



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),  
Mr Andrew Braddock MLA

## Submission Cover Sheet

### Inquiry into Penalties for Minor Offences and Vulnerable People

**Submission Number: 003**

**Date Authorised for Publication: 19 April 2023**

The Committee Secretariat  
Inquiry into Penalties for Minor Offences and Vulnerable People  
Standing Committee on Justice and Community Safety  
ACT Legislative Assembly

Via email – [LACommitteeJCS@parliament.gov.au](mailto:LACommitteeJCS@parliament.gov.au)

Dear Committee Secretariat,

Thank you for the opportunity to make a submission to the Inquiry into Penalties for Minor Offences and Vulnerable People. This is a timely inquiry. This submission addresses the impacts of fines on vulnerable people (specifically people with disability), the impact of non-payment of fines, as well as the suitability of current ACT Government alternatives to fines and a brief discussion of alternatives for non-payment.

#### About us

Advocacy for Inclusion incorporating People with Disabilities ACT<sup>1</sup> is an independent organisation delivering reputable national systemic advocacy informed by our experience in individual advocacy and community and government consultation. We provide dedicated individual and self-advocacy services, training, information and resources in the ACT.

As a Disabled People's Organisation, the majority of our organisation, including our Board of Management, staff and members, are people with disabilities. Advocacy for Inclusion speaks with the authority of lived experience. It is strongly committed to advancing opportunities for the insights, experiences and opinions of people with disabilities to be heard and acknowledged.

Advocacy for Inclusion operates under a human rights framework. We uphold the principles of the United Nations Convention on the Rights of Persons with Disabilities and strive to promote and advance the human rights and inclusion of people with disabilities in the community. Advocacy for Inclusion is a declared public authority under the Human Rights Act 2004.

#### Disability in the ACT: Background

Around 1 in 5 Canberrans has a disability. The proportion of people with disability in the ACT has increased over time, rising from 15.8% in 2012 to 16.2% in 2015, to 19.4% in 2018. The ACT also has a greater prevalence of reported disability across all age groups, compared to the rest of Australia.

The majority of people with disability are on low to modest incomes due to employment barriers and

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<sup>1</sup> On March 24, 2021, Advocacy for Inclusion (AFI) officially merged with People with Disabilities ACT (PWDACT), a systemic advocacy organisation based in the ACT. Herein, reference to 'AFI' also acknowledges the values and philosophies of PWDACT.

numbers of people in casual and part-time employment. On average, the gross median personal weekly income for a person with disability is approximately half that of someone with no disability: \$700 compared to \$1343.<sup>2</sup>

In the ACT, people with disability are overrepresented among low-income households.<sup>3</sup> At present, it is impossible to live in the ACT solely on the Disability Support Pension (DSP), let alone JobSeeker Allowance (JSA), without compromising on food, clothing, utilities, housing, medical bills, and additional expenses that come with disability.<sup>4</sup>

As part of our [work on income support](#) AFI produced a model personal budget for a Canberran on DSP which shows that people with disability face a shortfall of around \$824 per fortnight on conservative estimates after paying for the bare necessities of private rental housing, groceries, on demand transport, utilities and other expenses. Relevant to fines the Budget did not include any capacity to deal with unanticipated events or emergencies.

### The Cost of Disability

In addition to the rising costs of everyday essential goods and services, disability often incurs higher living expenses due to medication, treatment, and premiums placed on more specific items. These extra costs are typically unreported when it comes to understanding the financial pressures facing people with disability.

Economic analysis has identified the ‘less obvious higher costs’ experienced by people with disability which tend to go unreported because the costs are ‘ignored, internalised, or forgotten.’<sup>5</sup> Such costs include higher prices for similar goods due to inaccessible buildings, shops or transport, the inability to shop around for or take advantage of mark-downs or bargains, a greater reliance on more expensive, or more proximate, smaller convenience stores, and higher prices for non-basic models with added functionality. People with disability also report greater use of heating and cooling and more expensive transport modalities. ‘Free’ or low-cost workarounds are often inaccessible or unavailable. These additional costs amount to a disability premium between 2 and 5 per cent above the costs faced by people without disability.

The bottom line is that life costs more for people with disability and their families, spending more on essential goods and services. These extra costs mean people with disability have less money in their pockets than people without disability, or are forced to go without. It also means that unforeseen costs – like fines - hit people with disability disproportionately hard.

### Disability and Access to Justice

People with disability are over-represented at all stages of the criminal justice system – as witnesses, victims, offenders, defendants, and prisoners. Despite forming only 18 per cent of the general population, people with disability make up at least 29 per cent of Australia’s prison population.<sup>6</sup> Such over-representation in the criminal justice system reflects the systematic failure to provide appropriate

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<sup>2</sup> Australian Bureau of Statistics (2019) [Disability Ageing and Carers, Australia: Australian Capital Territory, 2018](#). ABS: Canberra, Australia, Table 7.1.

<sup>3</sup> Australian Bureau of Statistics (2019) [Disability Ageing and Carers, Australia: Australian Capital Territory, 2018](#), Table 7.3.

