

Using the tax system to collect fines¹

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In this article we consider the possibility that fines could be collected through the tax and social welfare systems in the same way as higher education contributions and child support payments are currently administered. We argue that the existing system of fine collection and enforcement leads to high default rates and reduces the usefulness of fines as a sanction. We consider a range of models for the implementation of an income-related fine collection system, and discuss their possible implications for issues including judicial independence, the time taken to repay fines and aggregate fine revenue.

There are significant problems with the current system for the imposition and collection of fines for criminal offences in Australia. Some of the major difficulties are as follows.

First, in some cases, the fines imposed may not be a true reflection of the severity of offences. Related to this is that fines may not be imposed even when they are apparently warranted. A reason for this is likely to be the assumption that offenders could not pay the level of fine required to reflect the severity of the offence.

Second, and related to the above, the imposition of 'just' fines may be associated with high default rates, resulting in both high personal costs for offenders and significant social costs. All parties suffer in the event of default: the offender because default may result in loss of property or personal freedom; and taxpayers who not only forgo the revenue from the fine but must also fund alternative default penalties such as community service or imprisonment.

Third, there are high official costs associated with fine default. Non-payment requires visits by sheriffs' officers or police and extra court or administrative proceedings. Following up the non-payment of fines is expensive.

In short, the current system for imposing monetary penalties and ensuring that they are paid

is significantly flawed. This article suggests an alternative. It involves the proposition that fines could be paid using levies on offenders' future income. The proposed policy is an example of a class of economic policy instruments known as 'income-related loans'.

The best-known applications of the idea are the Higher Education Contribution Scheme (HECS), introduced in Australia in 1989, and the Child Support Scheme (CSS), introduced in 1988. HECS, a system in which those enrolling in higher education are able to postpone the payment of tuition fees until their incomes reach a certain level, is a fair and administratively efficient method of collecting university charges. The CSS operates in a similar fashion to collect child support payable under court orders or registered agreements.

In this article we consider the possibility that fines could be collected through the tax and social welfare systems in the same way that higher education contributions and child support payments are currently collected. Such a policy might be labelled the 'Fine Enforcement Collection Scheme', or FECS.

The article is organised as follows. In the second section the desirability of an enhanced role for fines and the limitations of existing

enforcement and collection mechanisms are discussed. The relationship between fines and capacity to pay is considered in section three. In the fourth section we present the concept of an income-related loan and describe experience with HECS and the CSS. In the fifth section the idea of an income-related collection scheme for fines is explained and developed, and in the sixth section some estimates of possible repayment rates and effects on aggregate revenue from fines are presented. Section seven deals with the implications of the use of the Commonwealth tax and social security systems to collect fines levied by state courts for Commonwealth–state relationships. In the final section the broader implications of the proposal are discussed.

The desirability and practicality of an enhanced role for fines

Background

At present, fines are most commonly used as a sanction for minor offences, such as traffic infringements and various administrative misdemeanours. Fines may also be used as a sentence for criminal offences such as burglary, theft of various sorts and assault, particularly where the person is a first offender.

Fines are generally small, averaging around \$600 (based on NSW Magistrates Court data for 2001), which is less than one week's average weekly ordinary time earnings for Australian adults, estimated at \$734 in 2003 (Australian Bureau of Statistics 2003). Although fines would normally be inappropriate for serious criminal offences, such as murder and armed robbery, there is a large range of intermediate offences for which substantial fines might be appropriate.

Sentences of imprisonment for short terms (less than one year) are commonly imposed, but are widely recognised as unsatisfactory. As the UK Attorney-General (UK Home Department 2002, para. 5.22:102) notes:

...short-term custodial sentences...are usually ineffective... Short spells in prison also increase the chances of re-offending and these prisoners are reconvicted at a higher rate than those who serve longer sentences.

As part of its 'reducing imprisonment strategy', the Western Australian government proposes to prohibit sentences of six months or less. That

government believes that short sentences serve no useful purpose and that it is more appropriate to manage such offenders in the community. The *Sentencing Legislation Amendment and Repeal Act 2003* (WA) removed all sentences of six months or less from the statutes, and increased the availability of pre-sentence community-based orders and intensive supervision orders.

The main alternatives to short terms of imprisonment are periodic detention, intensive probation of various sorts, home detention and community service orders. All of these are usually cheaper than imprisonment, but are nevertheless more costly to implement than fines, and are frequently breached.

With an effective collection system, fines, possibly larger than those commonly imposed at present, could represent an alternative or addition to existing sentencing options for offences of intermediate seriousness. They meet a number of the standard objectives of sentencing, including retribution, deterrence and denunciation, and may be used to finance restorative and reparative measures. Unlike most of the available alternatives, they do not involve a net financial cost to the community. However, these theoretical advantages are not realised under the current system of fine enforcement.

