FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2019

Second Reading

Resumed from 13 November.

MR S.A. MILLMAN (Mount Lawley) [10.11 am]: I want to continue my contribution from yesterday, but, before I do that, I want to welcome two great friends of mine who are in the Speaker's gallery today: Emeritus Rabbi Dovid Freilich from the Perth Hebrew Congregation and my good friend Bob Kucera, former member for Yokine and a predecessor who served the constituents of my neighbourhood.

As I was saying yesterday, it is a great privilege to stand and speak in support of legislation that will have such a material and important impact. My view is that to be a good government, it needs to have a vision and it needs to take practical steps to achieve that vision. This government's vision is for a fairer criminal justice system. It is a vision that, as I have said before, sees us rebalancing the scales of justice. It is a vision that sees us being committed to justice for victims. It sees us cracking down on meth dealers and serial killers. But our criminal justice system also needs to have the right degree of compassion. Our prisons should be for murderers, rapists and drug dealers, not for single mums from disadvantaged backgrounds who cannot afford to pay fines. In fact, the imprisonment of people for unpaid fines is, in my view, a failure of our justice system. In support of that proposition, I will quote from the *Principles of Sentencing* by Geraldine Mackenzie and Nigel Stobbs. At chapter 3, they say —

> Punishment is carried out by the state on behalf of the community as a whole … The most important justification … for the state punishing on behalf of the community in general is the maintenance of the Rule of Law …

As all members here will know, I am a great adherent of and a great believer in the rule of law; I have mentioned it on numerous occasions. Ensuring that sentencing purposes are properly applied is an important part of ensuring consistency and fairness. We do not want to impose penalties that are disproportionate. We need to make sure that, as a Parliament, we preserve the community's trust and confidence in our criminal justice system. The reasons that penalties are imposed—I will quote from *Problems of the Criminal Justice System* by Roger Hawthorn and John Champion—are manifold. There are multiple reasons why punishment is imposed. Starting at page 89, for perpetrators of crime, they are retribution, incapacitation, deterrence, reform and rehabilitation. For people who have failed to pay a fine, oftentimes because they are impecunious or indigent, it is an incredibly disproportionate penalty for them to be imprisoned. Public confidence in our criminal justice system begins to be eroded if it is not applied correctly. The community recognises that putting people in jail for not having paid a fine is not right.

Furthermore, to quote from the eminent legal scholar Blackstone, we have the writ of habeas corpus, which I was talking to the member for Hillarys about yesterday. It prevents people from being unreasonably detained. It prevents that greatest imposition being placed on our liberty, our freedom. As Blackstone said, the writ of habeas corpus is that great and efficacious writ in all manner of illegal confinement. One of the great problems we have with the current system is that people can have their liberty deprived in circumstances in which they have not had the opportunity to put their case before a judge or a magistrate.

We have prison for retribution, incapacitation, deterrence, reform and rehabilitation. These aims in our criminal justice system, in sentencing and in imprisonment ought not be applicable for a simple offence like an unpaid fine. "Why?", I hear members ask. The answer is contained or illuminated in the excellent peer-reviewed article, which was referred to in the wonderful contribution from the member for Kalamunda, in the *International Journal for Crime, Justice and Social Democracy* titled "The Hidden Punitiveness of Fines", by authors Julia Quilter from the University of Wollongong and Russell Hogg.

Dr A.D. Buti: I saw that, too.

Mr S.A. MILLMAN: It is an excellent article, member for Armadale, and I hope it gets a thorough working out in the contributions that members make to this debate. I will try to avoid repetition, based on what the member for Kalamunda has already said, but there are a couple of points that I would like to make. At page 12, the authors go to the attraction of a fine and state —

> A growing number of offences are now subject to infringement or penalty notice provisions. These 'opt-in' measures imposed by police and other agencies require the 'offender' to pay a nominated fine for the infringement in question or elect a court hearing, usually with the prospect that, if unsuccessful, the penalty will be increased and court costs incurred.

They say further —

> Fines are widely viewed as the ideal penalty, a simple, 'quick, efficient, flexible, effective, and cheap form of punishment … easily understood … and readily adjusted to reflect the seriousness of the offence and the circumstances of the offender' …

So far, so good. But what we see next is the growth in the use of the fine. The article continues —

> In their classic 1939 study *Punishment and Social Structure*, Rusche and Kirchheimer identified the factors driving the growing ascendancy of the fine in the twentieth century: fines achieved a penal effect without cost to the state …

I will come back to that point. What is the cost to the state of these fines and the current regime that requires imprisonment for fine circumstances? It continues —

> They were, however, also mindful of the difficulties that stood in the way of 'the full rationalization of the penal system through the introduction of fines' … most importantly, the enforceability of fines against the indigent and how to maintain a semblance of equal justice if fines were converted to imprisonment in the case of those unable to pay.

That picks up precisely on the point made by the member for Hillarys—the paradox of forcing those who can least afford to pay a fine to be liable for the fine, and then sending them to jail when they cannot pay the fine. The same point was raised very well by the member for Kalamunda. The article continues —

> In or out of court, fines are now, and have been for some time, by far the most frequently imposed penalty in Australia and many other countries. Over 60 per cent of offenders sentenced in Australian criminal courts each year receive a monetary sanction as their principal penalty …

However, the problem with this increasing use of fines is highlighted on page 20 of the article, and I quote —

> The impact of converting fines to imprisonment has overwhelmingly been borne by women and Aboriginal people. In 2013, one in every three women entering the prison system did so solely to clear fines … In relation to Aboriginal people, between 2008 and 2013, the number incarcerated for fine default has increased from 101 to 590, a 480 per cent growth …

Given that the burden falls so squarely and so significantly on Aboriginal people, what do we do? As I said at the start, to be a good government, it needs to have a vision and it needs to take practical steps to achieve that vision. I refer members to an article on ABC News earlier this year written by Rhiannon Shine titled "WA Premier Mark McGowan outlines 12 key targets he says will define his job". One of those targets is —

> Reducing the number of Aboriginal adults in prison by 23 per cent by 2028–29;

That is a measurable, tangible, compassionate and worthwhile objective. We have already seen that the imposition of imprisonment for unpaid fines falls disproportionately on Aboriginal people. What does the Australian Law Reform Commission have to say about the incarceration rates of Aboriginal and Torres Strait Islander people? Thankfully, the answer is contained in its discussion paper 84 of 19 July 2017, "Imprisonment terms that 'cut out' fine defaults". It states —

> 6.21 …Imprisonment for fine default results in punishment disproportionate to the offending conduct, and contradicts the principle of imprisonment 'as a last resort'.

