which I am discussing today consisted of five studies.

**Overhead 4**

The first of which analysed the computer record data of the 6869 fine defaulters who registered in the first 18 months of the fine default scheme's operation.

The second study involved surveying 60 community service organisers (Probation and Parole officers) on their procedures and opinions of the scheme in July 1989.

The third study involved interviewing 48 fine defaulters doing community service.

The fourth study analysed details on gaol receival forms for all 143 fine defaulters received into NSW gaols in 1988.
The final study comprised interviews with 24 fine defaulters who were in gaol for breach of community service between the beginning of November 1989 and the end of January 1990.

Hence we used a mixture of record and interview studies to collect our data. From the record studies we were able to look at the numbers receiving a fine default order, the numbers and types of offenders breaching their fine default order and the numbers cutting out their fines in gaol. Interviews with community service organisers and offenders were necessary to obtain information which is not available from records such as: why offenders were not paying their fines, perceived benefits of the program and problems it was facing. Despite our best attempts, we were only able to interview 48 fine defaulters doing community service and 24 fine defaulters cutting out their fines in gaol. These sample sizes, while small, are adequate to give some insight into why the fine defaulters were not paying their fines.

We collected a wealth of information in these five studies. In today's paper I am describing a few of the most interesting findings.

It seems that a significant proportion of offenders who were fined by the courts were not paying their fines, and a significant proportion of those who received fine default orders were not registering with the Probation and Parole Service to do community service, during the time periods we investigated.
Since community service (fine default) orders were, at that
time, automatically awarded to all defaulters of court-based
fines, it is possible to estimate the proportion of offenders
fined by the courts who did not pay their fines. In 1988, 56548
fines were received by offenders in Local Courts across NSW ac-
cording to the Bureau of Crime Statistics & Research, 1989. A
similar number of fines were handed down in the previous year.
Over an 18 month period it can be estimated that approximately
84,822 fines were issued in Local Courts. In the first 18 months
of the fine default scheme's operation, of the 57302 fine default
orders that were issued to fine defaulters across the state
46,491 pertained to fines handed down in court in the same
period, (the remaining 10811 orders related to fines issued prior
to 1988) (Computer Services Division, Department of Corrective
Services). Therefore it is estimated that more than half (54.8%)
of offenders fined in court were not paying their fines.

The majority of those who were automatically issued with a
fine default order between 1.1.88 and 30.6.89 did not register
with the Probation and Parole Service to do community service
work. Between 1st January, 1988 and 30th June 1989, 35456 fine
defaulters were issued with fine default orders. Only 6869 of
these fine defaulters (19.4%) registered with the Probation and
Parole Service to do community work. As mentioned previously, if
the fine defaulter failed to register within 28 days or they
registered but did not turn up for work, then the Community Serv-
ice Organiser would breach them.
Overhead 7

Even those fine defaulters who did register with the Probation and Parole Service to do community work did not attend reliably. The community service organisers claimed that one-third of fine defaulters allocated to work in a survey week in July 1989 did not report during that particular week. This proportion does not seem overestimated, as when an attempt was made to interview the fine defaulters doing community service, less that half of the fine defaulters who were expected to work, turned up. The unreliability of fine defaulters makes the efficient management of the fine default scheme very difficult.

It would appear that the problem of fine defaulters not paying their fines is far more complex than assuming that the fine defaulter simply cannot afford the fines. For years the media and community have been horrified that fine defaulters are being imprisoned not for the specific criminal offence but for their inability to pay the fine (Warner, 1984; Brown, 1985, 1986 Zdenkowski; 1985). It has been suggested that the fine defaulters were being imprisoned purely for the "offence of being in poverty" (Brown, 1985). If offenders were defaulting on their fines solely because of lack of money then why are these fine defaulters not turning up to do community service?

Let us consider, firstly how much did these fine defaulters owe? This overhead provides a comparison between the 143 fine defaulters who cut out their fines in gaol in 1988 and the 6869 fine defaulters who registered to do community service between 1.1.88 and 30.6.89.
Fine defaulters who were working community service and those who were cutting out their fines in gaol were asked why they did not pay their fines. Their broad categories of response can be seen on the next overhead.