Collection rates and costs

The major problem with the current system of fine enforcement is that it is not effective. The collection rate, that is, the amount collected by the courts expressed as a proportion of the amount imposed, is low in most cases.

Freiberg and Fox (1994) examined court fines imposed in Victoria in 1992 and found that the collection rate was only 44 per cent. The lowest collection rates were strongly associated with offences which indicate fraud or dishonesty, poverty or some form of secondary deviance.² The least compliant offenders were those who committed offences involving fraud, failure to provide information to the authorities, unlicensed driving, driving while disqualified and having unregistered or unroadworthy vehicles. These are offenders who are least likely to be located through motor vehicle records, most likely to provide incorrect information to authorities and most likely to move residence frequently.

The collection of fines has high enforcement costs. For example, in Victoria, enforcement action can add another \$64 to a \$100 fine: courtesy letter

\$14.60, registration fee \$32.00 and enforcement certificate \$17.40. If a warrant is issued, a further \$79 is added (costs as at 1996) (Victorian Public Accounts and Estimates Committee 1997). A paradox of fine enforcement is that enforcement action may steeply increase the amount requiring payment, which, in turn, may render it more probable that the fine will not be paid. The poorest offenders, who are most likely to default under existing procedures, are likely to suffer disproportionately from high-cost enforcement strategies.

Enforcement mechanisms

Existing mechanisms for the enforcement of fines are unsatisfactory. Imprisonment in default of payment has been criticised as being unjust, unfair to poor offenders, dangerous to vulnerable offenders, expensive, administratively inconvenient and disproportionate in its effect on indigenous offenders (Redmond 2002; Whittaker and Mackie 1997). Though community work is considered more constructive and less expensive than imprisonment, program costs have risen as the number taking up this option has increased (ACT Treasury 2003; citing national figures showing costs of community corrections had escalated 11 per cent in the three years to 2001–02). High breach rates create further problems for program managers (Wise 1993).

The sanctions of suspension or cancellation of driver licences are the most rapidly growing means of enforcing fines (Storey 2001). They are used in almost every jurisdiction to enforce vehicle-related fines and in some jurisdictions to enforce fines generally. Such suspensions or cancellations may be imposed by courts or result from administrative action. While much success is claimed by enforcement authorities, there is evidence that a significant number of offenders violate the sanction and that it results in unlicensed (and uninsured) drivers being on the road (Storey 2001). It also tends to raise the penalties for default, as the punishment for driving while disqualified is severe when compared with standard penalties for fine default.

The civil model empowers the criminal courts to use one or more of the civil powers of the court to enforce monetary penalties. These include warrants of seizure and sale, attachment of debts and attachment of earnings. Attachment of income or debts is widely available both for civil debts and fine enforcement and is closest to

our proposed Fine Enforcement and Collection Scheme. However, under current arrangements, administrative costs are high and are largely borne by employers. Where property is seized this can adversely affect other family members.

Fines and capacity to pay

Under current sentencing procedures, fines are normally set as fixed financial penalties determined by the gravity of the offence, although the offender's capacity to pay may be taken into account in determining the level of fine that is imposed. Current common law and statutory provisions permit a court to impose a lower fine than that which might otherwise be appropriate for the offence if the offender is unable to pay the full penalty. However, there is no systematic basis for relating penalties to capacity to pay. In many cases where the usual fine imposed for a given offence represents a severe financial burden for a low-income offender, the fine imposed on a high-income offender for a similar offence may be somewhat larger, but is still little more than a 'slap on the wrist'. However, it is commonly argued that a fine heavier than that warranted by the gravity of the offence should not be imposed upon a wealthy person, even though this might achieve an equal correctional impact (Fox and Freiberg 1999).

The courts may also take offenders' means into account by allowing time to pay, by permitting payment by instalments or, ultimately, by waiving fines where offenders are unable to pay.

Recent Irish research illustrates the problem of lack of means. Of those imprisoned in Ireland for fine default, two-thirds were in 'basic' poverty, lacking key items essential for ordinary life, while all of them suffered secondary deprivation (Redmond 2002). An English study identified the major reasons for non-payment as other debts and changed financial circumstances, with the vast majority of non-payers not having a job (Whittaker and Mackie 1997). A study of 259 English fine defaulters found that 77 per cent of those whose employment status could be ascertained were unemployed (Moore 2003). Given the high proportion of defendants in criminal courts who are unemployed, dependent on social security, poor or otherwise disadvantaged, this is an endemic problem.

A more fundamental problem arises because the assumption that a particular monetary

amount is an appropriate penalty for a given offence is inconsistent with the principle of equal impact. A fair criminal justice system should attempt to avoid imposing sanctions that have unequal effects on offenders with differing resources (Fox and Freiberg 1999).

