FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2019

Committee

Resumed from 11 June. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 8: Part 9 Division 2 inserted —

Progress was reported after the clause had been amended.

Hon SUE ELLERY: When we were last in committee, I undertook to seek more information in response to two matters raised by Hon Michael Mischin, so I will deal with them now. Before we got to the very point of the clause that we were on, the honourable member tabled several blank tables, I suppose I would describe them, requesting that I provide him with a significant amount of data going back some 15 years on fines and enforcements. I am pleased to advise the chamber that the Department of Justice has made a very considerable effort to pull that data together, and I will now table an Excel spreadsheet that begins in the left-hand column with the words "financial year".

[See paper 3958.]

The CHAIR: That document is tabled, and I will cause some copies to be made for members who require it.

Hon SUE ELLERY: I also need to give my response to the clause that we were on. The honourable member had asked whether a costing had been undertaken on how expensive the scheme will be and how much money will be saved when it is fully implemented. I advised the honourable member that a comparator, if I may describe it that way, could not be provided; that was not the driver of the policy of the bill. However, I undertook to give the honourable member some information on additional FTE and the like. The government has budgeted for an additional 30.6 FTE to support the rollout and implementation of the bill. This includes increases in FTE to the Fines Enforcement Registry to assist with the work and development permit scheme, such as sponsor assessment, compliance and audit officers; additional FTE for the Sheriff's Office to administer garnishee orders and an expected increase in enforcement warrants; and an IT developer for the Department of Justice's courts technology group to build, maintain and enhance an online portal for the work and development permit sponsors. A senior project officer to implement the bill and a senior policy officer have also been appointed. The department has also budgeted for the establishment and maintenance of the work and development permit portal and associated database. In total, the government has budgeted approximately $12.7 million over three and a half years for the Department of Justice to implement the bill. This figure includes additional FTE for Legal Aid WA, including work and development permit paralegal and administrative officers and a solicitor. It also includes funding for the Aboriginal Legal Service's participation in the rollout of the work and development permit scheme. The government has not calculated savings to be generated—I think I made that point in my earlier response.

Secondly, and I think this is where we ended, Hon Michael Mischin indicated that he would be interested to know whether, as a matter of practice, the Attorney General seeks information about whether someone to whom he might be planning to give an ex gratia or act-of-grace payment has any outstanding fines or orders against them or orders to pay criminal injuries compensation to a victim; and, if so, whether that amount would be deducted from any ex gratia or act-of-grace payment. There is no standard practice of recommending that any debt owed to the state must be deducted from an ex gratia payment that is the subject of advice or a recommendation. A number of factors will determine whether a recommendation to make such deductions are made, including whether the existence of a debt is known, the nature of the debt and the specific circumstances of the case. Ex gratia payments are made in a wide variety of circumstances. As a result, the considerations that are relevant to whether a payment is recommended will also vary widely.

The CHAIR: Members, when last in committee, we were contemplating clause 8, "Part 9 Division 2 inserted". We dealt with and agreed to amendment 3/8 proposed by Hon Nick Goiran. The question now is that clause 8, as amended, do stand as printed.

Hon MICHAEL MISCHIN: Firstly, I thank the minister for providing that additional information, although I am still no better informed about whether the Attorney General makes it a practice. I know that a number of variables are involved about whether a deduction will take place. However, I am still no better informed about whether, as a matter of course, when the Attorney General is contemplating an ex gratia payment of a substantial amount of taxpayer money to someone, he checks whether someone owes money to the taxpayer and deducts it accordingly. I would be astonished and very disappointed if he did not. Apparently, there are a lot of variables and he cannot tell us one way or the other whether he does it.

I should also observe that I am pleased that this matter had been listed at the top of the priorities today. Given the amount of anticipation about the passage of the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 that had been expressed by campaigners and advocates for these measures over the last week or so, I was a bit surprised when the weekly bulletin came out last Friday and I found that the Planning and

Development Amendment Bill 2020 had been given priority over this bill. I cannot understand why that would be the case. As members know, the opposition has its reservations about some of the premises upon which this bill is based and the like, but it does not oppose its passage. It is surprising that the government then thinks that —

The CHAIR: Order! I will allow such observations in passing, but a general debate about the order of business is probably not within the province of clause 8. I am sure that the member, acknowledging that, will bring his remarks back to what clause 8 is about very soon.

Hon MICHAEL MISCHIN: I shall, Mr Chairman. My point is that I want to assure those who are interested in the progress of this bill that we are not holding up its progress. We are anxious to see it passed or to at least be resolved, and we do not stand in the way of its passage. I am glad that this bill has been brought on as the first item of business for today.

In that spirit, I now turn to clause 8. As I understand it, the provisions that are envisaged to be inserted into the principal act as part 9, division 2, proposed sections 115 to 119, essentially involve the cancellation of warrants of commitment that are in existence at the time of the passage of this bill and its getting royal assent, and the cancellation of those warrants of commitment generally, regardless of whether someone is in custody. Is that right?

Hon SUE ELLERY: That is correct.

Hon MICHAEL MISCHIN: The intended timing is that the day after royal assent, all warrants that have been issued against offenders will lapse or be cancelled; there will be an amnesty. Is that correct?

Hon SUE ELLERY: The honourable member used the word "amnesty", which is not reflected in the legislation before us. However, his understanding that the warrants will be cancelled at that point is correct.

Hon MICHAEL MISCHIN: Given that these offenders have not paid the fines against them and have not entered into time-to-pay agreements or work and development orders, or if they have, have breached those agreements or orders, what punishment or penalty will they suffer for the offences that they have committed?

Hon SUE ELLERY: This goes to the policy of the bill, which has already been set and which puts in place arrangements to make a failure to pay fines the absolute last resort. It puts in place a range of other measures by which a member of the community who has not paid their fine may ameliorate that, including work and development permits. Although I understand the question, it goes to the very heart of the policy of the bill, which already has been set by the second reading vote by the house. I am not sure that I can add anything further in response to the question about what punishment befalls these offenders. The bill sets out the arrangements that will apply in the event that a person does not pay their fines.

Hon COLIN TINCKNELL: Could the Leader of the House move closer to the microphone when she talks? It is very hard to hear her.

Hon Sue Ellery: No-one has ever said that about me before, honourable member, but I will endeavour to fix the situation!

Hon MICHAEL MISCHIN: I understand the policy of the bill, but have we not reached the last resort under the law as it is currently applicable? Is it the case that the day after the bill receives royal assent—not the proclamation or the various other measures under it—all these people who have reached the last resort stage under the current law will have nothing at all hanging over their head?

Hon SUE ELLERY: From the time that the warrant is cancelled, if the person subject to those fines is not in prison, the clock can start again in terms of enforcement actions. If this bill is passed by the house, all its provisions will apply to those people.

Hon MICHAEL MISCHIN: Is the government confident that those people, having not taken advantage of these measures up until the issue of the warrant, will enter into the same arrangements that they ignored up until that point?

Hon SUE ELLERY: One provision in this bill that has never been applied before is the garnishee provision, which will be direct action by the government to take money out of the offender's wages. That is a new option that will be available.

Hon MICHAEL MISCHIN: We are talking about people who, for however many years, have been unable or unwilling to pay their fines, unable or unwilling to comply with time-to-pay orders and unable or unwilling to enter into work and development orders. Finally, the registrar has said, "Nothing has worked. There's nothing to seize. They are no better off than they were before. I have issued a warrant of commitment so that they will have to spend a day or two in prison, but that's been cancelled." The Leader of the House is saying that these people will have their wages garnisheed and that that will be compliance. What if they have no wages? What happens to these people until the work and development permit system comes into operation at some time in the future? These offenders have a get-out-of-jail-free card, they have not paid their debt to society, and if they happen to be in prison, they

are serving time for a crime that warranted imprisonment and have a fine against them, they will be released from the obligation to pay the fine as well. How will they pay their debt to society?