When we have regard to the comments that I have already relayed from Messrs Hawthorn and Champion, we can see exactly what the Law Reform Commission is getting at. Nearly 30 years ago, in 1991 the Royal Commission into Aboriginal Deaths in Custody recommended that all governments ensure that sentences of imprisonment were not automatically imposed for the default of payment of a fine. Further, regimes that use warrants of commitment, which is exactly what the Western Australian does, permit imprisonment without hearings or trials. What happens to that great and efficacious writ, the writ of habeas corpus? People are being imprisoned without hearings or trials. The paper states —

> Imprisonment remains automatic at a certain point in the enforcement process.

The discussion paper continues —

> 6.24 In 2016, the Coroner's Court of Western Australia questioned whether incarcerating fine defaulters provided any benefit to the community and recommended the abolition of warrants of commitment in WA. …
>
> 6.25 The Western Australian system has been identified as particularly arduous for Aboriginal and Torres Strait Islander women.

Again, it has the same statistic —

> In 2013, it was reported that one in every three women who entered prison in West Australia did so for fine default.

The discussion paper also states that these laws unreasonably and disproportionately criminalise Aboriginal and Torres Strait Islanders women and are recommended for abolition. The paper further states —

> 6.28 The Aboriginal Legal Service of WA has stated that the
>
> > complex underlying problems that exist for vulnerable fine defaulters (such as mental illness, cognitive impairment, homelessness, poverty, substance abuse, family violence and unemployment) will never be addressed by the current blunt fines enforcement system in Western Australia.
>
> 6.29 The Law Council of Australia has indicated support for the national abolition of fine default imprisonment schemes.

In the list of concerns of the Aboriginal Legal Service, family violence is so much more pertinent when one has regard to the State Coroner's report in 2016 in response to the death in custody of Ms Dhu, a 22-year-old Aboriginal woman, who had been imprisoned as a result of failure to pay $3 500 worth of unpaid fines. That is the price we are putting on a life—$3 500 in unpaid fines. She was imprisoned for that and died in custody. She was a victim of family and domestic violence. I will come back to that point if I have time in my contribution. In addition to the Australian Law Reform Commission clearly and unambiguously stating its support for the proposition that we should abolish imprisonment for fine default, which is what this legislation does, the Law Society of Western Australia, that eminent organisation, in its briefing paper from April 2019, said —

> The Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA), has a discriminatory and disproportionate effect, leading to the over-representation of Aboriginal and Torres Strait Islander peoples …

It then refers to the numerous key findings in the 20 May 2016 report by the Government of Western Australia Office of the Inspector of Custodial Services. I will not traverse them in the time that I have because time is running out, but I recommend that members review this paper. Recommendation 4 states —

> The *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) is not consistent with recommendations made in the Royal Commission into Aboriginal Deaths in Custody Report.

We are close to 30 years after the recommendations of that report. Again, some useful statistics for members' deliberation on this legislation include that 43 per cent of the 1 358 people who entered prison in WA in 2013 solely for the purpose of clearing fine defaults were Indigenous Australians. The Law Society outlines the policy position at the end of the paper and it summarises the Law Council's policy position —

> In January 2019, the Law Council of Australia released a joint statement with the Law Society of Western Australia, —

I have a copy of that statement here —

> calling on the State Government to repeal laws that provide for imprisonment as a result of unpaid fines and outlining the disproportionate impact on people who experience significant disadvantage, including Aboriginal and Torres Strait Islander people.

Members, we have the philosophical basis, the academic research, and the policy position outlined by eminent organisations such as the Australian Law Reform Commission, the Law Council of Australia and the WA Law Society. We can see that what this government is trying to achieve by bringing this legislation to this place is supported by a broad cross-section of the community.

[Member's time extended.]

Mr S.A. MILLMAN: I said earlier in my contribution that I would refer to the joint statement from the Law Council and the Law Society. I have already summarised their policy position, but they issued the following statement on 26 September 2019 in response to the government's announcement that it would bring this legislation before Parliament —

> The Law Society of Western Australia and the Law Council of Australia have welcomed the announcement by the Attorney General the Hon John Quigley MLA of proposed changes to the enforcement and recovery of fines in WA.
>
> …
>
> Law Society President Greg McIntyre SC —

Who, as I have said previously, is a friend of mine, just for the declaration of interests —

> said, "Imprisonment for fine default has impacted adversely on the most vulnerable in our community, including Aboriginal and Torres Strait Islander peoples, and has a huge cost socially and to the taxpayer. Replacement by debt recovery and community service options is welcome and will be far less costly to the community."

I said I would return to the economic argument, which will be picked up by other speakers in their contributions to the debate. It continues —

> Law Council of Australia President Arthur Moses SC said, "Imprisonment for fine default is an inherently disproportionate and ineffective punishment which only serves to criminalise people living in poverty. This Bill will bring Western Australia further in line with the recommendations of the Australian Law Reform Commission in the Pathways to Justice Report and of the Law Council in the Final Report of the Justice Project, which called for the practice to be abolished in all jurisdictions."

I saw the member for Cottesloe pop his head into the chamber. I thank the member for Cottesloe. He and I, together with Hon Alison Xamon from the Legislative Council, hosted Social Reinvestment WA. Social Reinvestment WA has produced a paper called the review of Fines, Penalties and Infringement Notices Enforcement Amendment Bill, which states —

> Following our Briefing and conversations with Members of Parliament on Tuesday 17th September on the pressing need for reform to WA's fine default legislation, and the high profile imprisonment of another woman after reporting a burglary on the 24th September, Social Reinvestment WA was pleased to see the Attorney General announce and bring before parliament Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 on Tuesday 26th September.
>
> We appreciate your involvement …

I want to say a few thankyous. I commend the work of Social Reinvestment WA. I acknowledge the family of Ms Dhu, who I mentioned before. I acknowledge her legal representative during the coronial inquiry, a friend of mine, Hon Peter Quinlan, SC, Chief Justice of WA, for all the work he did.

