



Royal Commission into Aboriginal Deaths in Custody Recommendation

120. Ongoing amnesty on outstanding warrants for unpaid fines

That governments consider introducing an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.¹

Background²	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that imprisoning people for unpaid fines disproportionately affected Aboriginal people and often worsened their social and economic circumstances. It recommended alternatives such as community service orders and other non-custodial options, as well as considering amnesties for long-outstanding warrants, to reduce unnecessary imprisonment and support rehabilitation and social stability for affected individuals.
Intent	Introduce an ongoing amnesty on long-outstanding warrants of commitment for unpaid fines.
Responsibility	All state and territory governments.
Key contacts	Department of Justice and Community Safety; Department of Premier and Cabinet.

Key action taken

2005 Review³	<p>The Department of Justice assessed Recommendation 120 as partially implemented.</p> <p>Department of Justice</p> <p>Legal Policy advised that under section 58 of the <i>Magistrates' Court Act 1989</i> (Vic), warrants for imprisonment for unpaid fines were invalid if over five years old and could only be reissued with court approval. The renewal process, which was notably complex, required the enforcement order to be reinstated and justified by valid reasons. The report noted that the last government response offered no amnesty for outstanding warrants since 1994.</p> <p>The Koori Court and the Sheriff's Aboriginal Liaison Officer Program under the Victorian Aboriginal Justice Agreement (VAJA) aimed to prevent unnecessary incarceration of Aboriginal people and foster positive relationships through education. Strategic Objective 4 of VAJA focused on fair justice services, including a review of access to legal representation. The AJF and government departments had the opportunity to address Recommendation 120 by evaluating the sufficiency of section 58 and identifying issues with old warrants and the Sheriff's process. The Review concluded that collaboration with VALS, the Aboriginal Prison Liaison Unit, and other Aboriginal units could determine necessary adaptations to the recommendation.</p>
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¹ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) vol 3, 126 ('RCIADIC').

² *Ibid* vol 3, 117-126 [22.5.81].

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) vol 1, 471, 480-81 ('2005 Review').

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	<p>Review Team</p> <p>The Review Team noted that the extent to which Aboriginal people availed themselves of the 1994 amnesty was unknown given a lack of information on Aboriginal people with unpaid fines.</p>
2018 Review⁴	<p>Victorian Government</p> <p>Deloitte assessed Recommendation 120 as being fully implemented in Victoria through the <i>Magistrates' Courts Act 1989</i> (Vic) which states that warrants to imprison for non-payment of a fine are of no effect if they are outstanding for more than five years.</p> <p>However, Deloitte did not clarify whether sections 58(2) and 58(2A) could be considered void if a new warrant is issued for the same penalties.</p>
Since then	<p>In Victoria, there has not been a formal ongoing amnesty on the execution of outstanding warrants for unpaid fines. However, there have been legislative changes and other initiatives implemented to reduce the use of imprisonment in response to unpaid fines.</p> <p>For example, the <i>Fines Reform Act 2014</i> (Vic) introduced measures such as the <i>Work and Development Permit Scheme</i>, which allows eligible individuals to clear their fines through activities like community service, treatment, or education rather than paying them directly.</p> <p>Fines Victoria⁵</p> <p>Fines Victoria can review fines under "Special Circumstances". An individual can apply for specific circumstances if issues arise, such as mental illness, severe addiction, homelessness, or being a victim of family violence. In these instances, an individual may be eligible for a review of their fines, provided that evidence is from a qualified practitioner showing a link between their circumstances and the offence or their inability to deal with the penalties. Legal assistance and time extensions may be available to support applications.</p> <p>Victorian Aboriginal Legal Service⁶</p> <p>VALS can assist Aboriginal community members with non-court-based fines if they have a disability, or were experiencing severe addiction, homelessness, or family violence at the time the fines were incurred. Individuals may be eligible to waive their fines through a special circumstances application to Fines Victoria. The VALS Infringements Clinic assists Aboriginal clients with these applications, including for COVID-related infringements. Community organisations can download resources to share information about this assistance.</p>

⁴ Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 228-229 ('2018 Review').

⁵ Fines Victoria, 'Special Circumstances', *Fine Victoria support Special Circumstances* (Web site 2024) <<https://online.fines.vic.gov.au/Support/Special-circumstances>> ('Special Circumstances').