Hon SUE ELLERY: I understand the point that the honourable member is making. He talked about a get-out-of-jail-free card in his contribution to the second reading debate and he used the language again in his contribution just now. There is no avoiding or walking away from the point of this legislation—that is, to significantly reduce the imprisonment of people for a failure to pay fines. We are not hiding behind that. We are not pretending that that is not the case. That is critical to the policy of the bill. A consequence of this legislation is that fewer people will go to jail for a failure to pay fines; there is no question about that. If the honourable member chooses to characterise that as a get-out-of-jail-free card, so be it. It is his choice to characterise it in that way. The answer that I gave earlier still applies. For many of these people, a significant period may pass between the provisions that exist now that were sought to be applied to them and the options that will be available to the courts and fines enforcement to apply if this bill passes. For many of the offenders, a significant passage of time has passed and it may well be that circumstances have changed. If the honourable member is trying to make the point that the consequence of this bill will be that fewer people will go to jail for a failure to pay fines, he is quite correct; that is the intent.

Hon MICHAEL MISCHIN: All right. Perhaps I can re-categorise it as a "get off your fine for free" card. Nothing will require these offenders, beyond what has already been tried and failed, to satisfy the sentence of the court passed against them; correct?

Hon SUE ELLERY: No, it is not correct. I explained before the additional provisions that will be available as a consequence of the passage of this piece of legislation. I understand the point that the honourable member is trying to make. The policy of the bill, which has been set, is very deliberately about ensuring that fewer people will go to jail for failure to pay their fines. A range of measures are in place in the provisions that are set out in the bill. There is also, if you like, the capacity to revisit the particular circumstances of offenders to test their capacity to pay, for example, against the provisions in this bill. We make no apology for the fact that the purpose is unashamedly that fewer people will be jailed for failure to pay fines.

Hon MICHAEL MISCHIN: I am glad that the minister gets the point, but she has not actually addressed the problem. The problem is that although the minister proudly and unashamedly wants to reduce the risk of committal to prison for fine default, the minister is not setting up an alternative to encourage these offenders to either pay the fine or, indeed, suffer any consequence as a result of their offending. They have been fined, they have not paid it or cannot pay it, and that is the end of the story—they suffer no consequences. We know that. Can the minister give us an idea of how many warrants of commitment have not been executed and are currently outstanding, and how many of those will be cancelled if, let us say, the bill received royal assent today?

Hon SUE ELLERY: It is 1 300 warrants, for about 300 people, recognising that one person could have multiple fines.

Hon MICHAEL MISCHIN: Can the minister give us the range of offences for which warrants have been issued and fines have been imposed as a punishment but have not been satisfied by these 300 people?

Hon SUE ELLERY: I am not able to give the list of offences of those 300 people whom I have just identified. I can tell the member that the two most common major sentenced offences—that is, the two for which fine defaulters are most likely imprisoned—are around traffic and vehicle regulatory offences, and offences against justice procedures, government security and government operations.

Hon MICHAEL MISCHIN: Can the minister give us some idea of what traffic and vehicle regulatory offences might be? Are they speeding fines? What are they?

Hon SUE ELLERY: I am not sure what it is about traffic offences and the like that the member would not appreciate himself, but it includes driving without a licence and that type of thing.

Hon MICHAEL MISCHIN: That type of thing?

Hon SUE ELLERY: It is really not hard to understand what traffic offences are.

Hon MICHAEL MISCHIN: The minister seems to be struggling with telling us what that might involve.

Hon SUE ELLERY: I am just trying to pick one.

Hon MICHAEL MISCHIN: Okay. Would driving without a licence be one of them?

Hon SUE ELLERY: Yes.

Hon MICHAEL MISCHIN: Driving an unregistered vehicle?

Hon SUE ELLERY: Yes, it could be.

Hon MICHAEL MISCHIN: Driving while under suspension?

Hon SUE ELLERY: Chair, I am not sure how this helps us progress the bill. If the honourable member is seeking to list every single traffic offence, I am not sure how that is helpful to the chamber. I think members of the chamber would be well aware of what is encompassed by the term "traffic offences".

Hon MICHAEL MISCHIN: Thank you, minister. I will get back to it. Would driving under suspension be one of them? The minister is not going to do that. Okay. That is confusing.

The CHAIR: Order!

Hon MICHAEL MISCHIN: All right. Driving while disqualified, perhaps? Dangerous driving causing death? Dangerous driving causing bodily harm? Dangerous driving as such? Reckless driving? Possibly motor vehicle manslaughter? Would that be one of them? The minister does not seem to know. Okay. Those are not necessarily trivial offences, though. The point, minister, is that people who have been fined for these offences, perhaps more than once, will suffer no penalty at all, because the government will cancel any warrant of commitment against them before it is executed in order that they not be inconvenienced by having to go to jail for not satisfying the fine. What other sorts of offences would it include? The minister mentioned justice proceeding offences. Would it include things like breach of bail? Would that be right?

Hon SUE ELLERY: Chair, in order to progress the bill, I undertake that in the next available break, I will get a list of the kinds of offences that were used in the modelling relied upon for the bill, and I will be happy to table that. However, I am loath to sit here and have the member reel off a list of offences and ask me to say yes or no. I do not see how that is particularly helpful to the chamber.

The CHAIR: The question is that clause 8, as amended, stand as printed. A lot of matters relate to these particular clauses, but it is important that we focus on the clause before us. Although I will grant some latitude, and I note what the minister has just undertaken to do, I point out to members that the question is that clause 8, as amended, stand as printed, and that is what we are restricted to in our consideration at this time.

Hon MICHAEL MISCHIN: Thank you, Mr Chairman. I am obliged to the minister for going to the trouble of providing some of the information that was used to model this bill. During my second reading contribution, I had something to say about the potential range of offences. The minister does not seem to want to confirm those. I suggest that if they are justice offences, they could involve offenders breaching bail, telling the court they are not going to turn up for a charge, and having to be hunted down and then fined for disobeying a summons or court order that they appear at some future time. It could also involve breaching conditions. I am interested to know whether breaches of violence restraining orders, either at large or family violence restraining orders, will be among the offences that will effectively be written off without punishment. I am also interested to know the amount of money that is owed by the 300 people under these 1 300 warrants, because that will give us an idea of the gravity of the offending concerned, and the amount of default time that will be written off. If the minister could find that information, I would appreciate it. Also, if the minister is able to answer, just how many people are in custody at the moment with warrants of commitment that will be cancelled? Does the minister have that information?

Hon SUE ELLERY: There are four.

Hon MICHAEL MISCHIN: For what sorts of offences do they have those warrants of commitment?

Hon SUE ELLERY: I do not have that information.

Hon MICHAEL MISCHIN: Following an appropriate break, perhaps the minister could provide that information, too, just for the record.

Hon Sue Ellery: I am not sure I will be able to get that in a break. I cannot give that undertaking.

Hon MICHAEL MISCHIN: It would be helpful at some stage in the future so we can get an idea of just what we are saying people should not be imprisoned for, even though they are imprisoned for other offences that are serious enough to send them to jail. Can the minister tell us what these offenders are in prison for otherwise? What are they currently in prison for, apart from warrants of commitment?

The CHAIR: I will give the minister the call if she is happy to address that question. I am not sure it fits within the clause that we are dealing with, but, minister, I give you the call.

Hon SUE ELLERY: Thanks, Chair; I appreciate your advice, and I am trying to be helpful to the honourable member, so I will try to provide him with an answer. I think he might have misunderstood my answer about the four. I was making reference to four people who are in prison now just for failure to pay fines. In addition to that, 27 people are in prison for other matters and fines, and because of those other matters, they will not be released as a consequence of this legislation.