A comparison of the sentencing principles used for fines and for prison sentences suggests that no consistent principle of equal sanctions is applied. In general, and with the qualifications noted above, fines and other financial penalties are determined by the gravity of the offence, and independently of the offender's financial resources. By contrast, the financial impact of a given prison sentence, measured in terms of income forgone, varies according to the earning capacity and other circumstances of the offender, and is greater for those with higher income. Hence the view that monetary penalties should be set independently of the offender's financial resources appears to imply that prison sentences should be shorter for those with higher earning capacity, thereby equalising the financial impact. This is a conclusion that would not command broad support. It appears, therefore, that there is a logical inconsistency between the equity principles used in imposing fines and those used in setting terms of imprisonment.

In a number of European jurisdictions, this equity problem is dealt with through what is known as a 'day fine' scheme, which involves the setting of penalty units expressed in terms of days of income for the offender (NSW Law Reform Commission 1996; Irish Law Reform Commission 1991; Vera Institute 1996). This idea has not found favour with Australian legislatures, primarily because of difficulties of access to tax records for verification purposes and the dislike by the courts of variable or sliding-scale forms of penalisation. However, the tendency of courts to impose lower fines on those of limited means acts as an *ad hoc* and discretionary form of day fine. The system of income-related fines proposed in this paper does not imply the imposition of penalties that are proportional to current or future income. However, such a system would increase the flexibility of sentencing in this respect.

Income-related loans in theory and practice

The theory of income-related loans has been discussed, primarily in the context of education financing, by Grout (1983), Chapman (1997) and Quiggin (2003), among others. Quiggin (2003) shows that financing schemes with income-related repayments provide a mixture of consumption-smoothing benefits and insurance against the uncertain outcomes of risky educational investments, and concludes that 'educational financing schemes with income-contingent repayment will enhance welfare relative to the alternative of upfront fees yielding the same revenue in present value terms'. More generally, under a range of conditions, an income-related loan may be used to meet a given funding obligation for a group of borrowers at lower average welfare cost than a loan with fixed repayments.

An income-related loan may be operated using the tax-welfare system as follows. An individual incurs a debt to the government, such as a charge for university tuition. The debt is recorded with the taxation authorities and is repaid in the future, with the extent and structure of repayments depending on the level of the individual's income. Because interest rates are subsidised, debtors with low future income pay back less to discharge a given debt, in present value terms, than do those with high future incomes. In addition, the total amount to be repaid may be varied according to the individual's income.

The main benefit of income-related payment schemes derives from the fact that they offer a form of insurance against the risks associated with having payment obligations when future incomes are uncertain. That is, protection against default is implicit in an income-related payment scheme.

HECS and the CSS

In 1989 the Australian government introduced the Higher Education Contribution Scheme (HECS) as an alternative to proposals for the reintroduction of university fees, then under consideration as a response to the rising costs of financing higher education (Chapman 1997;

Edwards 2001). The scheme required all Australian undergraduates to pay a charge for each course undertaken. The charge was initially uniform, but was later differentiated by subject. No payment was required until the student entered employment, and the timing and annual level of payment were dependent on income.

A second instance of income-related payment obligations, more relevant in some ways to the prospects for income-related repayment of fines, is the Child Support Scheme (CSS) operated in Australia by the Child Support Agency. The scheme began in 1988 and facilitates the collection of child maintenance payments from non-resident parents.

The CSS differs from HECS in that there is no fixed debt to be discharged. Rather, the non-resident parent's obligation is to make a contribution to the support of children aged under 18, determined on the basis of an assessment of both parents' means.

A more significant distinction relates to the group affected by the schemes. Since the CSS is potentially applicable to all non-resident parents, it includes parents with a wide range of income sources, including social security payments. By contrast, HECS payments are made only by former university students.

The administrative requirements for the efficient collection of HECS and CSS payments are straightforward, even if they did not appear to be so at the time the schemes were first proposed. This is best understood through an explanation of the processes involved in the recording and collection of the debt. There are important lessons for the administration of an income-related fines system from the arrangements involved in existing income-related loans schemes.

Consider HECS first. When students enrol in university courses they are offered a choice with respect to the payment of tuition charges. One option is to pay the charge upfront, and receive a 25 per cent discount. The second option is for the student to agree to repay the charge out of future personal taxable income. In this case the debt is recorded against a student's unique tax file number and registered with the Australian Tax Office. When the student's yearly income exceeds a threshold, currently just over \$25,000,³ the repayment obligation is deducted from income and the debt is reduced accordingly. Repayments are set as a percentage of annual income, starting at 3 per cent, and increasing pro-

gressively up to 6 per cent for annual incomes above \$36,000. It takes about 10 and 13 years for typical male and female graduates respectively to repay an average HECS debt (Chapman and Salvage 2002).

HECS costs very little to administer and collect. It was estimated in the early 1990s that the cost of HECS to the Australian Tax Office was around \$20 million per year, or less than 3 per cent of current annual receipts (Chapman 1997).