⁶ Victorian Aboriginal Legal Service, 'Can VALS help me with my fine?', *Victorian Aboriginal Legal Service* (Web site 2024) <<https://www.vals.org.au/can-vals-help-me-with-my-fine/>> ('Can VALS help me with my fine?').

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Evidence of impact

Authorising documents

Fines Reform Act 2014 (Vic)⁷

Magistrates' Court Act 1989 (Vic)⁸

Section 58: Recall and cancellation of warrant

If a warrant is issued to imprison or detain someone in a youth justice centre because they haven't paid a fine, and that warrant isn't carried out within five years from when the first such warrant was issued for that person, then the warrant becomes invalid.

If the warrant becomes invalid and the person hasn't paid any part of the fine by that time, then the fine and any related fees or costs can no longer be enforced or collected.

However, the Court can still allow a new warrant to be issued for the same reason, even if the original one became invalid.

If a new warrant is issued with the Court's permission, then the fine and related costs become enforceable again, as if they had never stopped being enforceable.

Outputs

Under the *Magistrates' Court Act 1989 (Vic)*, section 58 invalidates warrants for imprisonment if they are over five years old.

The *Fines Reform Act 2014 (Vic)* introduced alternative measures, such as the Work and Development Permit Scheme, allowing eligible individuals to clear fines through activities rather than payment.

No formal ongoing amnesty has been implemented in Victoria.

Outcomes

In 2010, the Victorian government held a seven-week amnesty during which fine defaulters were able to pay only their initial penalty, with enforcement and other fees being waived. More than \$112 million was paid as a result.⁹

There is not an ongoing amnesty on the execution of long outstanding warrants of commitment for unpaid fines.

Victoria the 'fines capital'¹⁰

Victoria is the 'fines capital' of Australia, expected to generate nearly \$1 billion from fines in the 2023-24 financial year, driven by advanced technology and debt enforcement campaigns. Fines disproportionately affect low-income individuals, pushing many into severe financial hardship. Legal experts and community leaders are calling for reform, including a discount system like that in New South Wales, which offers reduced fines for those on unemployment benefits. Current Victorian measures include instalment payment options and special

⁷ *Fines Reform Act 2014 (Vic)* ('*Fines Reform Act*').

⁸ *Magistrates' Court Act 1989 (Vic)* ('*Magistrates' Court Act*').

⁹ S Willams, M, Gilbert, R, , 'Reducing the unintended impacts of fines' (2011)(2) *Current Initiatives Paper 2; Indigenous Justice Clearinghouse* ('Reducing the unintended impacts of fines').

¹⁰ Clay Lucas Josh Gordon, 'Victoria is the fines capital, expected to rake in almost \$1b this financial year', *The Age* (Web Site 19 March, 2024) <<https://www.theage.com.au/politics/victoria/victoria-is-the-fines-capital-expected-to-rake-in-almost-1b-this-financial-year-20240317-p5fcz6.html>> ('Victoria is the fines capital').

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circumstances reviews, but critics argue more systemic relief is needed to reduce the burden on disadvantaged individuals.

In 2022-23, the government issued an extraordinary 656,186 warrants for unpaid traffic fines – exceeding its own target by 46%, thanks to special “debt enforcement campaigns” and the deployment of automatic numberplate recognition technology in sheriff vehicles.

Community views

Indigenous Justice Clearinghouse¹¹

The fines enforcement system, on its surface, treats Aboriginal and non-Aboriginal people equally. However, the disadvantage experienced by many Aboriginal people results in the fines enforcement system having disproportionate impacts upon them.

Related recommendations

2005 Review¹²

Recommendation 112

That the Victorian Government, in the event of any future amnesty for outstanding warrants being declared, make a careful assessment of the extent to which adequate information and assistance for Aboriginal people in availing themselves of the amnesty before the amnesty process is commenced (Recommendation 120); and

That the Victorian Government continue to implement and monitor Recommendation 120 through any monitoring process established as a consequence of this Review.

Assessment summary¹³

The intent of Recommendation 120 to introduce an ongoing amnesty on the execution of long-outstanding warrants of commitment for unpaid fines, to prevent unnecessary imprisonment and support rehabilitation and social stability, especially for disadvantaged individuals.

