

**FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2019**

*Second Reading*

Resumed from 3 December 2019.

**HON JACQUI BOYDELL (Mining and Pastoral)** [3.53 pm]: I rise this afternoon to indicate the support of the Nationals WA for the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019. I have to say that I have had an enormous amount of correspondence on this bill, particularly in the last 10 days. There is a large degree of public interest in the process of this bill, and I think rightly so, because it is a move in the right direction. It will ensure that the rights of vulnerable people will be protected, to a degree, and it also will respond to reports by the State Coroner, the Law Reform Commission of Western Australia and, indeed, the state government. It is with that that I indicate the support of the National Party for this bill.

The bill was introduced in the Legislative Assembly on 26 September 2019. As Hon Alison Xamon intimated yesterday, the rationale for and the key recommendations that led to this Fines, Penalties and Infringement Notices Enforcement Amendment Bill have come from the State Coroner's findings into the inquest into Ms Dhu's death in custody in Port Hedland, a very unfortunate event that is still very sorely felt in the Port Hedland community. Before I go any further, I extend my sincere condolences to Ms Dhu's family. Unfortunately, Ms Dhu was arrested on a warrant of commitment of unpaid fines in August 2014, although her fines were only approximately \$3 500. At this point, particularly in light of global events, Ms Dhu's case is a particularly poignant issue. The fact that she was in prison at all for unpaid fines—particularly a small amount of unpaid fines—makes this discussion most pertinent. Surely, there is a better way to deal with such matters, and I think this bill addresses that sort of issue. I hope that Ms Dhu's family and friends can take some comfort from the fact that this is a step in the right direction. Because of that unpaid fine, Ms Dhu was required to spend four days in prison to expiate her fines at the rate of \$250 a day. While in custody, as has been reported in the media on many occasions and in the State Coroner's report, she experienced some severe medical conditions and complications from injuries sustained from earlier domestic violence incidents. Unfortunately, she passed away a few days later while in custody during her admission to the Hedland Health Campus.

The coroner recommended that imprisonment be removed from the act as an option for enforcing payment of fines or, alternatively, imprisonment for fine default be subject to a hearing before a Magistrates Court and be determined by a magistrate and that orders other than imprisonment be available to the magistrate. That recommendation is included in this bill. Work development permits, garnishing of income and fine expiation orders also have been included in this bill. The aforementioned rationale, which is probably the pinnacle finding of the State Coroner's report, is why this bill is before the house today.

The rationale behind the changes to licence suspension orders stems from the Australian Law Reform Commission's report "Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples", tabled in the federal Parliament on 28 March 2018. One recommendation was that states should avoid suspending a driver's licence for fine default, particularly in remote areas. I 100 per cent agree totally with that. Losing a driver's licence in a remote area disproportionately impacts people. There is no public transport and no capacity to connect to the next town, particularly to access agency services. As a result, people become further entrenched in a cycle of poverty and probably involvement in the justice system. I am therefore very pleased to see that there is provision for that in this bill, particularly for remote areas. However, Leader of the House, one of the questions I will ask during the Committee of the Whole House concerns how remote areas are defined in the bill. Most of the amendments relate to fines enforcement rather than enforcement of infringement notices because the former can result in imprisonment. The first Australian statutory principle is that imprisonment for failure to pay a fine should be truly an enforcement of last resort and that a person experiencing hardship that affects their ability to pay a fine or work it off should not be imprisoned for fine default.

The bill also goes further than legislation in other Australian jurisdictions in restricting the issue of licence suspension orders for both fines and infringement notices. Garnishee orders are already in place in Queensland, South Australia and New South Wales, and work development permits already exist in New South Wales, Victoria and Queensland.