I am incredibly grateful to the member for Hillarys for indicating that the Liberal Party will not oppose this legislation, but I want to make a couple of points about how and why this legislation is the right legislation at the right time by the government that is achieving its objectives, after having outlined quite clearly to the community precisely what those objectives are. The member for Hillarys was concerned about those who were going to thumb their noses—I think that was the language he used; I do not want to quote from the uncorrected *Hansard*—at the criminal justice system. This is what the Attorney General had to say in his second reading speech —

> It is important to note that this bill implements the alternative recommendation of the Dhu inquiry and provides that imprisonment for fine default is an option, however remote. It is important that imprisonment be available as a means of enforcement for the cohort of debtors who have the means but not the inclination to pay—those recalcitrant few who thumb their nose at the system …

The language used by the member for Hillarys was no accident because the Attorney General used precisely the same terms, stating —

> Those … who thumb their noses at the system and accrue fines with no intention of paying them back, having ignored all other attempts at enforcement. This bill draws a careful distinction between those who can pay but refuse to do so and the many experiencing hardship who cannot pay and should not be further entrenched in poverty.

Despite the concerns of the member for Hillarys, this bill achieves the objectives that it sets out to achieve. I said earlier that I was somewhat surprised that the member for Hillarys continually stated that his contribution was made in his personal capacity. He introduced this paradox that although he was confident that the legislation would pass the Legislative Assembly, he was not sure what would happen in the Legislative Council. One can only hazard a guess as to what features might exist in the Legislative Council, perhaps amongst the members of the Legislative Council who may take a different view of this legislation from that taken by those more moderate and more intellectual members of the Liberal Party, such as the member for Hillarys and those who have made contributions in support of the legislation in this place.

The member for Hillarys said something that took me by surprise. He said that perhaps we could have been bolder and perhaps this was a time when we would move beyond government operating in silos. I want to give all members two examples of the way in which the McGowan government has worked cooperatively and collaboratively time and again. I can only surmise that this cooperative and collaborative attitude by the

McGowan government is a function and reflection of the harmonious working relationship within cabinet, perhaps in stark contrast with the days of "Emperor Colin". Let me give two examples. I refer to jobs. We have the Minister for Tourism assiduously and diligently working to diversify our economy and encourage more tourists to Western Australia. No interjections.

Mr Z.R.F. Kirkup interjected.

Mr S.A. MILLMAN: He was supported in that endeavour by a Minister for Education and Training, who is investing in TAFE in order to enable students to access those qualifications that they will need for jobs in the tourism and hospitality industries. We have a Minister for Transport investing in those job-creating, congestion-busting projects that will drive jobs growth in Western Australia. We have a Minister for Tourism working with a Minister for Transport working with a Minister for Education and Training, all focused on what we can do to increase the number of jobs in Western Australia.

On the issue of law and order, we have a Minister for Police working with an Attorney General working with a Minister for Corrective Services, all doing what they can to improve and enhance community safety in our state. We have a Minister for Police who is actively and assiduously working to ensure that our serving officers have the resources and the protection they need in order to discharge their functions. We have an Attorney General who is strengthening our criminal justice system and strengthening our courts. We have a Minister for Corrective Services who is revitalising our prison estate. We have coordinated, cooperative, collaborative approaches within and amongst this cabinet. All that work, all that endeavour and all that effort is underpinned by a Premier and a Treasurer focused on those objectives of making sure that our community is safe and that we are promoting and creating jobs in WA. We have a Premier and a Treasurer who are driving precisely the sorts of reforms that we need after such a long time of the Liberals being in office. We wish to continue all the work that we have done in that regard and keep serving the people of Western Australia. I commend the bill to the house.

DR A.D. BUTI (Armadale) [10.33 am]: I also rise to contribute to the debate on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019. The member for Mount Lawley articulated our position very well when he spoke in support of this bill. I was intending to quote from some of the documents or sources that he quoted from, so I will see whether I can quote from different pages.

When the Attorney General introduced this bill and made his second reading speech, he started by moving that the bill be now read a second time and then stated —

> I stand before the house today to introduce a bill that will significantly change the way fines are enforced and recovered in Western Australia, to make the system more just, equitable and effective. It would be remiss of me if I did not begin this speech with recognition of the work of my good friend and colleague Hon Paul Papalia, MLA, who in his former role of shadow Minister for Corrective Services was relentless in holding the previous government to account on the issue of imprisonment for fine default. For many years, I, too, have voiced the need for significant change to the Fines, Penalties and Infringement Notices Enforcement Act 1994. This bill delivers those necessary changes.

This bill definitely introduces those necessary changes, which, if time permits, I will address later in my contribution.

The Attorney General mentioned Hon Paul Papalia, the former shadow Minister for Corrective Services. Specifically, he would have been referring to the WA Labor discussion paper dated November 2014, titled "Locking in Poverty: How Western Australia drives the poor, women and Aboriginal people to prison". It is a very good paper, and it can still be found. I suggest the member for Dawesville look at it because I know he is into research. It is a really good paper. It is important to read the executive summary because it shows that the Labor Party, which is now in government, has been thinking of these issues for a number of years, led firstly by Hon Paul Papalia and now the Attorney General, who introduced this bill that I think is incredibly important and necessary. It is great to have the support of the opposition in the passage of this bill. The executive summary of Paul Papalia's paper states —

> The current policy for managing Western Australians who cannot pay fines has cost taxpayers millions of dollars, strained the prison system and has disproportionately affected the poor, especially women and Aboriginal people.
>
> In Western Australia, fine defaulters may enter prison to clear a fine, if they have been unsuccessful in paying off the fine via a payment plan or completing a Community Service Order. The management of Community Service Orders was changed in early 2009, resulting in high rates of imprisonment of fine defaulters.
>
> The State Government assumes that the prospect of going to prison will deter people from breaking the law and incurring fines in the first place. If so, the number of fine defaulters entering the prison system should have diminished.
>
> Instead, this policy is driving an extra 1100 people to prison a year, with significant economic and social costs.

> This policy is not working. It is economically unsound, ineffective in enforcing fines payments and profoundly unfair.

A number of dot points follow, which I think are interesting and important in this debate. I continue —

- Every year since 2010 —

This paper was published in 2014 —

> more than 1,100 fine defaulters have entered prison in Western Australia solely for the purpose of clearing fines.

- Fine defaulters in prison 'cut out' $250 of fines a day, yet it costs $345 per day to keep them in prison.
- The costs of imprisoning fine defaulters have blown out by 220 per cent since 2008.
- Last year —

That would have been 2013 —

> one in every three women who entered the prison system did so solely for the purposes of clearing fines.

- The number of Aboriginal women jailed for fine default has soared by 576 per cent since 2008.
- Between 2008 and 2013, the number of Aboriginal people incarcerated solely for fine default has increased from 101 to 590, a growth of more than 480 per cent.
- Between 2008–9 and 2012–13, the Department of Corrective Services budget has blown out by an average of 8.6 per cent a year. If this trend continues, this year's budget of $870.25 million could blow out to $945.1 million.