We found that no actions had been taken that aligned with the intent of Recommendation 120. While the *Fines Reform Act 2014* (Vic) introduced alternative measures like the Work and Development Permit Scheme, no formal, ongoing amnesty on long outstanding warrants for unpaid fines has been implemented.

While Victoria has made efforts to address unpaid fines through initiatives such as the Work and Development Permit Scheme and special circumstances reviews, a continuous amnesty has not been implemented since the 1994 amnesty. Section 58 of the *Magistrates' Court Act 1989* (Vic) nullifies warrants after five years, but the legislation allows fines to be reissued, limiting the long-term impact of these measures. Additionally, concerns were raised about the Sheriff's Office continuing to issue fines independently of the Magistrates' Court, which further complicates the system.

Part of the problem with this is that it doesn't draw the other side of the coin: the Sheriff's Office, the legislation and the court...you know. Therefore, if they're in the hands of the sheriff, then there are limited

¹¹ Mary Spiers Williams and Robyn Gilbert, 'Reducing the Unintended Impacts of Fines' (Current Initiatives Paper No 2, Indigenous Justice Clearinghouse 2011).

¹² 2005 Review, vol 1, 510.

¹³ Meeting with Aboriginal Justice Caucus Working Group (Project Team, In Person 28 August 2024) ('Working Group Meeting (28 August 2024)'); Meeting with Aboriginal Justice Caucus (Project Team, In Person, 23 October 2024) ('Aboriginal Justice Caucus (23 October 2024)').

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things that the Magistrates Court can do. So, there are some discrepancies here about how...you know, we're sort of LED up the garden path a little bit here with how it all works. (Lawrence Moser, Chairperson, Eastern Metropolitan Regional Aboriginal Justice Advisory Committee (RAJAC))

We identified troubling evidence of increased enforcement of traffic fines, with Victoria issuing 656,186 warrants for unpaid traffic fines in 2022-23. However, there is no indication that a formal, ongoing amnesty has been implemented in line with Recommendation 120. This remains a high priority, with the introduction of an ongoing amnesty being the goal.

Furthermore, the discontinued *Deemed Served* programme, part of the Prison Fines Work-off Scheme, is an initiative worth re-instating. This service allowed detainees to have their unpaid fines deemed as served during their time in custody, helping to alleviate financial burdens upon release without requiring them to actively 'work off' the fines. We advocate for the program's reinstatement to manage fine-related penalties more effectively for incarcerated individuals, including people on remand.

If the person's gone into custody, they can turn around and say, can you check whether I've got any outstanding warrants or fines? If there are any warrants or fines out there, I want to call them in, and you can sort them out as to when you're doing your time in prison. (Bobby Nicholls, Chairperson, Hume RAJAC)

Assessment of Recommendation 120

Is the intent of the recommendation accurately described?

Yes No

Does the action taken align with the intent of the recommendation?

0 – No action taken

1 – Action taken is of little relevance to the intent of the recommendation

2 – Action taken partially aligns with the intent of the recommendation

3 – Action taken fully aligns with the intent of the recommendation

0.5

(Score out of 3)

Is there evidence of the desired impact or outcome/s?

0 – No evidence

1 – Evidence of output rather than outcome

2 – Some evidence action contributed to outcome/s

3 – Clear link between action and impact or outcome/s

0

(Score out of 3)

How relevant is the recommendation in the current context?

0 – No relevance – refers to practices, agencies or laws that no longer exist

1 – Low – some relevance, but most aspects of the recommendation no longer apply

2 – Moderate – remains relevant, but some aspects of recommendation no longer apply

3 – High – entirely relevant to current context

3

(Score out of 3)

Does full implementation have the potential to reduce incarceration, increase safety in custody and/or progress Aboriginal self-determination?

0 – No potential to improve Aboriginal justice outcomes

1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified

2 – Moderate – potential to progress one or two of the outcomes identified

3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

1

(Score out of 3)

Potential actions for further work

Increase awareness of Fines Victoria Prison Program (previously the 'Deemed Served' program)

Ensure Aboriginal people in custody (including on remand or recently released) are aware of and supported to access the Fines Victoria Prison Program to alleviate the financial burdens of unpaid fines.

Moderate priority for further work

Relevance and potential impact

		Low (0-2)	Moderate (3-4)	High (5-6)
Extent of action taken and evidence of outcomes	High (5-6)			
	Moderate (3-4)			
	Low (0-2)		Rec 120	

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