The top bar in each pair refers to the percentage of the 48 fine defaulters interviewed who were performing community service. The bottom bar refers to the percentage of the 21 who were interviewed while cutting out their fines in gaol.

As can been seen, the most frequent response was not being able to afford to pay the fine. It should be remembered that legislation was introduced in 1986 requiring that Justices consider the defendant's means before fining them. It may be that the perception of what we can each afford to pay in fines is very subjective.

These fine defaulters were also asked whether they had been fined before and if so whether they had previously paid their fines or cut them out in gaol.

It is interesting to note that between one-quarter and one-third of those interviewed had paid all their previous fines. There was a tendency for those who were cutting their fines out in gaol to have been more likely to have cut out all their previous fines in gaol, than those who were doing community service.
On the other hand, it is also of interest to note that 29% of those doing community service had cut out all their previous fines in gaol. It would seem that the fine default program has provided an alternative which has kept at least these fine defaulters out of gaol on this occasion.

A minority of the fine defaulters interviewed in gaol saw going to gaol as a better alternative than paying the fine (37%) or as a better alternative than working a community service order (29%).

Examples of comments made by those who thought that going to gaol was better than paying the fine include:

"What's the point of paying it - they're giving us money (the dole), why give it back?";
"Cut out at $50/day, they have to feed and keep you";
"Easier, I don't mind it"

Examples of comments made by those who thought that going to gaol was better than working a community service order include:

"Rather get it over and done with in one go; rather than hanging on for a month....Would probably have big Friday nights and not make it anyway ...(I) don't need more trouble;";
"(I) like gaol - get fed, but either way have to work";
This next graph portrays the percentage of the different groups who reported that they had not been in gaol before, had been in gaol only for fine default or had served a previous gaol sentence(s). From this table we can that those interviewed cutting their fines out in gaol were more likely to report having previously served prison sentences than those who were doing community service.

CONCLUSIONS

From the findings of the five studies conducted, a number of conclusions can be drawn.

It can be seen that the fine default scheme is a useful non-custodial alternative for some offenders who either cannot afford to pay or do not wish to pay their fines. It is not the answer for all fine defaulters.

More specifically it can be concluded that:

1. A substantial proportion of offenders receiving fines do not pay their fines.

2. The majority of those who do not pay their fine(s) also fail to register to do a community service (fine default) order. As mentioned previously, these offenders would have been breached by the Probation and Parole Service.

3. Even those fine defaulters who do register with the Probation and Parole Service to do community work do not attend reliably.
After appropriate warnings, these fine defaulters would also have been breached.

4. The fine default scheme has been successful at keeping some (but not all) fine defaulters out of gaol.

The number of fine defaulters received in gaol was 143 in 1988 and 272 in 1989, a substantial fall from the 2610 received in 1987 and 3476 received in 1986. Between 1st January, 1988 and 30th June, 1989, 6869 fine defaulters registered to do community service work. From interviews with a small sample of fine default order workers, it is estimated that approximately half of these would have otherwise cut their fines out in gaol. However, the major problem exists with the 28587 or 80.6% who, having failed to pay their fine also fail to register to do a fine default order. In theory, these people should end up in gaol.

5. The introduction of the fine default scheme has led to some people choosing to perform community service rather than paying their fine.

One concern in introducing any new alternative to gaol is that the "net" will be widened. That is, that the new sanction will be used for people who would not otherwise have spent time in prison.

Approximately half of the sample of fine defaulters interviewed who were doing community service said that they would have paid their fine if the fine default order was not avail-
able. If this can be generalised across all fine defaulters doing community service, and don't forget we had a small sample, then less offenders must be paying their fines.