Hon MICHAEL MISCHIN: No, but they still owe money under fines that have not been expiated for offences presumably serious enough to get fines, and once this bill has been passed and receives royal assent, the government

is saying that they can forget about those fines and they can forget about the offences they have committed, because the government is going to cancel that. If the minister could provide the information, I would be grateful, and if she could do it for the 27 people who are in prison, I would appreciate that as well. I just want to get an idea of what level of criminality we are told is not worth pursuing.

Clause, as amended, put and passed.

Clause 9: Section 3 amended —

Hon MICHAEL MISCHIN: Clause 9 amends section 3(1) of the principal act and inserts a variety of definitions, one of which is a definition of "hardship". It says —

> ***hardship*** has a meaning affected by section 4A;

Proposed section 4A is being inserted under clause 10 of the bill. In order to link the two, proposed section 4A(1) says —

> For the purposes of this Act, a person is experiencing hardship if the person —

Then it lists reasons (a) to (f), and they are not limited. I am curious about the description of "hardship" in clause 9, given the breadth of that provision in proposed section 4A. What does "hardship has a meaning affected by section 4A" mean?

Hon SUE ELLERY: It is the ordinary meaning of the word, and I suspect this is a matter of drafting conventions by parliamentary counsel. I do not think any grand conspiracy is behind it; I think it is just the language used by the drafters. I am not sure that I can add anything further than that.

Hon MICHAEL MISCHIN: It may be parliamentary counsel convention, but, bearing in mind that the registrar and the registrar's officers at the Fines Enforcement Registry will read this and make decisions on it, is it meant to expand the definition of "hardship" or restrict it? What does it mean that a definition or a description in proposed section 4A affects the meaning of the word "hardship"? Is it more expansive when read with proposed section 4A? Is it more limited? How is it coloured by that? What does it mean to be "affected"?

Hon SUE ELLERY: As I said, it is the ordinary meaning of the word. If the member looks at proposed section 4A and the definition of hardship, it is not a closed definition, so in that sense the use of that word recognises that other circumstances may not be captured in the descriptions used for proposed section 4A that might legitimately be applied under those provisions. As I said, it is an expression required by parliamentary counsel, so other than the ordinary meaning of the word, I am not sure I can add anything further to it. Proposed section 4A stands and is open about what it includes. It is open for anyone to read, and it is not an exclusive definition. That is clear in the reading of proposed section 4A.

Hon MICHAEL MISCHIN: So, is it intentionally meant to be so broad as to embrace just about any inconvenience?

Hon SUE ELLERY: Yes. This clause needs to be read with proposed section 4A. I am sure the honourable member has read proposed section 4A(2), which says —

> Subsection (1) does not limit the circumstances in which a person may be experiencing hardship for the purposes of this Act.

It is intentionally written that way to give capacity to take into account a whole range of circumstances that would be impossible to prescribe in a piece of legislation, but which reflect the diversity and complexity of the consequences for the lives of people who find themselves in these positions.

Hon MICHAEL MISCHIN: Is it a subjective test or an objective test?

Hon SUE ELLERY: I am sure it would be nice for everybody if it was possible to write these provisions in a way that was neat and in a box and that perfectly prescribed every single circumstance. That is not possible. To the extent that the member has asked me whether it is subjective or objective, I do not think it is either–or. The objective elements will be the facts and the subjective elements will be the judgement about all of those things that are set out. Some of the other objective elements of proposed section 4A, if we go back and look at that, are whether a person has been or might be subjected or exposed to family violence, whether they have a mental illness and whether they have a disability. A range of things would come under an examination of the facts and then there are other circumstances that would need to be taken into account, having a view to the policy of the bill.

Hon MICHAEL MISCHIN: I thank the minister but, with respect, that is not particularly helpful. I will say why. The provision in proposed section 4A—we will get to that one in a moment—defines "hardship". The ordinary dictionary meaning of "hardship" is some suffering or privation, but this bill defines certain things that amount to hardship, regardless of whether someone is suffering or experiencing privation. In most cases they would be, but not necessarily in all. Proposed section 4A(1)(c) refers to mental illness as defined in section 4 of the Mental Health Act.

I do not know how broad that is. That may include depression. That may have nothing to do with the fact that someone has committed an offence and been fined for it and that person's ability to pay the fine, but it is said to be hardship for the result of which the person is immune from various consequences under the legislation. Having a disability may be a problem, but it may have nothing to do with someone's ability to pay a fine or commit an offence, and so on and so forth. But we are told that a person is experiencing hardship if they have these things—if they can fit themselves under one of those categories. "Hardship" as defined in clause 9, the proposed amendments to section 3(1), has a meaning that is affected by the more specific definitions. To say that one cannot make up their mind about whether it is a subjective or an objective test makes it very difficult for law enforcement authorities. Someone could come forward and say, "I've got a disability that falls within the act, therefore I am experiencing hardship, and that hardship is affected by the fact that I am experiencing disability." Is it on their say-so? Is it on some objective test from the registrar or a court otherwise in making those decisions, or is it just a matter of someone coming forward and saying, "I don't want to pay the fine; actually, I can't, because I am suffering hardship"? I ask the minister to help us out here, because this seems to me a very broad attempt to ensure that fines cannot be enforced by imprisonment.

Hon SUE ELLERY: We are actually ranging now between two clauses, one of which we have not got to yet, which is the next one.

Hon Michael Mischin interjected.

Hon SUE ELLERY: Yes, they are. Can the member just let me say what I want to say, because I am trying to help the honourable member. If we go to clause 10, which sets out the general principles, after section 3, the bill proposes to insert a new section 4, "General principles relating to enforcement of fines". Proposed section 4(2)(b) states that the principle is "an offender who is experiencing hardship affecting the offender's capacity to pay a fine". It is not just that the person is experiencing hardship or has a disability or mental illness; that hardship must be affecting their capacity to pay. If we read clause 9, which we are on now, together with the following clause, we see that it is not just the provisions in proposed section 4A. It is not just that the person has a disability; it is that they have a disability and that disability is affecting their capacity to pay the fine. We have to read them together.

Clause put and passed.

Clause 10: Sections 4 to 4B inserted —

Hon NICK GOIRAN: I take the minister to page 11, line 4. We see that clause 10 looks to insert new section 4B, which makes reference to —

Hon Sue Ellery: Can the member please take me there?

Hon NICK GOIRAN: Yes, sorry. At page 11, line 4, the minister will see that at clause 10 there is the intention to insert a new section 4B, "Remote areas". My question is: what is to be designated a remote area?

Hon SUE ELLERY: I referred to this in my second reading reply. Regulations will allow for particular areas of the state to be designated as remote, and the Department of Justice will be undertaking consultation with key stakeholders, including the various elements of government and the Aboriginal Legal Service, in the development of those regulations to designate remote areas of the state. As a sort of threshold point, I suppose, the bill currently states that no part of the metropolitan region in the Planning and Development Act 2005 can be designated as remote. Broadly speaking, the metropolitan area extends from Singleton in the south to Yanchep in the north. I tabled a paper on this. We will also look to the Australian Bureau of Statistics and its five-tiered remoteness structure. It has already been used in the WA statute book—in the Education and Care Services National Regulations 2012 and the Medicines and Poisons Regulations 2016. The ABS remoteness structure is also referred to in the Queensland fines enforcement legislation, in the context of determining a remote area for participation in particular work and development activities.

Hon NICK GOIRAN: If I understand it correctly, there is some reference to what a remote area is in other legislation. The minister mentioned that she is intending to do a consultation. Why is consultation necessary if there is already a definition in other legislation? Are we intending to substantially deviate from those other definitions?