The CSS collects a larger proportion of income from a more diverse range of payers, of whom there are currently around 700,000. The median taxable income of CSS payers was \$28,038 in 2000–01, whereas the average starting salary for graduates was about \$35,000. Moreover, graduates typically experience rising incomes over the period during which they repay their HECS liability, so that the difference between the two groups is greater than this comparison indicates.

The amount of child support collected for a single child is 18 per cent of adjusted income, calculated to provide an implicit living allowance for the payer, up to a maximum of about \$18,000 each year. Payments increase with the number of children, up to a maximum of 36 per cent of adjusted income. Maintenance payments may be collected from pension and benefit payments at a maximum of \$10 per fortnight. A similar maximum applies to payers with a taxable income below about \$15,000.

The CSS also differs from HECS with respect to the way in which liabilities are incurred. Whereas HECS obligations are incurred voluntarily (even if not all students accept the fairness of the payments system), CSS payments typically arise from relationship breakdowns and are frequently the subject of continuing disputes.

Not surprisingly, these characteristics are reflected in higher collection costs and default rates for CSS payments. The collection costs of the CSS are around 14–15 per cent (Attorney-General's Department 2002) of each dollar collected. Estimates of default costs vary widely, but are well above those for HECS.

Overseas experience

Since 1989, schemes similar to HECS have been instituted in several other countries, including New Zealand, South Africa and Chile, and will be implemented in the UK in 2005, under legislation currently (February 2004) before parliament. In Australia, the HECS mechanism

was used to extend student income support in 1993 (Chapman 1993) and to cover postgraduate charges in 2002 (Chapman and Salvage 2002). In the 2003 Budget statement, the federal government announced its intention to extend HECS-type loans to full-fee-paying domestic students and some private higher education institutions.

In the UK, courts can require regular deductions from social security pensions or benefits for the payment of fines (Whittaker and Mackie 1997). A number of problems have been encountered with the UK scheme, though none appear insurmountable. The amount deducted is small; the maximum is £2.70 per week (about \$A7). Even so, this would permit collection of a fine of £130 or about \$A350 over the course of a year. Some magistrates felt that the payment mechanisms removed the responsibility for paying the fine from the offender, and that this lessened the impact of the fine as a punishment. Against this it can be argued that increased compliance can make the punishment more credible. Finally, the UK scheme is limited because it cannot be used if there are already three other deductions from social security payments. Many offenders found themselves in such a position, with numerous debts and outstanding utility bills.

The basis for an income-related collection mechanism for fines

How FECS might work

Consider an illustrative example. Imagine that a person is convicted of a criminal offence, for example an assault or property crime, entailing payment of a substantial fine. The offender would be given the option of paying immediately. Alternatively, if the offender chooses, the payment obligation could be deferred, in which case payments are based on future income with set percentages of the debt being collected through the tax system.

Those taking the 'pay-later' option would be required to provide their Tax File Number, and the fine obligation would be recorded in the tax file by the Australian Taxation Office.

The use of Tax File Numbers would obviate many of the problems which bedevil the present system. An example is the provision of false or out of date addresses. In the UK, 96 per cent of the write-offs for fines in 1997–98 were due to an inability to trace or contact the defaulter (UK

Select Committee on Public Accounts 2002, para. 22). Under the proposed scheme, itinerant offenders could be traced through their tax returns or social security payments rather than their ever-shifting abodes, and this would apply wherever they were in Australia.

For offenders in wage or salaried employment the employer would deduct payments in line with the parameters set by government, in the same way as currently happens with existing income-related loans. An offender would be able to repay all or part of the debt at any time.

An important issue in designing the scheme relates to interest rates and the possibility of a discount for early repayment. Although it would be appropriate to adjust fine debts for inflation, the objectives of the scheme would not be well served by the accumulation of interest obligations in addition to the original debt. However, it might be appropriate to offer a discount for immediate payment. This would constitute an implicit interest rate, but would ensure that the additional real cost of the deferred option was bounded by the amount of the discount. The effect of this approach would be that offenders with low incomes, and therefore long repayment periods, would pay less in present value terms than offenders with higher incomes. Note that, unlike a day fine, there is no requirement to predict income in advance.

Comparison with garnishment

A proposal for income-related fine repayments may be compared with various forms of garnishment of earnings currently available for the collection of various debts. Typically garnishment requires a specific order for the collection of a fixed amount from each pay, which would be paid by the employer to the party to whom the debt is owed. Such procedures were sometimes used for child support payments before the introduction of the CSS. However, because it requires administratively complex and case-specific arrangements, garnishment has been used only rarely.

More generally, there is provision for payment of fines by instalments. However, these require positive action on a regular basis by the offender, which often creates difficulties both for offenders and for those charged with collecting the fines. If the offender fails to make the required payments, the problem of collection falls to the sheriff, whose resources are considerably less than those of the Taxation Office.