6. The scheme does provide benefits for both the offenders and the community. Other than the obvious benefit of keeping fine defaulters out of gaol, the fine default scheme has a number of other positive effects. The fine defaulters who do work are gaining and giving considerable benefit. Community service helps the community, saves it money and can increase the fine defaulter's confidence and skills whilst at the same time avoiding contact with gaol. In a number of cases the fine defaulters have gained financial employment from the agency once their hours were completed.

The scheme also has considerable public relations potential. A positive move is that offences against certain authorities, resulting in fines and default may be referred back to the aggrieved authority for work allocation. A pilot scheme is presently underway which involves community service workers and periodic detainees removing graffiti from trains at Central Railway station.

Financially, the fine default scheme should be much more attractive to fine defaulters than gaol. Doing community service for fine default offers $100 per eight hours' work. However, gaol only allows $50 per day. So, whereas gaol is ap-
proximately 24 hours for $50, community service is six times this rate, at $300 per 24 hours work (although eight hours is the maximum to be worked in any one day).

Overhead 13

I have not come here today to provide the answer for what we should do with fine defaulters.

I have come to suggest that while the introduction of community service as an alternative to paying the fine removes the necessity for any fine defaulter to go to prison, it is too simplistic to believe that all previous fine defaulters defaulted merely because they did not have the funds and that all of these fine defaulters would be enthusiastic to perform community service.

What we, as a society, now need to decide is:

1) What we are willing to spend to chase up those who are fined and who are unable or unwilling to pay their fine? How much is the community prepared to spend on police, or others, locating these fine defaulters?

2) How should we punish those who are either unable or unwilling to pay their fine and are also unable or unwilling to do community service work? Should they be imprisoned? Has the community done enough simply by ensuring that community service exists as an option or is there more which should be done to keep fine defaulters out of gaol?
<table>
<thead>
<tr>
<th>Year</th>
<th>No. fine defaulters received</th>
<th>No. sentenced prisoners received</th>
<th>Total received</th>
<th>% of receptions who were fine defaulters</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978/79</td>
<td>3905</td>
<td>5304</td>
<td>9209</td>
<td>42.4</td>
</tr>
<tr>
<td>1979/80</td>
<td>3376</td>
<td>4568</td>
<td>7944</td>
<td>42.5</td>
</tr>
<tr>
<td>1982</td>
<td>3559</td>
<td>3699</td>
<td>7258</td>
<td>49.0</td>
</tr>
<tr>
<td>1983</td>
<td>4939</td>
<td>4579</td>
<td>9518</td>
<td>51.9</td>
</tr>
<tr>
<td>1984</td>
<td>4389</td>
<td>3996</td>
<td>8385</td>
<td>52.3</td>
</tr>
<tr>
<td>1985</td>
<td>4330</td>
<td>4638</td>
<td>9168</td>
<td>47.2</td>
</tr>
<tr>
<td>1986#</td>
<td>3476</td>
<td>4590</td>
<td>8066</td>
<td>43.1</td>
</tr>
<tr>
<td>1987</td>
<td>2610</td>
<td>4905</td>
<td>7515</td>
<td>34.7*</td>
</tr>
<tr>
<td>1988</td>
<td>143</td>
<td>4356</td>
<td>4499</td>
<td>3.2</td>
</tr>
<tr>
<td>1989</td>
<td>272</td>
<td>5745</td>
<td>6017</td>
<td>4.5</td>
</tr>
</tbody>
</table>

(SOURCE: Houghton, 1985; NSW Department of Corrective Services records.)

#Introduction of reforms.

*N.B. The moratorium on imprisonment of fine defaulters in November-December 1987 affected this percentage.
Legislative changes

January 1986:
- "Cut out" rate in gaol increased from $25/day to $50/day
- Fines continued to be cut out concurrently (simultaneously)

January 1988:
- Cancellation of driving licences or motor vehicle registrations in lieu of imprisonment for traffic and parking fines
- Offenders who were fined in court and defaulted on payment were automatically issued with a Community Service Order
- Length of Community Service Order based on 8 hours' (1 day's) work for each $100 owed
- Fines worked out by community service and fines cut out in gaol are combined consecutively (accumulatively)