In May 2016, a report from the Western Australian government Office of the Inspector of Custodial Services titled "Fine Defaulters in the Western Australian Prison System" reported the following statistics. They are fairly harsh. Hakea Prison and Bandyup Women's Prison are the prisons most heavily burdened by fine defaulters in our state. Women are disproportionately represented in the fine default population, making up 15 per cent of the total prisoner population but 22 per cent of the fine defaulter population. Aboriginal people are also disproportionately represented in the prison population of fine defaulters, which indicates that there is an issue there. Unemployment is rife in the fine defaulter prison population, particularly for Aboriginal women, at 73 per cent. We are issuing fines and then imprisoning people, and statistics show that it is not working. It continues to be a revolving door situation. I am pleased to see those recommended changes in this bill. The majority of fines—54 per cent—were related to minor

traffic offences. The prison system needs to deal with people who commit much more serious offences, rather than people who commit minor offences. People who are jailed for minor offences have their whole lives affected as a result and, unfortunately, in some instances it results in deaths in custody, as in Ms Dhu's case.

In 2013–14, the cost of prison admissions for people imprisoned for fine default offences was \$2.29 million. That is incredible. Surely that state government money can be better spent on supporting people in our communities.

I will give an overview of the bill. This bill aims to prevent vulnerable people who are unable to pay a fine from being sent to prison. It is as simple as that. The registrar will no longer have the power to issue a warrant of commitment and authorise the imprisonment of a debtor. Only a magistrate will be able to issue such a warrant on application by the registrar, and only when the registrar has attempted every other applicable enforcement option. I think that the general public expect that all viable alternatives are considered before someone is sent into the prison system. This is a good outcome.

The bill inserts a definition of "hardship", which includes financial hardship, mental illness and disability, experience of family and domestic violence, homelessness and drug and alcohol problems. All those things lead to hardship. This is not just about financial hardship, and I think it is a major step forward to recognise that those issues create hardship for people and reduce their capacity to pay a fine. That also relates to the above point, in that a person who is experiencing hardship that affects their ability to pay a fine should be sent to prison only as a truly last resort. All the other hardships that a person may be facing, as defined in the bill, and other alternatives presented to the magistrate should be considered before the person is sent to jail.

The bill implements a work and development permit, which is also linked to that concept of hardship, whereby if a debtor is experiencing hardship, they can enter into an agreement to undertake approved activities to discharge their liability to pay a fine. These activities include things like unpaid work, medical or mental health treatment, an educational or vocational course, treatment for drug or alcohol problems, engaging in a mentoring program if under the age of 25, or any other activity as prescribed in the regulations. That is a major step forward in actually trying to help people, once they do come in contact with the justice system, to address some of the issues that have maybe led to them finding themselves in that position. It also seeks to assist us in stopping this recidivist revolving door in which we have people in the prison system, we release them on their release date, and they get absolutely no help to address the issue for which they found themselves in prison in the first place. It is just unbelievable to me that we can recognise those issues yet people get no assistance or treatment whilst they are in the care of the state so that they do not come back through the door. So, this is a major step forward.

Thirty per cent of fine defaulters are from regional areas. There is a high representation of fine defaulters from regional areas in the prison system. I am hoping that once this bill passes this house, regional people will be able to seek assistance through the justice system to help correct some of the hardships they have faced in their lives, instead of just being sent to jail and then being expected to have got past those hardships. History shows that that just does not happen. I am hoping that those regional people will be able to use that engagement in the justice system as an opportunity instead of them just being sent to jail, and then being seen again the next time they are in. That is not acceptable. I will ask some questions when we get to this point in Committee of the Whole House. How will regional people access some of those services, such as rehabilitation and mental health services et cetera, that are thin on the ground in regional areas? Will there be funding to help support that? I absolutely agree with the principle; there is no doubt about that.