By comparison the proposed scheme is income contingent and does not wholly depend upon one employer. It is a more flexible system which is embedded in a broader revenue collection mechanism.

A significant problem with garnishment is that substantial private information must be provided to the employer if the payment is to be collected. If FECS were introduced as a scheme similar in design to, but separate from, HECS and the CSS, it would also require the provision of information to employers in registration for tax collection under the Pay as You Earn system. Privacy concerns could be addressed in part by allowing offenders a period of grace in which to pay the fine, after which the employer would have to be informed of their obligation to deduct the debt.

Moreover, it would be administratively feasible for the relevant information to be held by the Tax Office, which could advise employers of the rate of deductions required for an individual based on their Tax File Number. If the use of income-related repayment mechanisms is expanded, it would make sense, in administrative terms, to integrate a range of repayments into a single adjustment to basic tax rates, rather than requiring employers to make multiple adjustments to standard rates. If this procedure were adopted, privacy concerns would be mitigated.

Application to social security payments

An important issue is whether the scheme should be extended to allow deductions from social security payments, which are the main income source for many offenders, to be used to repay fines. As noted above, courts in the UK can require regular deductions from social security pensions or benefits for the payment of fines (Whittaker and Mackie 1997).

In Australia, deductions from pensions and benefits have not been favoured, for a number of reasons. First, there is the problem that pensions and benefits are Commonwealth responsibilities, but fines are mostly imposed in relation to breaches of state law. Second, it has been considered that the amounts that could be recovered in this way might be too small to be significant. Third, there is also an aversion to this technique because it runs counter to the prevailing ethos behind the provision of pensions and benefits, which are regarded as basic entitlements.

The issue of Commonwealth–state relations is discussed below. The second and third objections are inconsistent with the acceptance of compulsory deductions from pensions and benefits in relation to child support obligations. In this case, the collection of small amounts is justified, and the fulfilment of obligations to society overrides any assumption that the full benefit is a basic entitlement. The question is considered further below in the context of a comparison of different repayment arrangements.

Compliance issues

Since the target population for FECS consists of people who have failed to comply with the law, it is evident that compliance will be a challenge. A range of non-compliance problems arise with the general operation of the taxation and social security systems of which the most important for present purposes is that of undeclared work for cash payments, often using false names. Such work arrangements are particularly prevalent when employers themselves are involved in illegal or marginally legal activities, and it seems likely that the FECS target population would often work in activities of this kind.

Other problems with tax compliance include the fraudulent use of tax minimisation devices and exploitation of the self-assessment system for false deduction claims. Although problems of this kind cause serious losses of tax revenue, they do not seem likely to be a major problem for FECS. These avenues of non-compliance are primarily available to high-income earners, whereas most offenders are low-income earners. For high-income earners subject to penalties under FECS, the risks associated with illegal or doubtfully legal tax minimisation would be enhanced by the possibility that additional penalties would be imposed for fine default.

Since compliance with the tax and social welfare systems is imperfect, and the target group for FECS is particularly prone to non-compliance, it seems likely that a scheme such as FECS will experience significant non-compliance, and also significant costs of enforcement. In particular, it might be argued that some very poor criminals would have their punishments deferred, and in some cases, avoided altogether.

However, the relevant comparison is not an ideal of perfect compliance, but the performance of the existing system of fine collection. As noted above, this system achieves compliance rates of

about 50 per cent, with high administrative costs relative to the amount collected, despite the employment of arguably disproportionate responses such as property seizure or loss of driving licence. No system is likely to achieve total compliance. At least the FECS system could allow the recovery of fines from offenders once their circumstances permitted it. However, the criticism is valid to the extent that the scheme is likely to be more successful in recovering outstanding fines from those with fluctuating incomes rather than the perennially poor.

A related issue is that the increased effective tax rates associated with HECS constitute a disincentive to work. It is worth noting, however, that substantially greater disincentives already exist in the tax-welfare system. Under the proposals considered here, the highest rate of collection proposed is the same as the maximum under the CSS. This is smaller than the effective tax rate that applies to the second income earner in a middle-income household with children.

Incentive effects depend further on whether fines are specified as fixed amounts, as at present, or as a proportion of future income, as in the 'day fine' system. In the case of a fixed penalty, adverse incentive effects are mitigated by the fact that the higher the level of payments, the faster the debt is discharged. On the other hand, setting penalties proportional to income is more consistent with the general principles under which the tax-welfare system operates.

Judicial independence

Any change to penalties raises the question of judicial independence. In the case of fines, it is worth noting that the widespread use of administratively determined penalties, parking tickets and on-the-spot fines means that the principle that all penalties should be determined by a judicial officer, taking into account all relevant circumstances, has long been abandoned in the case of minor offences. In relation to sentences of imprisonment, parole boards manage penalties for prisoners after they are imposed, frequently being required to substitute their own subjective judgments for those of the sentencing judge.