The discussion paper released in 2014 by Hon Paul Papalia highlighted the absurdity of the system in which people were being imprisoned at an alarming rate for not paying fines—for being fine defaulters. It disproportionately fell on those who were poor and/or Indigenous women. Besides the immorality and injustice of it, it also had a major economic cost for the state, because the amount that was being paid down on the fine per day was less than the cost of imprisoning a person, plus all the social costs that relate to imprisonment.

The issue of incarceration and punishment has a long philosophical and theoretical development in western society. When we are imprisoning someone for being a fine defaulter, we are incarcerating them; we are putting them in jail because they have not paid a fine. Obviously, that option still needs to be available as a last resort. I will read from the document "The Philosophical and Ideological Underpinnings of Corrections", which refers to incapacitation. It states —

> **Incapacitation** refers to the inability of criminals to victimize people outside prison walls while they are locked up. Its rationale is summarized in J. Wilson's (1975) remark, "Wicked people exist. Nothing avails except to set them apart from innocent people" …

I think being a fine defaulter does not make someone a wicked person. It also does not necessarily make them a person who is going to be harmful to the population. There are many aspects to incarceration: why we incarcerate, the many principles behind it and the function of imprisonment. One aspect is safety. If the person is wicked or evil, they could be harmful to society, but just because someone has defaulted on a fine does not make them wicked or harmful to society. Therefore, it does seem a bit extreme that they are then imprisoned.

The member for Mount Lawley and the member for Kalamunda mentioned a very thoughtful and useful article, "The Hidden Punitiveness of Fines", which is published in the *International Journal for Crime, Justice and Social Democracy*. I will not read the quotes that the member for Mount Lawley read, but it explains that there has been a massive increase in using fines as a form of punishment. The use of fines has soared since 1980. The article states —

> … the human impacts on those affected is little understood. Because 'only' money is at stake rather than personal freedom, the assumption is too readily made that fines are inherently lenient, making evidence of its effects unnecessary.

That may be true, but if we then go further and imprison someone for not paying the fine, we are taking away their freedom. The article continues —

> A third reason for devoting more attention to fines is that fines enforcement has recently undergone significant reorganisation in many jurisdictions.

Other jurisdictions in Australia have sought to reduce the alarming rate of imprisonment because of fine defaulters, which we are doing through the introduction of this bill.

The Aboriginal Legal Service, of course, has been very interested in this issue for many years. I refer to a briefing paper from the Aboriginal Legal Service of Western Australia titled "Addressing Fine Default by Vulnerable and

Disadvantaged Persons: Briefing Paper" of August 2016. Before I do that, I will refer to a slightly different issue; that is, we always need to be careful when we use money as a form of punishment or a way to modify or motivate behaviour, even unintentionally. I used to work at the Aboriginal Legal Service, and when I commenced there in the mid-1990s, one of the big issues around that time was meal allowances. Western Australia had a system in rural areas that for every prisoner in a police lock-up, a meal allowance was provided to pay for the meal to feed the prisoner. The Aboriginal Legal Service was very concerned about this policy. A paper titled "Policing in Wiluna" by Steve Leicester states —

> *A desert community takes issue with over-policing, meal allowances and social justice.*

In Wiluna, a person would be in prison and money to feed the prisoner would be received by the police officer, but the police would provide a very cheap meal to the prisoner and pocket the surplus meal allowance. Therefore, obviously, there was an incentive to have more people locked up, and that is what happened in Wiluna. This paper, "Policing in Wiluna" by Steve Leicester, published in the *Alternative Law Journal*, volume 20, number 1, in February 1995, is a really good exposé of that practice and the problems that took place. It states —

> The ALS report also revealed that a total of $197,471 in fines was imposed during the period of the study.

I am not sure of the actual time, but the period of the study was rather brief. The paper continues —

> Western Australia is the only State of Australia in which a meal allowance continues to be paid to the officer in charge of a police lock up on a per prisoner per day basis. This potential conflict of interest has been removed from all other States.

It has also been removed in Western Australia now, but it shows that we always need to be careful when we are dealing with the issue of money and vulnerable people or Aboriginal people because of their connections to, or regular contact with, the criminal justice system. As I said, there has been an increase in the use of fines as a method of punishing behaviour that we do not think is favourable. When the consequences lead to incarceration, it can be economically damaging to the state and the person involved, and there are many social costs. If anyone needs to be convinced that we need to move in this area, they need to read the discussion paper by Hon Paul Papalia.

[Member's time extended.]

Dr A.D. BUTI: They also need to read the August 2016 briefing paper by the Aboriginal Legal Service of Western Australia. It is a really important paper that led to the development of this bill before the house. It states —

> In ALSWA's view, the critical issue with the current fines enforcement system in Western Australia is that vulnerable and disadvantaged persons are liable to imprisonment for failing to pay their fines. One of the major arguments for providing imprisonment as an option for fine default is that there must be tangible consequences for those who fail or refuse to pay their fines. For example, it has been argued by the Minister for Corrective Services —

That was back in 2016 —

> that imprisonment for fine default is essential to ensure that there is an 'endgame or else nobody would pay a parking ticket, nobody would pay a speeding ticket, and nobody would pay a driving without a licence ticket'.

[Interruption.]

Dr A.D. BUTI: There might be fines for mobile phones going off in Parliament, but I do not know!

The Minister for Corrective Services who made that statement the paper referred to was Hon Joe Francis. The paper continues —

> This argument is flawed for two reasons. First, imprisonment is not an enforcement option for failing to pay an infringement (ie, a parking ticket or a speeding ticket). Imprisonment for fine default is only available for unpaid court-imposed fines. Thus, those who currently pay infringements do so without any threat of imprisonment. Second, if imprisonment for fine default was removed as an option there would still be an 'endgame', albeit a different one. The other enforcement options under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA), such as drivers licence suspension, vehicle immobilisation and seizure of property are designed to deter people from not paying their fines (and currently also apply to infringements).

Further along in this paper it states —

> It was further argued that those who are imprisoned for fine default are in prison 'because of their refusal to pay their fines or to make amends for their penalties somehow through the justice system'. ALSWA acknowledges that there are some fine defaulters who refuse to pay and simply ignore their obligations. The major debtors lists on the Department of the Attorney General's website on 20 August 2015, shows that of the nine fine defaulters with fines debt in excess of $100,000 there were seven corporations.