Hon SUE ELLERY: The ABS remoteness structure has five tiers, and the purpose of the consultation is to test with organisations like the ALS to what extent we are relying on the boundaries, if you like, of those five tiers. Are there elements that are, I suppose, borderline, or more remote than others? I think it is worth noting my language, honourable member. We are going to look to the ABS and its five-tiered remoteness structure, but it might be that we vary something in that and not rely on it precisely and entirely, depending on what the consultation shows us. It may well be that the consultation with bodies like the ALS demonstrates that the ABS five-tiered structure is working well, for example, for the purposes of the Medicines and Poisons Act, and the member will be aware that the Medicines and Poisons Act goes to things like nurse practitioners who have to operate without supervision of a medical practitioner. It may well be that the ALS and others have a view that that works satisfactorily and that those five tiers are satisfactory, but it may not be, so we want to test that.

Hon NICK GOIRAN: Is there an anticipated time line for this consultation to take place? I note that until it is concluded, the regulations will not designate the remote area. Part 2, Division 3 is one of the provisions in the bill that the government has expressly determined shall commence only upon proclamation, so the timing of the consultation will affect when this provision comes into effect.

Hon SUE ELLERY: I cannot give the member a precise date, but it is anticipated that that consultation will be completed before October. Hopefully, this element will be completed well before then. That is the anticipated time.

Hon MICHAEL MISCHIN: I will go back a little from proposed section 4B to proposed section 4, which states —

> (1) A person performing a function under this Act must have regard to the principles set out in subsection (2).
>
> (2) For the purposes of subsection (1), the principles are —
>
> (a) that imprisonment for failure to pay a fine is an enforcement measure of last resort; and

So be it; that is as it is now —

> (b) that an offender who is experiencing hardship affecting the offender's capacity to pay a fine or to perform the requirements of a work and development order should not be imprisoned …

It is not a matter of the offender's inability to pay a fine or a matter of preventing them from performing the requirements of a work and development order; the person has only to experience hardship, under this very broad definition, and their ability to pay has only to be affected. Is this provision intended to be as wide as that in its operation? Will this provision apply not because of someone's inability to pay but because their capacity to pay is affected?

Hon SUE ELLERY: Yes, that is the intent.

Hon MICHAEL MISCHIN: If I received a very substantial fine, in the order of several thousands of dollars, for some sins or crimes that I had committed but I was having difficulty finding that money because I had a number of other debts to pay, which therefore affected my capacity to pay, notwithstanding my income and the like could I avail myself of the other means under this provision to avoid imprisonment? Could I enter into a time-to-pay arrangement and then say, "That's too much like hard work because that's interfering with what I spend on cigarettes, booze or holidays"? It affects my capacity to pay a fine; it does not prevent me from paying it. Is this provision intended to operate as broadly as that? What is limiting it from applying in that fashion and being taken advantage of?

Hon SUE ELLERY: I need to note my objection to the characterisation made by the honourable member about a person making a decision to claim hardship affecting their capacity to pay because they do not want to spend money that they would otherwise spend on cigarettes, booze and whatever other example he just gave. I am sensing that the honourable member is not supportive of the policy of the bill, which is, quite deliberately, to reduce the number of people who are imprisoned, particularly, but not limited to, Indigenous people, for failure to pay fines. The provisions are clear. An offender who is experiencing hardship that is affecting their capacity to pay is captured by the provisions set out in here. We do not back away from that. This is not about people who should otherwise be imprisoned because they have committed other offences; this is about people who should not be imprisoned for the failure to pay the fine alone in certain circumstances when a range of options are available, including time-to-pay arrangements, garnishee arrangements and a range of other matters that will be put in place. My sense is that that is the element the honourable member is struggling with, and I am not sure I can help him reconcile that.

Hon MICHAEL MISCHIN: Thank you for the patronisation, minister. I am struggling with some elements of it because I do not think they have been thought through carefully enough. I know we are getting to the difficult parts of the bill when the Leader of the House starts arcing up by attacking the man rather than dealing with the legislation. I entirely understand that because we are used to seeing it. I know that the government is unapologetic about the utopia it is attempting to achieve with this legislation. But it is part of my responsibility to see what the metes and bounds are and whether there will be undesirable consequences for the community, not just undesirable for those people who break the law. The Leader of the House said that people who cannot pay should not go to jail for not paying alone, but we say it is much broader than that. The principle applies to an offender who is experiencing hardship affecting their capacity to pay. The Leader of the House will tell us it is deliberately broader to embrace any effect on their capacity or their performance of the requirements of a work and development order. So be it. Why was it not framed in a more definite way, such as limiting these principles to the prevention to those people who are "unable" to pay rather than simply "affected by" their capacity to pay?

Hon SUE ELLERY: I will try to assist the honourable member. We are dealing with the general principles that will apply. It is the overarching principle that will apply. The objective is to take account of the hardship and, if that hardship is affecting the offender's capacity to pay, they should not be imprisoned. That is the principle position. An offender may have one of those other hardships that was touched on, such as disability, mental health or whatever, and has some money in their bank account. But if all that money was taken to pay the fine, the

decision-maker would take account of whether that is useful, given the other hardships the person has. If they are not able to deal with their mental illness, and if they become homeless as a consequence of not being able to pay their rent because they have paid this fine—which creates further likelihood of social consequences for that person and, indeed, the community—a judgement on those matters will be made. What we have is deliberately broad, because it is the overarching principle about what should drive the decision-making, but, as is ever the case, the particular circumstances will be taken into account.

Clause put and passed.

Clauses 11 to 16 put and passed.

Clause 17: Section 16 amended —

Hon NICK GOIRAN: Clause 17 is looking to delete section 16(1)(b) of the act. As I understand it, section 16(1)(b) reads —

> such information as the Registrar requires in such manner as the Registrar specifies,

We will replace that with the form of words found on page 14 of the bill at line 18, which is, "any information prescribed by the regulations". What is this information that the government intends to prescribe by regulation?

Hon SUE ELLERY: It is already referred to in regulation 3AAA. The change to delete section 16(1)(b) has been made at the request of the Fines Enforcement Registry. In November 2015, the regulations were amended to insert new regulation 3AAA, which provides —

> … a prosecuting authority may, with the consent of the Registrar, give the Registry —
>
> (a) an enforcement certificate; and
>
> (b) a document setting out information required under section 16(1)(b),
>
> by electronic means in accordance with regulation 11A.

For clarity, section 16(1)(b) will be amended to remove reference to the registrar and replace it with a reference to information prescribed by the regulations.

Hon NICK GOIRAN: I make the observation that this is certainly an improvement, because it is regrettable that the current legislation refers in such a broad fashion to the registrar being able to effectively determine what information they require in such a manner as they specify. That is a lot of power to be given to the registrar. This is a far more satisfactory way of dealing with it, when it will need to be prescribed by the regulations that will then have the appropriate oversight of Parliament.

Clause put and passed.

Clause 18 put and passed.

Clause 19: Section 18 amended —

Hon MICHAEL MISCHIN: Clause 19(3) will insert in section 18(5) the word "generally". What is the import of that? Why is it necessary? What circumstances will be exceptions to the rule?

Hon SUE ELLERY: Under the existing provisions, the section states that licence suspension orders cannot be cancelled until the penalty is paid. Under the provisions of the bill before us, by inserting the word "generally", it will be possible to request cancellation on particular grounds that are not related to the payment.

Clause put and passed.

Clause 20 put and passed.

Clause 21: Section 20 amended —

Hon MICHAEL MISCHIN: Under proposed new subsection (2A) —

> The Registrar must cancel a licence suspension order if the alleged offender gives the Registrar a notice stating that the alleged offender's current address is in a remote area.