A proposal such as FECS would, if anything, enhance judicial independence by expanding the range of penalties that can be imposed. In particular, in cases where imprisonment would be appropriate, FECS provides the possibility of both a substantial penalty and significant

restitution to the community, whereas existing fines are constrained to be small in relation to the incomes of all but the poorest offenders. In summary, magistrates would retain their powers to impose sentences as they see fit, within the range of penalties set by parliament; FECS would simply improve the collection mechanism.

What FECS might mean for offender repayments

To explore what FECS might mean for the repayment obligations of hypothetical offenders we have constructed a series of age-earnings profiles using data from the Housing and Income Distribution Survey (Australian Bureau of Statistics 1995), updated to 2002 dollars. The profiles are based on earnings functions estimated for males, using an ordinary least squares regression. The explanatory variables are experience (a term in squared experience is included to allow a quadratic relationship between earnings and experience) and dummy variables for educational qualifications (the base category is high school or less). The econometric results are shown in Table 1.

This is a well-behaved earnings function, and is comparable to those used in similar exercises related to HECS (Chapman and Salvage 2002). It suggests that males with postgraduate, Bachelors and TAFE qualifications earn around 60, 52 and 27 per cent more than those in the residual category. The coefficients on experience suggest that when unskilled males have been in the labour force for 10 years, their weekly wages increase at around 4 per cent per year, but that their earnings peak at around age 40.

The wage coefficients allow us to construct an age-earnings profile for unskilled males, the group used in the illustrations of the potential repayment streams for different variants of FECS. Unskilled young males have been chosen because members of this group are more likely than average to commit low-level criminal offences. Several income-employment relationships are shown in Figure 1.

The figure shows the annual income for unskilled males at different ages for three employment scenarios. The first, represented by the top line, is for full-time workers employed year round and earning the average income by age for unskilled males. The middle line is for males who earn the average income of unskilled

males who work full-time for nine months of each year, but who receive unemployment benefits (with no dependants) for the other three months of the year. The lowest line is for individuals who work full-time for three months, and who are unemployed for the other nine months of each year.

The data can be used to illustrate repayment streams for hypothetical individuals and repayment parameters, for assumed levels of fines. For the latter we note that in 2002 in South Australia the average fine per person was \$578. In the UK, a recent study of fine defaulters found that their average fine was £465: 12 per cent were ordered to pay more than £1000 and 10 per cent less than £100. With this background it seems reasonable to assume that average fines per person might be between \$500 and \$1000. However, given the benefits of collecting the debt through a default-protected mechanism such as FECS, fines could be raised to a higher level, more commensurate with the offence in question. Accordingly we illustrate the time taken to repay hypothetical fines of \$750, \$1,000 and \$2,000.

In all cases it is assumed that the offender is an 18-year-old unskilled male. Three different assumptions about FECS repayment rules are considered for illustrative purposes. The first is that current HECS repayment parameters are applied (Table 2a). The second is that repayments are equal to 5 per cent of income, with an income threshold of repayment of \$10,000, which just exceeds unemployment benefits for a person with no dependants who is living at home (Table 2b). The third is that the formula used to calculate payments under the CSS for a single child is used

to determine repayment rates (Table 2c). Under each of these assumptions, repayment times are calculated for workers employed throughout the year, for those employed for nine months and unemployed for three months per year, and for those employed for three months and unemployed for nine months per year.

Table 2a shows that applying the current HECS repayment rules would lead to excessive repayment times in all cases. For example, for a fine of \$2,000, repayment would take nine years for a full-time unskilled male and 12 years for a similarly qualified male who is unemployed for three months of the year. Moreover, under HECS rules no fine at all would be paid for those unemployed for nine months of the year. Hence, current HECS repayment parameters appear unsuitable for FECS.

Table 2b shows the implications of requiring repayments of 5 per cent of income with an income threshold of \$10,000 per year. At 5 per cent of income, a fine of \$1,000 would take just over a year for a worker unemployed for three months per year (and at this rate, the amount paid per week for this fine level is around \$14 a week). As shown in Table 2c, application of the CSS parameters for those experiencing short unemployment durations takes the same length of time for a fine of \$1,000.

Table 2c suggests that application of the CSS payment rules is generous compared to the 5 per cent scheme for those experiencing long periods of unemployment, taking just under four years for a \$1,000 fine with the CSS, compared to about 1.7 years for the 5 per cent rule. It is arguable that the CSS rule is perhaps then more appropriate given that the income situation of individuals in these income circumstances is extremely poor.

The income threshold for repayments under FECS should be low enough to include offenders who receive social security payments for part of the year, provided that no deduction, or combination of deductions, is so great as to reduce the person to penury. A straightforward way of taking this concern into account would be to use the CSS repayment parameters, which are designed to enforce significant payments while taking account of the financial needs of the payer.