> However, for many vulnerable and disadvantaged people, failure to pay fines is not a deliberate strategy but rather a consequence of impoverished and complex circumstances. In this regard it has been observed that for homeless and other vulnerable people, the accumulation of 'massive fine debt adds to the problems of finding food and shelter, dealing with a mental illness or navigating the world with a cognitive impairment. It is all but impossible for those surviving on a Centrelink benefit (and sometimes on no benefit at all), to pay off their [fine] debts'.

That really just shows the absurdity of using imprisonment as a major way of dealing with the issue of fine defaulters. That is why the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 is incredibly important. I will quote one further paragraph; I am not sure whether the member for Mount Lawley already quoted this —

> The Office of the Inspector of Custodial Services (OICS) has recently observed that there is little doubt that imprisonment needs to remain as the ultimate deterrent for people who *wilfully* refuse to pay or to engage in other measures to work of fines'. Nonetheless, it was also emphasised that more information is required in relation to how many fine defaulters are truly wilful (ie, those who can pay their fines but choose not to do so). As highlighted in the OICS report, unemployed Aboriginal women are the most likely group to be imprisoned for fine default in Western Australia and ALSWA is strongly of the view that the overwhelming majority (if not all) of these women are not 'wilful' fine defaulters.

I think that would be backed up by the empirical evidence.

There is a real impact from having imprisonment as a first or common resort for fine default. Social Reinvestment WA produced a paper in April 2018—only last year—titled "Taking a Smarter Approach to Justice: Position Paper on Imprisonment for Fine Default in Western Australia", which states —

> On average, 10 people a day are locked up in WA prisons for failing to pay fines, mostly because of poverty and disadvantage.

I will just stop there. People who continue to argue that we should be imprisoning people for not paying their fines need to also look at the economic cost to the state of imprisoning someone for one day compared with how much it cuts into their fines.

Mr I.C. Blayney: I thought you said there are actually only eight or 10 people in jail in WA at the moment —

Dr A.D. BUTI: No, per day.

Mr I.C. Blayney: That's what you said just then, but earlier on you said there's only eight or 10 people in jail for not paying fines.

Dr A.D. BUTI: No, I am reading from this paper, which states —

> On average, 10 people a day are locked up in WA prisons for failing to pay fines …

Mr I.C. Blayney: So how many people are in jail at any one time for not paying their fines?

Dr A.D. BUTI: Eight or 10 people per day.

Mr F.M. Logan: That works out to thousands over a year.

Mr I.C. Blayney: It's just that other people have quoted this figure—that there's only eight or 10 people in jail, full stop.

Dr A.D. BUTI: Maybe they did not quote correctly.

Mr F.M. Logan: Member for Geraldton, they've actually got it wrong. They haven't looked at the aggregated number over a year.

Dr A.D. BUTI: It is more than 1 100.

Mr F.M. Logan: It's over 1 100.

Mr I.C. Blayney: Okay. It's the first time I've heard that.

Dr A.D. BUTI: I did say 1 100, quoting the other paper.

Mr I.C. Blayney: I missed that. Thank you.

Dr A.D. BUTI: That is just per day.

Mr F.M. Logan: The worst part about it is that because they only come in for a short period of time, that's the highest cost to the prison system, so over a year it is a lot of money.

Mr P.J. Rundle: Are you offering a solution?

Dr A.D. BUTI: The solution is here in the bill. That is the solution.

The ACTING SPEAKER (Mr T.J. Healy): Good segue, member.

Dr A.D. BUTI: Thank you very much.

That is why it is imperative that this bill is supported, because the solution is in this bill. It does not remove the possibility of imprisonment, but obviously it will severely reduce the frequency of people going to prison for not paying their fines.

The real impact is outlined in the paper "Taking a Smarter Approach to Justice", which states —

> In 2017, a Western Australian mum made a call to police, fearing for her safety following a visit from a violent family member. The result? She was taken away from her five children and incarcerated after a background check revealed she had an outstanding fine which she was unable to pay.

She rang up the police to report a domestic violence scenario, the police came and did a background check, found that she had fines in arrears, and she was incarcerated. How appalling.

In another case, the paper states —

> A young woman who died in police custody in 2014 was taken into custody for unpaid fines after police suspected her partner had breached a family violence order.
>
> These stories are not isolated, and Aboriginal and Torres Strait Islander women are more likely than any other group to be jailed for unpaid fines, often whilst unemployed and having no real capacity to pay.
>
> Some of these women will have suffered financial abuse at the hands of a partner or former partner, and we know that almost half (44 percent) of women escaping abusive relationships had a household income of less than $40,000 post-separation.
>
> **It is a highly alarming trend that women seeking help from the police for incidents of family and domestic violence are being further victimised and punished for unrelated occurrences.**

It really is an absurd policy of law if someone cannot comply with it. If people in poverty have a financial impost, they will not be able to cover that impost. If the solution is incarceration, that surely goes against all modern and enlightened thinking about imprisonment, why we should imprison people, rehabilitation, criminal justice theories, redistribution theories of justice, and restorative justice. It is just absurd for us to continue with that system. The former shadow Minister for Corrective Services, Paul Papalia, banged on about this issue for a number of years, but the then government would not listen. I read a quote by the then Minister for Corrective Services, Hon Joe Francis, which showed that the government did not even turn a blind eye to the issue, because it knew what the issue was; it just did not listen.

This is a very enlightened piece of legislation in the matrix of restoring commonsense, justice and economic rationalism to the justice system, and this is an economic rationalist move because when we imprison someone, it actually costs more per day than what will be cut down on in fines. There is also the social cost of incarcerating someone. Added to that is the fact that this disproportionately affects Aboriginal women, many of whom are mothers with children and some of whom are involved in violent family situations. Given that, how can anyone advocate remaining with the current system?

It was imperative for this bill to be introduced, and it is imperative that it has quick passage through this house and the other place to become the law of Western Australia, so that we can move away from the ridiculous situation of incarcerating people for fine default when they do not have any capacity to pay their fines. We are not talking about people who have the capacity to pay their fines; we are talking about people who have no capacity to pay their fines.

The Attorney General broke this down into various parts in his second reading speech to this house. He talked about hardship, licence suspension orders, garnishee orders, work and development permits and fine expiation orders. The Attorney General said, with regard to hardship —

> Hardship: In keeping with this government's focus on protecting marginalised and vulnerable Western Australians, this bill introduces a statutory concept of "hardship", which includes mental illness and disability, experience of family and domestic violence, homelessness, drug and alcohol problems and financial hardship.
>
> …
>
> It is important that imprisonment be available as a means of enforcement for the cohort of debtors who have the means but not the inclination to pay …

That should be the key. If people have the means to pay the fine, they should pay it, but most people—probably all—who are currently incarcerated in Western Australia for fine defaults do not have the capacity to pay. On that, I come to my conclusion and commend the bill to the house.