We already established that the minister can deem just about anything outside the metropolitan area as a remote area. The registrar must cancel a licence suspension order if notice is given by the offender. What will then remain as an incentive to pay an infringement notice? Let us say someone in a remote area likes parking in disabled parking bays all the time, keeps getting issued with notices and keeps ignoring them. What will the incentive be?

Hon SUE ELLERY: It is the enforcement warrant, which includes the provision of seizing and selling property, wheel clamping and garnishee orders.

Hon MICHAEL MISCHIN: If they have no income or means, we are left with wheel clamping a vehicle or seizing property that may not be worth seizing. Why not a licence suspension order, if we are going to prevent them from driving by clamping their vehicle?

Hon SUE ELLERY: One of the policy drivers around licence suspensions, for example, was canvassed by a number of members in their contributions to the second reading debate. It has been demonstrated that suspending the licence of someone in a remote area is not particularly effective, because there is no alternative form of transport available, such as public transport. A number of members made note of that during the course of the second reading debate. Licence suspension has quite deliberately not been included in these provisions. It becomes a kind of self-fulfilling prophecy of failure to comply and people ending up in prison as a consequence of the circumstances that are created when a person in a remote community has their licence taken off them.

Hon MICHAEL MISCHIN: I thank the minister, but we are not talking about remote communities; we are talking about a remote area. Just about anywhere outside the metropolitan area could be declared by the minister to be a remote area. Secondly, no regard will be given to the individual circumstances of the person whose vehicle we are talking about. I am sure it would come as a bit of a surprise to someone living in the heart of Kalgoorlie, who could get about with public transport or by other means, that they will be classified as having the same set of disadvantages as someone who lives in Fitzroy Crossing or some community in the middle of nowhere. Why is the discretion that previously resided with the registrar being taken away from the registrar and replaced with a blanket protection to people outside the metropolitan area, if the minister should so desire?

Hon SUE ELLERY: The policy of this has been canvassed. The current arrangements involving the suspension of licences have had a disproportionate effect, particularly on Indigenous people. A decision has been made based on numerous reports over the years about how to best tackle this issue. These specific provisions give effect to that.

Hon MICHAEL MISCHIN: I can understand that there might be a disproportionate effect on Indigenous people, but we are talking about everyone in a remote area—Indigenous, non-Indigenous, wealthy, poor, with a disability, without a disability and so forth. Why is this providing such a blunt protection, without having regard to individual circumstances? I just do not see the sense in that. The minister will tell me that the policy has already been decided. That may very well be the case, but that does not prevent me from questioning why a particular provision in the bill has been drafted so broadly. Can the minister offer an explanation?

Hon Sue Ellery: I have in the second reading reply and in the second reading speech. I have nothing further to add.

Clause put and passed.

Clause 22: Sections 20A and 20B inserted —

Hon MICHAEL MISCHIN: Proposed section 20A provides that an offender can request that a licence suspension order be set aside. Amongst the very broad bases for doing so includes saying that the licence suspension order seriously hinders the alleged offender in performing family or personal responsibilities. Is that intended to be so broad? I could say that a licence suspension order would hinder my responsibility to go and visit my mum once a month; therefore, it should be set aside. How can that be contradicted?

Hon SUE ELLERY: These grounds already exist. The elements of the current arrangements have been restructured. Currently, it is section 27A. The reference to family and personal responsibilities is not a new policy element; that already existed.

Clause put and passed.

Clauses 23 to 55 put and passed.

Clause 56: Section 53A replaced —

Hon NICK GOIRAN: I know that an amendment has been foreshadowed by the Leader of the House on the supplementary notice paper, but before we get to that, I have a number of questions on clause 56, which is a quite mammoth clause in this bill. I take the Leader of the House specifically to proposed section 52B, which can be found at page 50 of the bill. I note that clause 56 commences at page 49 and goes all the way through to page 76. For the purposes of this question, I refer to page 50 and proposed section 52B, "Term used: daily expiation amount", which states —

> In this Division —
>
> ***daily expiation amount*** means the amount prescribed by the regulations for the purposes of this definition.

What is the proposed expiation amount that the government intends to prescribe by way of regulations?

Hon SUE ELLERY: Although it is yet to be determined, the government's thinking is that expiation under a fine expiation order and expiation under a warrant of commitment should be the same amount, as both involve expiating a fine in custody. The current prescribed daily rate for a warrant of commitment is $250 under regulation 6BAA.

Hon NICK GOIRAN: It is yet to be determined, but what steps need to be taken by the government before it will be in a position to determine the amount?

Hon SUE ELLERY: It is the normal process of drafting, but a decision needs to be made by the Attorney General. The advice at this point is that the two rates should be the same. That is what we think is likely to happen, but the final position has not been landed on.

Hon NICK GOIRAN: When discussing an earlier clause that determines what constitutes a remote area, the minister mentioned that consultation will be undertaken and there is an aspiration by government—I am paraphrasing what the minister said in the earlier dialogue—for that to be done before October. Is it reasonable for us to expect that the government will have determined what the daily expiation amount will be before October?

Hon SUE ELLERY: Yes. If it assists the honourable member, the expectation is that the entire package of regulations will be finalised by October.

Hon NICK GOIRAN: A number of concerned constituents have contacted me about the passage of this bill. I do not know whether this has happened to other members, and perhaps it is the same for the minister, but over the last few weeks it would be reasonable to say that I have been bombarded by emails. I am quite happy to receive any solicitations from constituents about the priority of legislation passing through the Parliament, but I am a little concerned that the impression of those individuals who have written to me, and no doubt other members, is that this bill urgently needs to pass today. My hope and expectation is that we resolve this matter today. But on the information that we have just been provided on clause 56, it seems that in effect nothing will happen until October. When I say that, I want to provide some context, because the minister will quite rightly correct the record if I do not do it now and say that the government will be doing things between now and October. Certain things need to be done in order to prescribe these regulations, including working out the daily expiation amount and whether it will be the same as the amount currently set, $250, or some other amount. Am I correct in understanding that regardless of whether we pass this bill today, the reality is that nothing will be operative until most probably October?

Hon SUE ELLERY: I will mention two points, but let us put to one side for a moment the second point, which is that the regulations cannot be properly drafted until the bill is passed, which is not an insignificant thing. The most important point is the element that takes effect the day after assent—that is, the warrants of commitment are cancelled. That is a significant time element and what I think the member will find is driving those campaigners who have been emailing members.

Hon MICHAEL MISCHIN: On that subject again, is it correct that for the next four months at least, those people have absolutely no incentive to abide by the court order ordering them to pay the fine, no matter what offences they have committed?

Hon SUE ELLERY: It is not correct. We had this debate on an earlier clause, so we do not need to repeat that.

Hon NICK GOIRAN: I foreshadowed a number of questions under clause 56 that I propose to ask in a moment. As I indicated, clause 56 is a mammoth clause. My questions relate to parts of clause 56 after the minister's amendment on the supplementary notice paper. I will defer asking those further questions until we have dealt with the amendment.

Hon SUE ELLERY: I thank the honourable member. I move —

Page 53, line 22 — To delete "Part 2 Division 3" and substitute —

section 56

By way of brief explanation, this amendment is necessary as a result of the amendments at 2/2 and 3/8 moved by Hon Nick Goiran and agreed by the Committee of the Whole last week. It amends proposed section 52G(1)(c)(iii) that is inserted by clause 56 and deals with fine expiation orders. The amendment will delete the reference to "Part 2 Division 3" coming into operation and replace it with "section 56". Clause 56 will insert proposed division 3D, "Fine expiation orders". The amendment reflects that part 2, division 3 will no longer come into operation as a single bloc and it will remove any uncertainty around the expiation commencement day for a fine expiation order.

Hon NICK GOIRAN: I rise briefly to indicate that I support the amendment moved by the government. The brutal reality is that the government has picked up something missed by me and I thank the government for doing so.