The bill introduces fine expiation orders, which allows for offenders to discharge their fine if they are in, or have previously been in, custody. The registrar is restricted from issuing a licence suspension order for a debtor whose last known address is in a remote area. The bill introduces those garnishee orders that I talked about, which will enable the sheriff to go direct to the source of the debtor's income through either their employer or their bank. I do not know whether this also needs clarification, but will people be able to access Centrelink pensions or benefits for those garnishee orders, because ultimately that will assist them to reduce their fine? A fair balance of their pension or benefit being paid towards that fine would be a good outcome for all. That may be something that the minister could also clarify when we get to the committee stage. That might be welcomed because it would assist people to get on their way and address those issues so they can move on and live their lives. One day those people might live next door to you or me, and when those people live next door to you or me, I want them to be responsible, good neighbours, with all of the same opportunities that we have in the towns and communities that we live in. I do not think that that is an unreasonable expectation of people, and we, as a Parliament, should support the processes that allow legislation to support people rather than penalise them.

There are some questions for consideration once we get to the Committee of the Whole House stage, but the Nationals WA most definitely support this bill. I look forward to the contribution of other members on this legislation and I look forward to it passing the house, because it will help people. I would like to see that in the numbers in the future. I wonder whether the government intends to keep any statistics on where fine defaulters from the prison system go, how they are supported and how a positive outcome is effected for those people as a result of this legislative

change. I think that will be important to ensure that we have made the right decisions with this bill and whether, in the future, further changes might need to be made.

There are some amendments on the supplementary notice paper, which I am sure we will get to during the Committee of the Whole stage. All in all, I support the bill. It is a move in the right direction. It will be welcomed by people in the community. As I said at the outset, I have had an enormous amount of engagement on this bill from the general public. I do not think I have heard from anyone who does not support the bill. It will be exceptionally welcomed in the Mining and Pastoral Region. I thank the government for bringing the bill to the house.

**HON COLIN TINCKNELL (South West)** [4.10 pm]: I will be very brief. I was not going to talk on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019, but I will make a short contribution. I thank Hon Jacqui Boydell for her words. I think she captured the very good parts of the bill. I will ask questions later during the Committee of the Whole stage.

On 13 June 2017, I had been working as a member of Parliament for about two and a half weeks and I was lucky enough to have a meeting with the Treasurer, who is also the Minister for Aboriginal Affairs. I put to him a 10-point plan for what I would like to see happen. From talking to him, and from my previous experience in this area, I understood that to achieve some outcomes in the Indigenous field, he would need lots of other ministers, departments and the federal government to work with him as closely as they could. In some cases, the minister has had a tough time and, in other cases, he has achieved great things. This bill is part of that. If we want to see fewer Aboriginal people incarcerated, fewer deaths and everything else that goes with that, this bill will help. Fine defaulters often finish up in jails because of their socioeconomic backgrounds. Although penalties and discipline are needed for people who break the law, a redevelopment, prevention and training role needs to happen to assist them and reduce the numbers who enter jail. Jail is not a great place to go for someone who has been convicted of a traffic offence and not been able to pay the fine. That is where they find themselves a few months or a year later.

In Port Hedland, I sat in many Magistrates Court hearings just to be there for Aboriginal people who were going through this. The lawyers who represented the Aboriginal person often had no idea what they were really in court for and did not know them. It was good to be able to be in court to represent these people, put forward references, and let the magistrate know who the person was and what their circumstances were. I was in no way agreeing with the offence that had been committed, but was trying to understand what led to it and why the people were in that position. I worked very closely with people in that position, trying to assist them. The magistrates were very experienced and certainly knew what the people faced in those courts.

The change outlined in this bill to keep fine defaulters out of jail was a part of my 10-point plan. There were other points, but I am not here to talk about them now. One Nation supports the bill. I am happy it is before the house. It has taken a while; I wish it had happened a couple of years ago, but that is the way it is. We support the bill.

**HON ALISON XAMON (North Metropolitan)** [4.15 pm]: I rise as the lead speaker for the Greens on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 and indicate from the outset our wholehearted support for its passage.

I am mindful of the time and that we are likely to break in a moment. I seek your guidance, Mr Deputy President, as to when we are likely to break.

**The DEPUTY PRESIDENT:** It might be convenient if I leave the chair now until the ringing of the bells.

Debate interrupted, pursuant to standing orders.

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*Sitting suspended from 4.16 to 4.30 pm*