MRS J.M.C. STOJKOVSKI (Kingsley) [11.00 am]: I rise to make a contribution to the second reading debate on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019, which is another of the Attorney General's pieces of legislation to come before the house. Western Australia has the unenviable title of being the state that imprisons people for fine default at the highest rate in the country. That is not something we should be proud of. In every year between 2010 and 2014, more than a thousand people were sent to prison in Western Australia for unpaid fines. One-third of women imprisoned were there for that reason. That policy disproportionately affects Indigenous Western Australians. An article written by Elyse Methven in April 2018 titled "We need evidence-based law reform to reduce rates of Indigenous incarceration" states —

> In 2016, Indigenous Australians constituted 27% of the national prison population …

Indigenous Australians make up only three per cent of our population. It continues —

> Indeed, Indigenous Australians are the most incarcerated people on Earth.

In the specific area of fine default, 44 per cent of fine defaulters in our prison system are Indigenous Australians. That was found to be the case in a 2016 report of the Office of the Inspector of Custodial Services titled "Fine Defaulters in the Western Australian Prison System". It is 44 per cent. That statistic shows that it obviously disproportionately affects our Indigenous people. Unfortunately, despite that data, some members of the Liberal opposition claim that this law does not discriminate against Aboriginal Australians. The shadow Attorney General, Hon Michael Mischin, has said that they have the option of not offending, paying fines or complying with arrangements to pay them off. He added that only a small number of people were affected. I challenge the shadow Attorney General to read the 2016 report of the Office of the Inspector of Custodial Services to see just how wrong he is in making that statement.

This is clearly an issue that is permeating not just Western Australia but also the country. It was highlighted in the very first episode of a brilliant new Australian drama called *Total Control*, which is set in Queensland, not Western Australia. Deborah Mailman's character explains the circumstance in which her mother received fines. It was a few hours' drive to get from their remote community to a medical clinic, and when they came outside, there were parking fines on their vehicle. It was a few hours' drive to get back to the house. The medical expenses were costly, so they could not afford to pay the fines. The system is so inflexible that in that episode, even though Mailman's character tried to pay off her mother's fines, she was not able to because the time frame had passed. I fully understand that that was a dramatisation of the situation, but it is not beyond the realms of possibility that that happens—and not just in remote areas.

I thought it was particularly relevant that our Treasurer wrote a very moving article that was published recently called "They haven't the remotest idea". He detailed the experience he had when he attended some of Western Australia's more remote communities and was told how difficult it is for people in those remote communities to access technology to determine whether they have received a fine and how they can pay it. Phones are not readily available and they cannot get the internet. It is a very good article that demonstrates just how hard it can be to comply with the Fines, Penalties and Infringement Notices Enforcement Act 1994. It can be hard even if people have the means, but what is particularly relevant to this legislation is that a lot of the time people who are imprisoned for a fine default do not have the means for whatever reason.

A number of journalists have written articles that highlight the real-life impacts of the legislation and the practice of imprisoning fine defaulters, especially women. I found an article written by Livia Albeck-Ripka in February this year titled "The police were called for help. They arrested her instead." When I saw the article, I could not believe the situation that the woman found herself in. I have talked about how this impacts people in remote communities, but this woman lived in a district of Joondalup, which is not far from my electorate of Kingsley. The article states that after the woman was arrested —

> … the police took her from her home in an outer northern suburb of Perth to a women's prison 30 miles away and told her she would be there for 14 days; each day, they said, would shave 250 Australian dollars off her fine. To her relief, she was released after four days when a donor from Melbourne paid the debt.
>
> Still, the experience took a toll: An aunt rushed over to care for the children —

Of which there are five —

> …the family, which was living week to week, saw its electricity shut off while she was jailed.

That in itself is pretty disturbing, but having read the few paragraphs of the story, the reason that the police were called was that the woman's brother was on his way to her house in an agitated rage and she felt that she needed protection. She called the police to her family home to protect her children from a family member who was in an

agitated rage and who she feared would inflict harm on her and her children. This raises the question: if people are automatically imprisoned for fine defaulting, and they know that they could be imprisoned for fine defaulting, does that prevent them from calling the police for help when they fear they will be the victim of or are experiencing domestic violence? We already know that domestic violence in our society is under-reported. Does this policy contribute to that? Are we putting the lives of women and children at risk with this type of policy and legislation? This was also reflected in a well-known case that the Attorney General has spoken about in this place, including in his second reading speech. I refer to the case of Ms Dhu, who passed away in 2014 while she was in police custody. Her story bears an eerie resemblance to the story I just read out because the police were called to a domestic violence incident and Ms Dhu was arrested and taken away for a fine default. In the 2016 State Coroner's findings into Ms Dhu's death, one of the recommendations was to reform the act, including removing imprisonment as an option for fine enforcement or, alternatively, that imprisonment for fine defaulting be the subject of a hearing determined by a magistrate in the Magistrates Court. It is a sad indictment on the former government that it did not take up those recommendations. It sat on them and did not do any work to try to progress to where we are now. It is important to note, however, that although this legislation limits the instances when people can be imprisoned for fine default, it does not remove that as an option for people who have the means to pay but refuse to. That is very important. Any commentary that says that we are easing up on fine defaults, or that we are not being strong on crime because we want to take this away as the main way of dealing with fine defaulters, is contrary to what the legislation proposes. We are not saying, "Don't worry about paying your fines"; we are saying that if there is a genuine issue why someone cannot pay their fines, such as hardship, imprisonment will not be the first response and there are other ways. This is not only a humane way to respond to people who find themselves in this situation, but also an economic argument. We had a great briefing on this by the minister's office, and what struck me the most in that briefing was the cost. The cost of putting someone in jail is approximately $750 a day for the first three days. That reduces to about $340 a day thereafter. If we take into account that people who are put in jail for fine default are working off those fines at $250 a day, there is a real cost to the state of approximately $500 a day for the first three days. To me that just does not make any economic sense. Why would we put people in jail at a cost to us, when other mechanisms can be looked at to recover that fine and to have them work off the fine that they have accrued for whatever reason?