<sup>4</sup> Li, J., Brown, L., La. H.N., Miranti, R., and Vidyattama, Y. (2019). [Inequalities In Standards of Living: Evidence for Improved Income Support for People with Disability](#). NATSEM, Institute for Governance and Policy Analysis, University of Canberra. Report commissioned by the Australia Federation of Disability Organisations, p. 21.

<sup>5</sup> Frisch, J. (2001) [Towards a Disability Allowance: Offsetting the Costs of Disability – an analysis](#). The Sidney Myer Fund and the Physical Disability Council Australia.

<sup>6</sup> This is a conservative estimate. Additional qualitative and case studies report a figure closer to 50 per cent

services and supports to people with disability.

People with disability face a wide range of systematic and structural barriers to accessing justice. Without appropriate support and adjustments, the legal system remains largely inaccessible and can produce unjust and costly outcomes. Fines and fine enforcement can present significant access to justice issues for people with disability.

There is an assumption that fines are an inherently lenient form of punishment. However, fines neglect the circumstances of the offence as well as the financial means of the offender. Research, as well as official inquiries, have shown that fines have disproportionate and serious adverse impacts on already vulnerable sections of the community.<sup>7</sup>

People with disability, particularly people with intellectual or cognitive disabilities, are more vulnerable to being fined in the first place and to accruing multiple fines. They are less likely to be able to pay fines or to negotiate the processes available to contest them or otherwise mitigate their impact.

Inappropriate, inadequate or non-existent support can mean that official correspondence are either not received or not understood. This can also result in the inability to provide relevant documentation or use online systems that are heavily dependent on complex forms and written information. These aspects, among others, ensure that many vulnerable people fall between the cracks of inflexible administrative systems that are insensitive to specific contexts and circumstances.<sup>8</sup>

Fines for minor offences cover a broad range of activities including, but not limited to, traffic and parking, behaviour and order in public, and public transport infringements. Traffic and parking fines can range from, for example, \$125 to \$1840. If fines are either not received or not paid, escalating actions can include accumulation of debt, licence suspension, or in some cases, imprisonment. We know, for example, that the offences for which people with cognitive disability are imprisoned are overwhelmingly in the lowest severity categories, including low-level non-violent offences, traffic offences, theft and breach of orders.<sup>9</sup>

While not fines, the Australian Governments failed “Robodebt” program is an important lesson in the human consequences in circumstances where levying unanticipated debt, complicated messaging and administrative processes converge for highly vulnerable people on very low incomes. As a jurisdiction with very high costs of living the ACT should take heed.

Debt can lead to mental health issues, suicide, poor health and a loss of personal autonomy and independence. We are aware of some instances where debts and fines have been the ‘tipping point’ for people moving from circumstances where they manage their finances independently to circumstances where they are pressured to move their affairs into the care of the Public Trustee and Guardian – which itself has a cost to them.

In general levying fines on vulnerable and low income people with disability should be avoided where it is possible and in the public interest to do so.

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<sup>7</sup> Quilter, J., and Hogg, R. (2019). ‘The Hidden Punitiveness of Fines.’ *International Journal for Crime, Justice and Social Democracy* 7(3): 9-40.

<sup>8</sup> Wei, Z., McDonald, H., and Coumarelos, C. (2018). [Fines: are disadvantaged people at a disadvantage?](#) Justice Issues, Paper 27. Law and Justice Foundation of New South Wales.

<sup>9</sup> Simpson, J. (2014). [‘Participants or just policed?’](#) Guide to the role of the NDIS – people with intellectual disability who have contact with the criminal justice system. Sydney, New South Wales Council for Intellectual Disability, p. 28.

## Recommendations

Given the already heightened cost of living and disproportionate impact of fines on people with disability, the ACT should maximise the opportunities for people with disability to participate in alternatives to fines. This could involve, for example, ability-to-pay assessments, payment plans, and community service.<sup>10</sup>

This would involve training and education for those responsible for issuing fines to first exercise judgement in whether a fine is the most reasonable outcome for a minor offence. If such capacity is exhibited and a fine is issued, the offending person should then be presented with clear options and on-going support for paying, waiving, or contesting the fine.

This is one area where universal design can be deployed. Universal design ensures that systems and environments are accessible for everyone. Proactive steps to improve accessibility through universal design are strongly encouraged as this could increase the access and participation of people with disability, regardless of whether their diagnosis or support needs were individually identified. This would involve making information, materials, processes and services available and accessible for all people.

As a final step, a system of income-based fines could help to introduce fairness and equity into a system that has a disproportionate impact on people with disability and vulnerable people.<sup>11</sup>

AFI are happy to provide further information or discuss this submission at a hearing.

You can contact me on [REDACTED] or at [REDACTED]

Regards,

(Signed by email)

**Craig Wallace**

Head of Policy

14 April 2023

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<sup>10</sup> For more information, see Fines and Fees Justice Center (2020). [First Steps Toward More Equitable Fines and Fees Practices: Policy Guidance on Ability-to-Pay Assessments, Payment Plans, and Community Service](#). New York: Fines & Fees Justice Center.

<sup>11</sup> Bing, L., Pettit, B., and Slavinski, I. (2022). ['Incomparable Punishments: How Economic Inequality Contributes to the Disparate Impact of Legal Fines and Fees.'](#) *The Russell Sage Foundation Journal of the Social Sciences* 8(2): 118-136.