February 1990:
- Abolished automatic issuing of fine default orders
- Once fine is defaulted, a warrant is to be issued and notice served
- Police to give fine defaulter 7 days' notice to pay the fine or apply to the court for a fine default order
- If neither option is utilized the warrant may be executed and the fine defaulter imprisoned
In some instances these people will have decided to pay their fine upon receipt of the CSO. The Court will check their records for payment before issuing a warrant. If payment has been received the CSO will be recalled.
FIVE STUDIES

1. Analysis of computerised records of the 6869 fine defaulters who registered to do community service work between January 1988 and June 1989

2. Survey of 60 Community Service Organisers in July 1989

3. Interviews with 48 fine defaulters doing community service

4. Analysis of gaol receipt forms regarding the 143 fine defaulters imprisoned during 1988

5. Interviews with 24 fine defaulters cutting out their fines in gaol between November 1989 and January 1990
<table>
<thead>
<tr>
<th>Estimated no. of persons fined by lower court during 1.1.88 to 30.6.89</th>
<th>84822</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of fine default orders issued pertaining to fines 1.1.88 to 30.6.89</td>
<td>46491**</td>
</tr>
<tr>
<td>Estimated % of those fined in lower courts who defaulted</td>
<td>54.8</td>
</tr>
</tbody>
</table>

* Sources: N.S.W. Bureau of Crime Statistics and Research Court Statistics

N.S.W. Department of Corrective Services, Computerised Offender Record System

** N.B. The remaining 10811 fine default orders issued during this period related to fines handed down prior to 1988
Fine default orders issued
Clients and orders registered with the Probation & Parole Service*

• Between 1.1.88 and 30.6.89

ORDERS
TOTAL: 57302

CLIENTS
TOTAL: 35456

Not registered
41618

Registered
15684

Not registered
28587

Registered
6869

27%

19%
831
Total number

564
Reported for work

68%

267
Failed to report

* Allocated work

* Number of fine defaulters
<table>
<thead>
<tr>
<th></th>
<th>Fine defaulters imprisoned during 1988</th>
<th>Fine defaulters registered for C.S.O. 1.1.88 to 30.6.89</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>143</td>
<td>6869</td>
</tr>
<tr>
<td>Average number of fines</td>
<td>2.2</td>
<td>2.3</td>
</tr>
<tr>
<td>Range of number of fines</td>
<td>1 - 9</td>
<td>1 - 70</td>
</tr>
<tr>
<td>Average total fine</td>
<td>$741</td>
<td>$474</td>
</tr>
<tr>
<td>Average time in gaol</td>
<td>13.5 days</td>
<td>-</td>
</tr>
<tr>
<td>Range of time in gaol</td>
<td>2 - 125 days</td>
<td>-</td>
</tr>
<tr>
<td>Average time between court and gaol</td>
<td>335 days</td>
<td>-</td>
</tr>
</tbody>
</table>
Why didn't they pay their fines?

- Couldn't afford it
- Refused on principle
- Principle & expense
- Poorly organised
- Wanted to do CSO
- Didn't know of fines

Those interviewed who were doing Community Service or In gaol.
Previous gaol experience

- No previous gaol
- Gaol for fines
- Served gaol sentence

Those interviewed who were doing Community Service or In gaol.
CONCLUSIONS

1. A substantial proportion of offenders receiving fines did not pay their fines.

2. The majority of those who did not pay their fine(s) also failed to register to do a community service (fine default) order.

3. Even those fine defaulters who did register with the Probation and Parole Service to do community work did not attend reliably.

4. The fine default scheme has been successful at keeping some (but not all) fine defaulters out of gaol.

5. The introduction of the fine default scheme has led to some people, choosing to do community service rather than paying their fine.

6. The scheme does provide benefits for both the offenders and the community.
Decisions to be made:

1. What is society willing to spend to chase up those who are fined and who are unable or unwilling to pay their fine?

2. How should we punish those who are either unable or unwilling to pay their fine and are also unable or unwilling to do community service work?