

**FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT
(COMPENSATION) BILL 2008**

Introduction and First Reading

Bill introduced, on motion by **Mr C.C. Porter (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR C.C. PORTER (Bateman — Attorney General) [12.20 pm]: I move —

That the bill be now read a second time.

The Fines, Penalties and Infringement Notices Enforcement Amendment (Compensation) Bill 2008 will enable monetary compensation to be available in two situations. Firstly, compensation will be available to persons who have, pursuant to a warrant of commitment, served more time in prison than was legislatively authorised. Secondly, compensation will also be available to persons who have, under a work and development order, undertaken additional work that also was not authorised by the legislation.

In introducing the bill, the government is expeditiously correcting an error in the application of the Fines, Penalties and Infringement Notices Enforcement Act 1994 which occurred between 2001 and 2006. The amendments will enable persons who have spent additional periods of time in custody for fine default or who have undertaken additional work on a work and development order to obtain monetary compensation.

In 2006 an issue was raised with the Western Australian Department of the Attorney General by the Office of the Parliamentary Commissioner for Administrative Investigations in response to a query by a prisoner serving default on warrants of commitment issued under the 1994 act. The registrar of the Fines Enforcement Registry investigated the matter and an incorrect practice was identified. The incorrect application of the 1994 act was in respect of a warrant fee being added to the amount outstanding for an offender when a warrant of commitment was issued, and when previously in the enforcement process a warrant of execution had not been issued. A warrant of commitment is issued for the imprisonment of a fine defaulter when all other enforcement sanctions have failed. A warrant of execution is for the seizure and sale of goods to satisfy a fine.

In the enforcement process a warrant of execution is commenced before the issue of a warrant of commitment. However, in certain specific circumstances the registrar of the Fines Enforcement Registry may proceed directly to a warrant of commitment without previously issuing a warrant of execution. This incorrect practice arose as a result of a change to the 1994 legislation enacted in 2001. Unfortunately, the officers administering the act did not, at that point in time, take into account those legislative changes. As a consequence, changes to the fines enforcement system computer program were not made. As a result, the Fines Enforcement Registry's computer system continued to automatically add a fee for a warrant of commitment when such a fee was not legislatively authorised. Subsequently, all warrants were correctly issued because all the offenders had defaulted in satisfying their outstanding fines by undertaking any of the other options which were available to expunge the outstanding fine.

However, as I have indicated, there was an error. The error was the addition of an incorrect fee. It was not in the issuing of warrants of commitment. Use of warrants of commitment in respect of persons who have unpaid court fines is used as a last resort when all other enforcement sanctions have been unsuccessful. On average, a person imprisoned for fine default has approximately 11 warrants for separate offences.

Immediately the error was identified the registrar of the Fines Enforcement Registry commenced action to correct the situation; that is, the registrar performed system enhancements to the fines computer to correct the error; assessed the scope of the problem by identifying that 1 730 offenders had served additional periods of default of at least one day; compiled a detailed list of persons affected by the imposition of the warrant fee to enable tracing of the group; refunded overpayments for fees to the value of \$45 808.28 to those who had actually paid out their warrants where the fee was included; and identified those who currently had further outstanding matters at the Fines Enforcement Registry.

To deal with this situation, the bill contains several specific reforms, including retrospective provisions. Firstly, the bill will compensate persons affected. The amount of compensation was struck at the current fine default rate of \$250 per day. This will be applied retrospectively. Secondly, the bill will also apply to a person who may have worked additional days, which were not legislatively authorised, on a work and development order. This aspect of the bill will also be retrospective. At this stage, however, no person has been identified as having been under such an additional work order. The bill proposes that where an affected person has an outstanding fine or infringement notice, the payment will be offset against any amount owed to the state for their fines. Currently,

73 per cent of the 1 730 individuals affected have further outstanding fines at the Fines Enforcement Registry. Thirdly, the bill also seeks to make provision for remedies to any future unforeseen events.

Importantly, the bill expressly provides that this state has no liability in relation to wrongful imprisonment in these circumstances. Subject to the enactment of the bill, it is proposed that the registrar of the Fines Enforcement Registry will write to each affected person about this bill. That correspondence will indicate that the effect of the bill, in relation to that person, will either be an offsetting of compensation payable to them by reducing any existing outstanding fines they may still have, or pay the person, at the rate of \$250 per day, for the additional unauthorised time they may have spent in custody.

In summary, the bill will compensate those persons adversely affected by the error to which I have previously referred. Importantly, the bill also provides a mechanism by which to deal with similar errors which may arise in the future; that is, the bill provides a procedure for fair and prompt action if similar errors occur in the future. I commend the bill to the house.

Debate adjourned, on motion by **Ms M.M. Quirk**.