The CHAIR: Congratulations, minister.

Amendment put and passed.

Hon NICK GOIRAN: I have a question for the minister about proposed section 52S(4), which is on page 63 of the bill starting at line 19. It states —

> If the Court makes an order under subsection(1)(e) in relation to an offender and a fine, it must issue a warrant of commitment in the prescribed form in relation to the fine.

Has a warrant of commitment form been drafted; and, if not, when is it expected to be done?

Hon SUE ELLERY: No, the final version has not been drafted. If the honourable member wants to know what that form might look like, an existing form can be found in the current regulations, but it will need to be amended to take account of the changes being made by the bill before us now.

Hon NICK GOIRAN: The second part of that question is: when do we expect that to be done?

Hon SUE ELLERY: As I said earlier, the intention is to have all this done in October.

Hon NICK GOIRAN: My next question is about proposed section 52U, "Form of summons". It states —

> A summons to appear at a warrant of commitment inquiry issued in relation to a person under section 52Q(1)(a) or (2) must —
>
> (a) be in the prescribed form; and —

That will be a different form from the one that we referred to earlier at proposed section 52S —

> (b) state when and where the warrant of commitment inquiry will be held; and
>
> (c) require the person to appear at that time and place; and
>
> (d) contain any information prescribed by the regulations; and
>
> (e) be signed by the magistrate who issues it.

My question is about proposed section 52U(d). I am less interested in proposed section 52U(a) because the answer to that will no doubt be the same as what was just provided about the warrant of commitment form. What is the information that will be prescribed by the regulations and contained in one of these summonses?

Hon SUE ELLERY: It is proposed that there will be some consultation with the courts about what is required, but it is likely to include things such as the consequences if the person does not comply, and what information the person might need to bring with them, for example.

Hon NICK GOIRAN: This is the second time that we have talked about consultation. The first time was when we talked about the designation of "remote area". I understand that the ordinary custom and practice of government is to wait until a bill has been passed and then take the necessary steps to prescribe things and to ensure that the Governor approves the regulations. However, I fail to see why consultation cannot already be undertaken. The government introduced this bill last year. We all know from the volume of correspondence that we have received in recent times that the community is eager to see this bill passed. As the minister quite rightly pointed out in the earlier dialogue, some of the concerns raised by those constituents may be about provisions of the bill that are intended to commence immediately after assent, and there may be less concern about the larger parts of the bill, which will wait for proclamation. That may well be so. However, it is not apparent to me why consultation cannot already commence. Why can there not be a conversation with the courts? The contributions made by members so far should have made it readily apparent to the government that there is majority support for the bill. I see no reason why the consultation cannot be undertaken more speedily. I suspect that if the consultation were expedited, all this would happen earlier than October. If the information that the government intends to prescribe needs to wait and be subject to consultation with the courts, so be it. However, I would encourage the government to commence those conversations.

I move now to proposed section 52W, which is at page 65 of the bill and is entitled "Oral service or substituted service of summons". Proposed section 52W(4)(b) refers to further prescription by the regulations. By way of context, proposed section 52W(4) states —

> A summons to appear at a warrant of commitment inquiry is served by substituted service if the person serving the summons —
>
> (a) takes the steps that the Magistrates Court has directed to bring it to the attention of the person being served; or
>
> (b) takes the steps (if any) prescribed by the regulations.

My preference would be that we do not have proposed subsection (4)(b). When we talk about substituted service, it is far more satisfactory if a court officer—in this case, the Magistrates Court—has determined and considered an application for substituted service and determined that the substitution will take place in a certain form or a certain manner, and that proper consideration is given to that, rather than a summons to appear at a warrant of commitment

inquiry simply being served in a substituted fashion by somebody relying on this alternative provision. Proposed section 52W(4)(a) is a far superior safeguard than proposed section 52W(4)(b). Proposed subsection (4)(b) is a slavish reliance on a provision that will apply irrespective of the circumstances, whereas proposed subsection (4)(a) will ensure that there is proper protection for the person, because a court officer will have considered the application for substituted service and determined the steps that need to be taken to fulfil service. Does the government intend to prescribe any regulations under proposed section 52W(4)(b)?

Hon SUE ELLERY: I thank the member for the question. I understand the point that he is making. Proposed section 52W(4)(b) is a kind of catch-all to provide the greatest flexibility. Frankly, four months ago, I might have struggled to think of some examples for the member, but we were then hit by a pandemic and we had to rethink every kind of system and the steps that we use in that system. I take the member's point. Proposed subsection (4)(a) is the specific paragraph, but proposed paragraph (b) is there in the event that it is required. We do not have any plans at this moment, but we ask the chamber to grant this provision in the event that it is needed.

Hon NICK GOIRAN: I make the observation that it is a point of increasing annoyance to me when the government continues to rely on so-called catch-all provisions. I have noticed that another phrase that is often used by government is "futureproof". The phrases "catch-all" and "futureproof" set off alarm bells in my mind. The reason these phrases annoy me is that they are a classic example of how, had this bill been referred to a committee, the committee definitely would have picked up this point and almost certainly recommended that proposed subsection (4)(b) be deleted. The committee would have undertaken an inquiry, and ministerial and departmental advisers would have been called and asked whether they intend to do anything about this. They would have used phrases like "catch-all" and "futureproof", and the committee would not have been satisfied with that explanation and would have recommended that proposed subsection (4)(b) be deleted. The reason that has not happened in this instance is that this bill was not referred to a committee. This is despite the fact that, as I described in my second reading contribution, the bill has been on the supplementary notice paper for an extensive period. There would have been ample opportunity for this bill to be referred to the Standing Committee on Legislation and for it to consider the bill, pick up these points and make the necessary amendments. Unfortunately, the government continues to have a culture—albeit it is incrementally improving over time—of resisting the referral of bills to a committee. The unfortunate side effect is that we continue to have these types of provisions that are not only unnecessary but also incapable of being explained.

The explanation that was provided by the minister made some general reference to the possibility of pandemics and the like. I draw to members' attention that proposed section 52W(4)(a), as it is currently worded, specifically enables the Magistrates Court to determine the steps. The Magistrates Court may determine steps that are necessary when it comes to pandemics and the like. Therefore, we do not need proposed subsection (4)(b). It is not a good protection for a person who might receive a summons for a warrant of commitment. I hope the government will not proceed to prescribe any regulations under proposed subsection (4)(b). I take the government at its word that that is not its current intent. I hope we will not need to have a debate down the track about a disallowance motion.

If the government does decide to bring in regulations under proposed subsection 4(b), it will need to provide a comprehensive and cogent explanation, including making sure that that regulation is drafted in such a way that it provides proper safeguards for a person who receives a summons. This is no small matter. A person would ordinarily receive the summons in person so that we can have confidence that they are being given notice and they are aware that they are being summoned to appear before a warrant of commitment inquiry. We can have confidence when that service is delivered personally and that somebody then swears an affidavit to confirm that that has occurred. But that is not what we are talking about here; we are talking about service in a substituted fashion. I have certainly known of circumstances of summonses being attached or nailed to the front door of premises. Yes, that can be justified in certain circumstances, but we cannot have the same confidence as we do when the summons is actually delivered to the person. I have concerns about proposed section 52W(4)(b). Nevertheless, for the reasons I have described, we can see that there is not a desire to amend it, there was not a desire to send it to the committee to get it right and we are just going to proceed in the usual fashion.

That takes me to the next proposed section, which is proposed section 52Y, "Form of arrest warrant", and is found at page 67 of the bill. Proposed section 52Y says —

> An arrest warrant for an offender issued under section 52Q(1)(b) must —
>
> (a) be directed to all members of the Police Force; and
>
> (b) be in the prescribed form; and
>
> (c) require the person who arrests the offender to bring the offender before the Magistrates Court in accordance with section 52Z(2)(a); and —

This is the part that is of concern to me —

> (d) contain any information prescribed by the regulations; and

(e) be signed by the magistrate who issues it.