This bill is really good in that it makes it easier to enter into time-to-pay arrangements. Sometimes it may seem too big to pay, because the amount has gained interest or it has come to such an amount that it is insurmountable for people who cannot find $2 000 or $3 000 at short notice to pay a fine, when it has built up over time. Time-to-pay arrangements make it easier for people to pay a fine off over time, and that is definitely something that will be useful for people who do not have the means to find a large amount, but have the means to pay it off slowly. Garnishee orders in the legislation are also a really good idea, because that gives the state the ability to garnish somebody's payments or account, and it can take some money out without leaving that person in a financial situation whereby they will not be able to support their family.

For me, the most important part of this bill is the legislating of the term "hardship" to address not only those underlying issues that may have contributed to the reason that a person got the fine in the first place, but also their incapacity to pay. It is supremely unfair to say to somebody, "You have to pay this fine", when they do not have financial capacity, they are suffering from domestic violence or abuse, they have a mental health condition that prohibits them from working, or they have an addiction to drugs or alcohol. That itself is supremely unfair. This legislation really shines in its capacity to provide for people to not only seek help to address those underlying issues, but also use that as a means of paying off their fine. If people who have an addiction or mental health issue and who genuinely want to address that issue are able to enter a program to help them address that issue, not only will they pay back their debt to the state, but also they will better their situation. If they are given a fighting chance to address their underlying issues, they may not find themselves in the same position in coming years.

The Attorney General should be commended for bringing in this piece of legislation. He has been prolific in bringing legislation into the chamber. I will always applaud him for that. He is one of the hardest working Attorney Generals this state has ever seen. For me, this is probably one of the best pieces of legislation that the Attorney General has brought into this place. That is simply because it addresses the issue of putting people in jail for fine default. It also provides the fundamental safeguard of enabling people to access the assistance that they require to address their situation so that hopefully they will not find themselves in the same position in the future. That concludes my remarks on this piece of legislation, and I commend the bill to the house.

MR D.T. PUNCH (Bunbury) [11.16 am]: I, too, would like to make a contribution to the debate on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019, and I, too, would like to thank the Attorney General for bringing this bill to the house. I would also like to thank the members for Mount Lawley and Armadale for their contributions and for exploring the history of this issue from a justice point of view. The fundamental dilemma for people involved in the administration of justice is to ensure that justice is seen to be done, and to impose a penalty that is fair and just for both the victim and the offender and that achieves the desired

outcome. Another fundamental issue is the differential impact of fines on people who are relatively well off and people who experience some form of disadvantage.

It would be remiss of me not to acknowledge, as other members have done, the tragic death of Ms Dhu in August 2014 while in custody for what is commonly called cutting out fines. I certainly applaud the State Coroner for bringing into sharp focus the notion of incarceration as a means of cutting out fines, and for recommending that either incarceration be abolished as a means of dealing with fine default or some other process be established so that incarceration becomes an issue of last resort.

In my view, there are three components to this issue. The first is justice and incarceration, which previous members have spoken about. The second is corrections administration; namely, once a penalty is imposed, how is it effectively and efficiently administered to achieve not only a just outcome for the victim and the community, but also a meaningful outcome for the offender? The third is the fundamental issue of social justice. I would like to comment briefly on the justice issue and delve into some law research papers, which is a bit of a frightening experience! One paper that particularly struck my mind is "Justice Issues" of February 2018, published by the Law and Justice Foundation of New South Wales. The paper is about research into the disproportionate impact of fines on people who are experiencing disadvantage. Two principles or components came out of that research. The first is that fines have a disproportionate impact on disadvantaged people, particularly Indigenous people, single parents, people in housing for the disadvantaged, people with a disability, and people who are on government benefits. It is not hard to think about the problem for a single person on Newstart of around $270 a week of being faced with a fine of $500, $1 000 or $1 500. The paper identifies a raft of areas of disadvantage from an empirical point of view and the differential impact of fines on the lives of those people. The second piece of research was about the effect of appropriate assistance and of working with people on almost a case-management basis to enable them to negotiate a fine situation and look at the other options that might be available to them. It called for an understanding of the differential impact and an intelligent approach to the administration of the fines system for those people who clearly, for whatever reason, do not have the capacity to pay. I am sure many members would have heard stories about people who have appeared before the courts, and then stepped outside and spent an enormous amount of time with an adviser going through the experience they have just had. The level of comprehension of the court setting can be quite challenging for many people. The more remote an area is, and the more likely that English is a second language, particularly in remote Indigenous communities, the more the court system, as we understand it, poses a really difficult challenge for a person to understand clearly their obligations. Because of the volume, court systems move very quickly. A person may go in feeling quite anxious about what the outcome might be, agree to pay a fine without thinking about its implications for a low income, and then leave thinking that it is all over, and that they are out of it. But they are still left with the legacy of a fine to pay off, and that is a difficult challenge.

From a justice point of view, there has long been a history of understanding that there is a problem with the imposition of a fine on people from disadvantaged backgrounds. However, there has been a failure until now to really address that issue properly, and it is really tragic that it took the death of Ms Dhu to put a sharp focus on this issue. I applaud the Attorney General for bringing this bill forward, and, as the member for Armadale said, the solution to these issues is in this bill. That is why both sides of this house have indicated their support for it. I applaud that, but I want to put on record my disappointment that, although this issue has long been known, and the previous government had an opportunity to address it, some of the responses that the previous government applied to fine enforcement, which led to an increase in the number of defaulters in prison over that period between 2006 and 2015, were a quite lazy approach to applying the intellectual horsepower to come up with a solution. That was a lost opportunity, and I hope that the example that the Attorney General has set with this bill, and all the other legislation he has brought into this house, will continue that pattern of innovation and responding to the needs of a contemporary society.

I want to talk a bit about corrections administration, and a particularly interesting report by the Inspector of Custodial Services in 2016 titled "Fine Defaulters in the Western Australian Prison System". I would like to read a short extract from the beginning of that report, because I think it goes to the heart of what we are talking about. It reads —

> The imprisonment of fine defaulters in Western Australian prisons has been a contentious issue for some time. Debates have centred around the number of defaulters in prison, their impact on an already-crowded prison system, the cost of short terms of imprisonment for fine default, and whether the state is too quick to imprison fine defaulters rather than using alternatives. Very different views have been put as to the extent of the problem and the potential solutions, and the matter has generated political division.

