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COLLINS' STREET UNITING CHURCH, MELBOURNE

SEMINAR ON POVERTY ISSUES

SATURDAY 19 MAY 1984

LAW, RIGHTS AND THE NEW POOR

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The Hon Justice MD Kirby CMG

Chairman of the Australian Law Reform Commission

IMPRISONMENT FOR POVERTY

Australian law needs review for the new poor. The Australian Law Reform Commission has reported on three aspects of law specially relevant to Australians below the poverty line:

- . imposition of fines on indigent offenders;
- . reform of debt recovery process; and
- . reform of child welfare laws.

Although comprehensive statistics are not available on imprisonment for fine default in Australia, it is clear that up to a third of prisoners in Australia's gaols were there because of failure to pay fines. A 1980 report of the Australian Law Reform Commission suggested reforms to limit imprisonment of people for failure to pay fines in Federal offences.

The statistics are, as usual, poor. However, on the basis of an extensive study of the Adelaide Magistrates Court, it has been estimated that as many as 15 000 persons spend some time in prison each year in Australia for non-payment of fines. In Victoria, according to a 1979 report, a total of 1 852 offenders whose fines amounted to approximately \$420 000 (about 3% of all fines imposed) were received in prison for non payment. The total days ordered to be served in default of payment was 52 075. If the full default period had been served it would have represented an average of 142 prisoners for every day of the year, or about 10% of the normal prison population. In fact, a number of the fines were paid and the actual number of prisoners held was believed to be below this figure. New South Wales prison authorities have informed the Law Reform Commission that about a third of all prison admissions in New South Wales are for non-payment of fines.

A similar estimate was provided for other prison authorities. People who do default in the payment of fines sometimes serve their sentence not in a regular prison but in a police lock up. This is particularly true in the ACT, a Federal responsibility. Any effective method of reducing the extremely costly business of keeping people in prison will ensure that those who fail to pay their fines do not go to prison simply for poverty. Imprisonment for non payment of fines should be confined to people who wilfully and without just excuse disobey a court order to pay such a penalty. This reform is specially relevant in the case of Federal offences which tend to be of the white collar variety and which, in default of a range of sentencing options, have tended to result in penalties by way of fine.

REFORMS PROPOSED

In its 1980 report, Sentencing of Federal Offenders, the Australian Law Reform Commission suggested a number of reforms to limit the imprisonment of persons for non payment of fines. The reforms included:

- . introduction, in the long term, of a 'day fine' system as in Sweden so that fines are calculated on the daily net income of the offender;
- . introduction of a standard check list of basic information such as income, assets and liabilities available to the court to assess the offender's means before fines are imposed;
- . confining imprisonment for non-payment of fines to those who 'wilfully and without just excuse' disobey a court order to pay a fine;
- . using penalties other than imprisonment to enforce fines, such as community service, weekend detention, work orders, probation etc;
- . replacing automatic imprisonment for non payment of fines by requiring the offender to be brought before the court to explain his default;
- . authorising the court on such re-examination to consider a fresh assessment of the offenders' situation where the default has arisen as a result of changes in the offender's ability to pay occurring after the original fine was imposed;
- . authorising the court to vary the fine originally imposed to take into account the financial circumstances of the offender where these have changed and he is no longer able to pay the fine imposed.

The present system could not be more counter-productive. Citizens must realise that prisons are extremely expensive institutions and it is the community of law-abiding citizens who pay for them. It has been estimated to cost approximately \$440 a day to keep a person in prison. As well as that, if the person does have employment, in hard times you are likely to destroy whatever chance he or she has of keeping his job, thereby throwing the prisoner on to the public purse and social security. No-one suggests that a deliberate fine defaulter should be able to scoff at the law.

But . . . should not imprison people for poverty. There are good people in our society who, because of technological change, economic misfortune, illness or age lose their income. It is a cruel society that imprisons its poor, imposing equal fines on the rich and the poor, without regard to the devastating effect that fine default can have on the poor. These are the reasons why the Australian Law Reform Commission urged its reforms upon the Federal Government. The reforms are still being discussed with the States. The need for reform has become more urgent since the report and recommendations were made in 1980.

DEBT RECOVERY REFORM

The Law Reform Commission is also working on the reform of debt recovery laws. A first report was delivered on this subject in 1977 and announcements are expected shortly concerning the Federal Government's response. The main proposal of the 1977 report was to provide people with a short moratorium in which they could secure credit counselling in order to repay their entire debt. The Australian Law Reform Commission expects to report later in 1984 on a code of conduct for debt collection.

More than 90% of debt problems do not get to court. They arise at the stage of the debt collecting process. The Law Reform Commission hopes to suggest a number of important improvements in the debt collection laws, specifically to lay down a code of fair debt collection conduct. Already there are some laws in the States forbidding harassment of debtors. The Trade Practices Act also prohibits certain false and deceptive conduct. But there is a need for a comprehensive code for the guidance of debtors and creditors alike. It should protect debtors from violence, intimidation, unwarranted disclosure of personal information to third parties and deceptive conduct.

DEBT COLLECTION CODE

The Law Reform Commission is considering a debt collection code which includes:

- . prohibition of the use of threatened use of violence or intimidatory tactics;
- . prohibition of disclosure or threatened disclosure of debts to persons or institutions not genuinely concerned in the matter, such as employers and neighbours;
- . prohibition on visits or telephone calls made at times or in circumstances that would unduly interfere in the privacy of the debtor;
- . prohibition on falsely representing procedures of debt collection as enforcement measures of the courts;

- . forbidding the use by creditors of stationery or names or titles in an attempt to induce the debtor to believe that the communication came from a solicitor or debt collection agent;
- . obligation on debt collectors to show positive identification when making personal calls;
- . loss or suspension of licences in cases of breach of the code, together with compensation for damage to debtors.

It is no use ignoring the economic realities of hard times. Law reform is necessary to ensure that a just legal system pays attention to the special problems of poor members of Australian society. The legal problems of poor citizens are not the same as those of rich citizens without money. They are special and they must be addressed by a legal system with any pretention to compassion.