In this form of arrest warrant, what type of information do we think will be prescribed by the regulations?

Hon SUE ELLERY: It would not be dissimilar to the answer I gave to a question earlier, but in this case it will rely on advice from WA police about what they want encapsulated in the detail to be provided on the warrant.

Hon NICK GOIRAN: Minister, help me understand that. Proposed section 52Y(d) has been drafted on the assumption that there will be some consultation with WA police about the information they might want prescribed in the regulations. It is reasonable to assume that that must mean that there had to be some conversation with WA police in the first place and that somebody had asked for proposed section 52Y(d) to be put into place. They might well have said, "We don't have all the details at this time, but throw it in 52Y(d) and we'll find out the details later." Some discussion must have taken place about the type of information it was thought was needed to be put in one of these arrest warrants. I ask whether any information is available to us now about some broad categories or parameters for the information that people were thinking of including.

Hon SUE ELLERY: I do not have any further information in detail that I can provide the member with. Of course, WA police issue warrants of arrest now, so we can assume that there is a basis to start from, but I do not have any more detail about what might be added to this form of arrest warrant that is different from any others that the police use and what particular information they may require or suggest to take into account in this form.

Hon NICK GOIRAN: I have two more questions about clause 56. The next one relates to new section 52ZD. This clause has become so big that we have run out of letters in the alphabet, so we now have, after proposed section 52Z, proposed sections 52ZA, 52ZB, 52ZC and 52ZD, which I would like to discuss now. This deals with conditional release undertaking, and I note that in proposed subsection (2), there is a reference to a conditional release undertaking, and it is an undertaking in writing by an offender in the prescribed form. Proposed subsection (4) says —

> The prescribed form for a conditional release undertaking must include an explanation of the obligations of the offender under the undertaking and the consequences of failure to comply with the undertaking.

Do I take it that this conditional release undertaking form is yet to be drafted and is again one of those matters intended to be dealt with by October?

Hon SUE ELLERY: Yes and yes.

Hon NICK GOIRAN: My last question about clause 56 relates to new section 52ZF, which begins on page 72 of the bill and continues on page 73. New section 52ZF(c) says —

> the person before whom the conditional release undertaking is entered into signing a certificate in the prescribed form that the offender has a right to be released.

Is there any indication of what this certificate will look like, or is there a basis upon which this certificate is intended to be used? In other words, is there a certificate used at the moment or under another piece of legislation that will form the basis for this one?

Hon SUE ELLERY: While my advisers are checking whether such a certificate appears in any other legislation, I advise the member that the reason that we want the prescribed form is to ensure consistency of information, for example. We are just checking whether, for example, it applies in the Bail Act or any other similar piece of legislation. We will just have a quick look and that might take a minute or two.

I am advised that there is a provision for such a certificate in the Bail Act, so that would obviously form the basis, and then there would be variations related to the specifics of the bill before us today.

Hon NICK GOIRAN: One observation, if I can, just to thank the minister and the advisers for that speedy response. I indicate that I have no further questions on clause 56.

Hon MICHAEL MISCHIN: I have a question about proposed section 52ZK and its relationship to proposed section 52S, which provides that after all this process, a warrant of commitment appears to be able to be appealed against, but decisions to write off fines cannot be looked into or reviewed, no matter the extent of the fine, the lawbreaking or the justification; those are immutable. Why is that? Why is there no opportunity to review decisions that may be wrong other than one to issue a warrant of commitment?

Hon SUE ELLERY: Again, this goes to the policy of the bill, which we have canvassed several times.

Hon Michael Mischin interjected.

Hon SUE ELLERY: I am doing my best to answer the question that the honourable member posed. There are a number of other elements of the existing fines arrangements under which the final decision rests with the registrar. To that extent, this is no different.

Clause, as amended, put and passed.

Clauses 57 to 64 put and passed.

Clause 65: Section 63 amended —

Hon NICK GOIRAN: Clause 65 seeks to amend section 63. It is stated in the definitions at proposed section 63(1) —

> ***earnings*** —
>
> (a) has the meaning given in the *Civil Judgments Enforcement Act 2004* section 3; but
>
> (b) does not include amounts of a kind prescribed by the regulations for the purposes of this paragraph;

What amounts does the government intend to prescribe by the regulations?

Hon SUE ELLERY: There are no immediate identified plans that would be captured by that provision. It may be something like a National Disability Insurance Scheme payment. There are similar provisions in the Civil Judgments Enforcement Act. There is no immediate plan, but the sort of thing that is being contemplated is something like an NDIS payment.

Hon NICK GOIRAN: Is an NDIS payment currently captured by the meaning of "earnings" in section 3 of the Civil Judgments Enforcement Act 2004?

Hon SUE ELLERY: No, not at the moment. Those provisions have not been acted upon, if you like, or relied upon so far. This is the bit that the member does not want me to say about flexibility in the event that it is required.

Hon NICK GOIRAN: The minister will see that the terms "protected earnings amount" and "protected bank account amount" are also defined in clause 65. What is the protected bank account amount that the government intends to prescribe?

Hon SUE ELLERY: I touched on this in my second reading reply. We do not have a fixed amount in mind. We will look to other jurisdictions and undertake consultation as well, but it will be an amount beyond which it would be considered too difficult or unreasonable for a person to meet their daily living expenses. There is not a fixed amount in the government's mind right now; we intend to consult and look to other jurisdictions as well.

Hon NICK GOIRAN: Again, I take it that this consultation will need to take place before October so that the package of matters can all be dealt with. Is there any indication at the moment of the amount considered in other jurisdictions to be a protected bank account amount?

Hon SUE ELLERY: There is a range between $370 and $440 in other jurisdictions.

Clause put and passed.

Clauses 66 to 75 put and passed.

Clause 76: Part 7 Division 6B inserted —

Hon NICK GOIRAN: Clause 76 is another large clause dealing with various proposed sections to be inserted. The one that interests me at this point is proposed section 95U, which is found on page 100, which states —

> (1) The regulations may prescribe a method for determining the protected earnings amount for a pay period for the purposes of section 95P.
>
> (2) Different methods may be prescribed for different classes of debtors.

Can the minister explain why that is necessary?

Hon SUE ELLERY: It is envisaged that it might be necessary to have different methods to take account of the financial standing of different debtors; for example, there might be a different arrangement in place for someone who is working as opposed to someone who is on a Centrelink payment. That might be the case. There is nothing specific intended at this point, but, again, it is about having the flexibility to take account of the fact that we will most likely be dealing with a range of people who have varying sources of income, and we want the capacity to be able to deal with them differently.

Hon NICK GOIRAN: The intention is to have a protected earnings amount. I think the Leader of the House indicated earlier that the amount in other jurisdictions varies from between $370 and $440. That is the amount that is protected and cannot be touched. For the purposes of our consideration of this clause, it really does not matter whether it is $370 or $440 because the range of difference is so small that nothing will turn on that. However, let us at least agree that the amount is a small amount, and this is the amount that other jurisdictions have said is a protected bank account amount or, if you like, a protected earnings amount. Before I go on to that, I take it that there is a difference between the protected bank account amount and the protected earnings amount. Just to make sure that we are talking about the same thing, the Leader of the House indicated earlier that the protected account amount in other jurisdictions was between $370 and $440. Do we know what other jurisdictions do with the protected earnings amount?