FECS and total revenue from fines

We now consider estimates of fine revenues from both the current and proposed FECS arrangements. In this respect, it is important to distin-

Table 1 Log weekly wage determinants

(Constant)	5.48**
EXP	0.072**
EXP ²	-0.0015**
Postgraduate qualification	0.60**
Bachelors degree	0.52**
TAFE qualification	0.27**

**Significant at the 0.01 level.

$R^2 = 0.31$

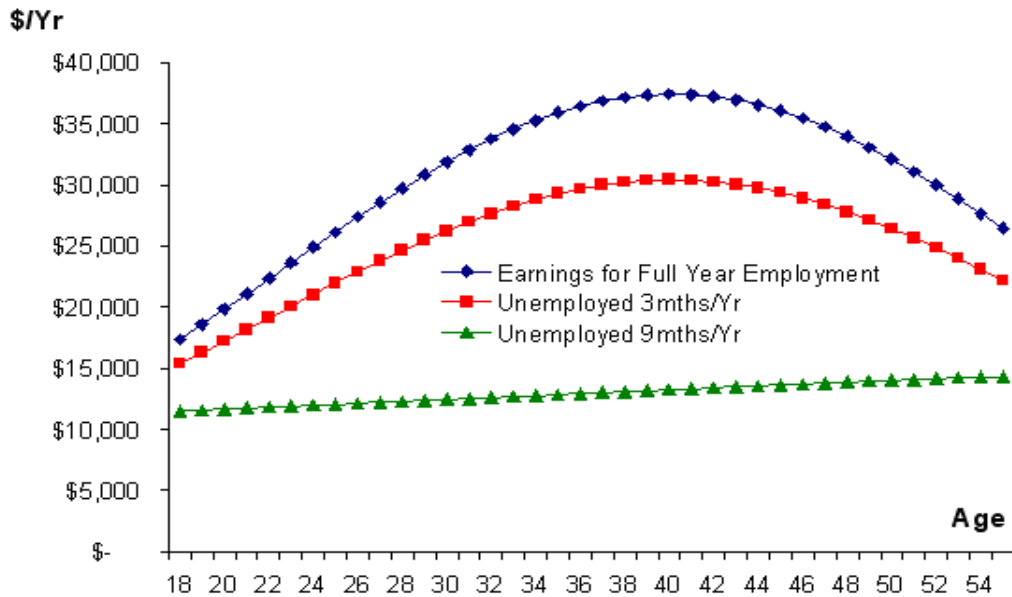


Figure 1 Age-earnings profiles for males, no qualifications, 2002 dollars

guish between fines for traffic and parking offences, which are normally issued by police or other officials, and fines imposed by courts. The majority of fine revenue comes from traffic offences, but much of the difficulty in collecting fines relates to those imposed by courts. However, as noted above, the costs of current sanctions for non-payment of traffic offences, such as licence cancellation, are difficult to measure.

Estimates are derived from the equation:

$$\text{Annual fine collections} = AF \times APC \times TO$$

where AF is the average fine per offender; APC is the probability of fine collection; and TO is the number of offenders.

It is assumed that for Australian court-imposed fines under the current system, AF , APC and TO are respectively \$600, 0.6 and 200,000. These parameter estimates have been influenced by data provided to us for South Australia.⁴

On the basis of these parameters, the revenue from the current system of fine collection is estimated at $\$600 \times 0.6 \times 200,000 = \72 million per year.

Under FECS two parameters change: the average fine per offender increases (we assume to

\$1,000) and the probability of collection increases (we assume to 0.8). As a result, the revenue delivered from FECS is $\$1,000 \times 0.8 \times 200,000 = \160 million per year, more than twice as much as under the current system. Moreover we envisage that the administrative costs of collection would fall, leading to a further increase in net revenue from fines.

Substantially greater revenue could be obtained if the use of a FECS scheme were combined with the imposition of income-related fines, particularly for traffic offences. However, this issue is beyond the scope of the present paper.

FECS would not guarantee a 100 per cent collection rate, because some offenders may leave the country, or may fall completely outside the tax and social security network.⁵ As with HECS, an offender could apply for remission or deferral of all or part of the FECS debt on the basis that the FECS repayment could cause serious hardship.

Commonwealth-state issues

The proposed scheme raises important problems for Commonwealth-state relationships. Commonwealth, state and territorial parlia-

Table 2a Repayment periods* under current HECS formula

Fine \$	750	1,000	2,000
Employment status			
Year-round workers	5	6	9
Employed 9 months, unemployed 3 months	6	7	12
Employed 3 months, unemployed 9 months	**	**	**

* Years to repay.

** no payments made over the lifecycle.

Table 2b Repayment periods*, payments 5 per cent of income, threshold of \$10,000

Fine \$	750	1,000	2,000
Employment status			
Year-round workers	0.9	1.1	2.2
Employed 9 months, unemployed 3 months	1.0	1.3	2.5
Employed 3 months, unemployed 9 months	1.3	1.7	3.4

* Years to repay.

Table 2c Repayment periods* under the CSS formula

Fine \$	750	1,000	2,000
Employment status			
Year-round workers	0.7	1.0	1.7
Employed 9 months, unemployed 3 months	1.0	1.3	2.3
Employed 3 months, unemployed 9 months	2.9	3.8	7.7

* Years to repay.

ments all have the power to create criminal offences and regulate criminal procedure (Fox 2002). However, offences against Commonwealth laws are generally heard in state courts, which are invested with Commonwealth jurisdiction. Fines for offences against a state are enforced under the relevant state law. The *Crimes Act 1914* (Cwlth), s.15A, provides that

state laws relating to the enforcement of fines apply to persons convicted within a state of offences against Commonwealth laws.

State default laws providing for imprisonment, community service, weekend detention or similar orders can be applied to Commonwealth offences. Though this may result in offenders who have committed an identical offence against

Commonwealth law in different states being treated differently, the expedient of using the states' judicial infrastructure has been used since federation.

The proposed scheme would involve a partial reversal of the historical allocation of responsibilities, with the Commonwealth taking on the responsibility for collecting fines levied by state courts. Would the Commonwealth wish to undertake such a responsibility? And if it were so minded, does the Commonwealth have the power to implement such a scheme?

In relation to the first question, it might be argued by analogy with the tertiary education sector, which is a *state* statutory responsibility, though almost entirely funded by the Commonwealth, that the federal government has an overriding interest in the maintenance of the peace and security of its citizens. More prosaically, the Commonwealth, through the Australian Taxation Office, may see its agency and collection role as a means of increasing its revenue, if it incorporates a profit margin in its collection fee.

The second question raises complex constitutional issues. Could the Commonwealth, even with the consent of a state, legislate to require a state offender to repay a fine to the state through the taxation system? Section 51(xxxvii) of the Constitution permits the Commonwealth to make laws in respect of any matters referred to it by a state, and that law need only apply to that state. A state could thus refer a law relating to fine enforcement to the Commonwealth, which could then establish a HECS-like legislative scheme. Second, the Commonwealth could legislate in respect of fine default by corporations, using the corporations power under s.51(xx). Should the Commonwealth wish to apply FECS to Commonwealth offences only, it could repeal or amend the *Crimes Act 1914* (Cwlth), s.15A, and create its own scheme for the collection of fines imposed in respect of offences against the Commonwealth.

Changes in the nature of the enforcement scheme may have other implications for fine enforcement. Whereas unpaid fines are enforceable against the estate of the offender, HECS debts are cancelled from the period after the date of death. Penalties and fines imposed for offences against federal or state law are not provable in bankruptcy and consequently

cannot be discharged in full or in part by any bankruptcy process (Fox and Freiberg 1999) whereas any HECS debt held prior to going bankrupt is a provable debt (DEST 2003).

Conclusion

The central aim of an improved fine collection is to restore the credibility of fines as a criminal penalty. Restoring the credibility of fines would have a number of important consequences. First, it might decrease the use of more expensive options such as imprisonment, probation, community service orders and the like.

Second, it might create a fairer system in that both poor and wealthy individuals and corporations are more likely to bear penalties appropriate to their means. With the prospect of introducing a day fine scheme in Australia appearing remote (NSW Law Reform Commission 1996), FECS would be more equitable than the current system.

Third, police, sheriff, prison and community corrections resources would be freed for their primary activities, rather than being diverted to the enforcement of sanctions for fine default. Fewer indigenous offenders might die in custody. Specialist fine collection units could be disbanded.

HECS and the CSS have been implemented without jeopardising the integrity of the tax system or creating adverse equity effects. They have provided a default-protected mechanism for the collection of citizens' financial obligations. The extension of the income-related loan mechanism to the collection of fines, proposed here, would have similar benefits.

Ultimately, should FECS prove effective in relation to fines, it might be extended to collect a wider range of monetary penalties, including costs awarded by courts, civil monetary penalties and confiscation orders, and reparation orders for victims of crime. In this way, not only the state but also victims might benefit from this far-reaching reform of an important component of the criminal justice system.

Notes

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2. The term 'secondary deviance' offences relating to activities by persons who, having been convicted of an offence and sanctioned, have further offended because of the imposition of the sanction, for example through non-compliance with community service orders.
3. The reforms introduced to HECS in the 2003–04 federal budget will mean that the first income repayment threshold will increase to around \$36,000 in 2005.
4. In this respect we greatly appreciate the assistance provided by Deputy Chief Magistrate Andrew Cannon.
5. Further, there is necessarily an implicit subsidy with FECS so long as the debt is not adjusted for the real rate of interest, a parameter to be decided.
6. Moore (2003) found that magistrates consider that a penalty should be painful, though it should not cause unnecessary hardship.

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