Hon SUE ELLERY: It is because there are two different types of orders. The protected earnings are because of a garnishee order; an employer deducts that and hands it over. The bank account amount is when it applies to an individual. If I can be so bold, while I am on my feet, bear in mind that there is no specific plan for the differing methods. For example, if we look at Centrelink payments, until the decision to implement the JobSeeker program, for a long time there has been a significant difference between the benefit paid to the unemployed and those who receive an aged-care benefit or a carers benefit—a significant difference. The member makes the point—I agree that it is correct—that although there is not a material difference for him and me between $330 and $440, it is a very significant amount for someone who is living on what used to be the unemployment benefit. A different rate might be set taking into account, for example, those kinds of circumstances.

Hon NICK GOIRAN: I think the Leader of the House makes a good point. It will be interesting to see what the government decides to do about these regulations that are set out at proposed section 95U and whether the government is in a position to define these different classes of debtors and different methods. As a matter of principle, I am somewhat concerned about the treatment of debtors in different classes. I do not even necessarily like the language. That being said, we will see how this progresses and I take what the Leader of the House has said, which is that at this point there is no intention to do anything in this space.

Having said that, I draw the Leader of the House's attention to proposed section 95Z. The Leader of the House will note that it states —

> If a bank charges a debtor an amount for the administrative cost of making a deduction under a bank account garnishee order, the amount of the charge must not exceed the amount prescribed by the regulations.

What is the amount that is intended to be prescribed by regulations?

Hon SUE ELLERY: The precise amount of the administrative fee is at the discretion of the bank, up to the maximum amount set by the government. Looking at the other jurisdictions, Queensland, for example, has set a maximum of $14. That is the kind of amount that we will be looking at.

Hon NICK GOIRAN: Has there been any consultation with the banks about what amount they say is fair and reasonable for them to cover the costs of facilitating these garnishee orders?

Hon SUE ELLERY: Not at this point.

Hon NICK GOIRAN: We will mark that down as another matter to be dealt with between now and October. Whoever is given the responsibility of the government to bring this bill into effect will be a very busy person. There will be a lot of consultation and drafting between now and October. That said, I draw the Leader of the House's attention to proposed section 95ZB(2), found at page 106, that states —

> Different protected bank account amounts or methods may be prescribed for different classes of debtors.

Now we are taking things to a whole other level. We are giving the government the capacity to do pretty much whatever it likes. We will have different protected bank account amounts, different methods and different classes of debtors. Is the Leader of the House in a position to give us some idea about the intended framework or structure for the operation of proposed section 95ZB(2)?

Hon SUE ELLERY: It is not dissimilar to the example I gave earlier about the difference between someone living on a Centrelink payment who is in receipt of an unemployment benefit versus someone living on an age pension or carer allowance. It will be a matter of whether we will need a differentiation in the lump sum minimum amount that is left in the account taking into account the person's particular living circumstances. If the minimum amount is set at $500, will that have a greater deleterious effect on someone living on the pre-JobSeeker unemployment benefit, as opposed to someone living on the age pension? Other factors will be whether the person lives in public housing versus the private rental market. The capacity to take a lump sum amount out of the different kinds of debtors will determine whether different minimum amounts are needed.

Hon NICK GOIRAN: I am really not convinced that that is appropriate, because if a minimum amount—let us just specify $500 for the sake of the dialogue—has been determined, it would be unfair and unreasonable for a person's bank account to continue to be eaten into and diluted below the figure of $500, if that is the determination. That should apply to everybody. It should not matter whether they are the richest or poorest person on the planet. If the determination is to say, "Less than $500", as an example —

Hon Sue Ellery: Can the honourable member see the difference between somebody who is on a fixed income in the private rental market, versus someone who may not be on a fixed income, or is on a fixed income but it is a greater amount and has three kids with a disability, or whatever the particular complexities of the circumstances are? There is an arguable difference between them and the deleterious impact it could have on circumstance A versus circumstance B.

Hon NICK GOIRAN: Yes. I understand that point. As an example, $500 is the bear minimum amount. A person who is not on a fixed income and has capacity to earn should not be allowed to have their account eaten into beyond the $500 limit. I do not see how that is fair and reasonable. I am not convinced that it is appropriate to have different protected bank account amounts or methods for different classes of debtors. It is appropriate for there to be an amount, but it should be the same amount for all. Nevertheless, we will see what these regulations look like when they are ready in October. I think we will have some interesting times in October when we consider everything else that the government has on its legislative agenda at that time, including the budget. I indicate at this point that I have no further questions on clause 76, and my next questions relate to clause 78.

Clause put and passed.

Clause 77 put and passed.

Clause 78: Part 7A inserted —

Hon NICK GOIRAN: Clause 78 inserts new part 7A, "Information". The provision in new part 7A that attracts my attention at this time is proposed section 100B found at page 111 and, in particular, subsection (3), which reads —

> The Registrar or Sheriff may —
>
> (a) disclose information relating to offenders, alleged offenders, fines or infringement notices to a public authority or other body for use in research; or
>
> (b) disclose information prescribed by the regulations in circumstances prescribed by the regulations.

Again, I make the observation that this is a classic clause that a committee would want to interrogate. Do we read what we are about to pass? It states —

> The Registrar or Sheriff may —
>
> …
>
> (b) disclose information prescribed by the regulations in circumstances prescribed by the regulations.

That is the ultimate chicken-or-egg clause. Which one comes first? Is it the circumstances prescribed by the regulations or the regulations themselves? Nevertheless, what guidelines will be put in place to fetter the disclosure of information for so-called research purposes?

Hon SUE ELLERY: I have been given two types of examples. The first example is a university that is looking to do an evaluation of the work and development permits. That has been done in other jurisdictions. The second example is the need to crosscheck with another agency—Centrelink, for example—to make sure that the address is correct. Those are the kinds of examples I have been given.

Hon NICK GOIRAN: Do those two examples, the university or another agency, fit under the description of a "public authority or the other body" provision in proposed section 100B(3)(a)?

Hon SUE ELLERY: We have five universities in Western Australia. Four of them are public authorities and one is a private university. In that example, four of those universities will be public authorities, and the other, the University of Notre Dame Australia, will be another body. It is that kind of example.

Hon NICK GOIRAN: This clause will allow Parliament to give the registrar or the sheriff the power to disclose this information. The minister has indicated that one of the examples might be for a university for research purposes. The heart of my question is whether there will be any guidelines to ensure that the registrar or the sheriff is not simply disclosing information under what is quite an unfettered power. Under proposed section 100B(3)(a), the sheriff and the registrar could disclose any information relating to alleged offenders. What kind of information? Could they disclose a name? Could the registrar or sheriff send to another body or public authority the name of not only an offender, but also an alleged offender with fines or infringement notices? We are giving quite a big power to the sheriff and the registrar. I again make the point that this is a classic case of something that would have been picked up by a committee and the committee would have recommended some protections around the power that we are giving to the registrar and the sheriff. It would absolutely be picked up in the fundamental legislative scrutiny principles. What types of guidelines are intended to be put in place to ensure that this significant power is somewhat fettered?

Hon SUE ELLERY: I thank the member for the question. The guidelines are proposed to be quite extensive. I am not able to be advised at the table now about whether the point the member makes about this being included has been contemplated; however, I do not think it is a bad idea, so I give the member an undertaking that I will raise that with the Attorney General.

Hon NICK GOIRAN: I have one further question on clause 78. It relates to proposed section 100F, "Confidentiality", found at page 113. Proposed section 100F(2) states —

> The collection, use or disclosure of information to which subsection (1) applies is authorised if the information is collected, used or disclosed in good faith —

It then sets out a range of parameters, including, at the very bottom, proposed paragraph (g), "in circumstances prescribed by the regulations". What circumstances does the government intend to prescribe by regulations?

Hon SUE ELLERY: The honourable member is going to love the answer. It is for the purposes of flexibility. Nothing specific is proposed at this time.

Committee interrupted, pursuant to standing orders.

[Continued on page 3599.]