The member for Armadale alluded to the discussion paper put together by the former shadow corrections spokesperson, Paul Papalia, some time ago, which really tried to put a focus on this issue. The debate and the discussion was out there, but unfortunately the then government failed to take note of it, and deal with it in an effective way. I note that the member for Armadale was quoting the daily cost of imprisonment, but the Inspector of Custodial Services

found that, when the costs of admission are taken into account, the average daily cost for short-stay fine defaulters is $770. There is an up-front, lumpy cost to take someone into the prison system, and the longer the stay, the more that cost is amortised. For someone who has defaulted on a $2 000 fine and is imprisoned over a three, four or five-day period, the cost of cutting that out is up around the $770 mark a day; not the $340 mark that has generally been quoted. It is a very expensive response to an issue.

In the period between July 2006 and June 2015, starting out from a very low base over the period 2006–2008, the number of prison receptions for fine default escalated markedly. Over that period, a total of 7 462 Western Australians were imprisoned for default of fines. As we have heard from other members, the majority of those were women, Aboriginal people, and people on low incomes who had a fundamental incapacity to pay. The tragedy sitting behind those figures is that some of that experience has actually become cultural.

I smiled when the member for Armadale mentioned the old meal allowances issue. When I was a young social worker in Moora, our office was just in front of the police station. That local country police station had a meal allowances framework in place. In a very large patch of ground just behind the office that I occupied was a vegetable garden. The local sergeant would bring the fine defaulters in—they would cut their fines out in the jail and work on the vegie patch during the day. Those vegetables would then go into the meals produced for the prisoners. It was a very tidy little way of having an extra bonus in terms of the income of the local police sergeant. It incentivised fine default and imprisonment.

The sad thing about that from a cultural point of view is that people saw that as a natural way to cut out the fines. Families would visit during the day and sit and have lunch with the prisoners. It became normalised that, after getting a fine, a person went into the local lock-up, the fine was cut out and away they went. That is what the children have learnt. That has been replicated in some of the conversations I have had with disadvantaged people who have grown up in intergenerational poverty. That is a continuing theme. That is not the sort of outcome that we want out of this system. That is the sort of outcome that takes a generation to actually work through and get out of the mindset that that is the natural order of things. We need people to think, "I have committed an offence and these are the circumstances of that offence", and the corrections system works in a way that sees that justice is done but at the same time works out a strategy that means that that person is less likely to reoffend.

I was very glad when the meal allowances system disappeared, because in a sense it was a fundamental corruption of the justice administration system. The sad thing is that the thinking in relation to responding to this issue, during the period that I have just mentioned up to 2015, still incentivised imprisonment as an option for fine default. Policy amendments led to the ability to cumulatively cut out a fine; that is, if a person had multiple fines and the maximum fine was, say, $3 000, they could cut out the time for that $3 000. But if a person who had cumulative fines wanted to do a community service order, they still had to do the cumulative community service orders. It became a cost–benefit analysis for people: "I might as well go in and cut it out over three days rather than spend three weeks doing community service." That is the sort of lack of policy insight that has driven some of the numbers we have seen in the corrections system. That is, in a sense, really a bit of a tragedy in terms of policymakers of the past.

The same consequence occurred when work and development orders were more strictly enforced, with an automatic consequence being that a defaulter ended up in prison in 2009. That was done without really thinking through the cost of that to the prison system and the impact on people's lives. Although I have commented on Ms Dhu, I am sure that if we analysed the stories of many people who have been involved in that system, there would be a lot of tragedies in terms of lost opportunity, impacts on children, impacts on partners, and dislocation from family and community. I am very pleased that the Attorney General has brought forward this legislation because I think it will go to the heart of more effective management of the corrections system.

The fundamental issue I am interested in is social justice and how we as a community can meaningfully address, on the one hand, the effective administration of sentencing and penalties and, on the other hand, identifying effective outcomes that pinpoint when people are really struggling. When I look at the structure of this bill and what the legislation intends, I see it retains work and development orders in parallel with the new notion of work and development permits. If someone's circumstances have changed or they are in a situation of hardship, they can apply to the registrar and have a work and development permit put in place. Hardship has been defined in the legislation to include mental illness and disability—we are seeing that more and more in our communities—experience of family and domestic violence, homelessness, drug and alcohol problems and financial hardship. We know that, fundamentally, if people are in those circumstances, they are going to have difficulty paying a fine and incarcerating them will add to their difficulties. We also know that there will be people, as the Attorney General and the members for Armadale and Hillarys have said, who will thumb their nose at the system and have a fundamental view that they do not want to be a part of it, so imprisonment is still in there as an option of last resort. They will be caught up in the system if they need to be, but at a level that is an appropriate response to somebody who is saying, "Up yours; I'm not going to participate in this system and I'm not going to pay my fine." Very well done on that particular issue.

On licence suspension orders, I was particularly pleased to see the notion of "remote" included and that people whose last known address is in a defined remote area cannot have their licences suspended. I must acknowledge that we cannot think of that only in terms of geography. It has to be about access to things like health facilities, public transport and the workplace because people living in many areas in the south west, as an example, in small communities like Mullalyup, are very isolated from the rest of the mainstream urban centres in the south west so the loss of a licence becomes a critical issue. In fact, the application of both work and development permits and licensing issues in a regional context needs to be carefully thought through to make sure that living in a region does not replicate another form of disadvantage by virtue of a lack of access to supports or opportunities.

It is not only government that can provide these opportunities in terms of work and development permits; the broader community can take some ownership of that in looking at what the opportunities might be. I know that in my own community, as in many members' communities, people under various forms of orders, including prisoners, are contributing back to the community in a range of community projects. That is an area in which the community can rise to the occasion. Garnishee orders provide a fifth limb of an enforcement warrant and appropriate arrangements can be made to garnish a person's income when they have capacity to pay and to do that at a level that shows capacity to pay.

That concludes my comments on this bill. I again thank the Attorney General for bringing forward the legislation. I note it has been a long, long time coming. It is well overdue but better late than never. Thank you, Attorney General. I commend the bill to the house.

MS C.M. ROWE (Belmont) [11.33 am]: I am really pleased and proud to be speaking on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019. I would particularly like to acknowledge the work of the Attorney General in introducing this bill because it rectifies a terrible injustice in the way fines are enforced and recovered currently in WA. This bill seeks to introduce a number of important changes but the principal issue is that people should not be jailed for non-payment of fines. Sadly, as is often the case, it takes a dramatic or a tragic incident to instigate such changes, and that is exactly what initiated the changes borne out in this bill.

In 2014, as many other people have mentioned, an Aboriginal woman, Ms Dhu, was arrested for unpaid fines of about $3 600 and was to spend four days in prison to expiate the largest of her fines. She was a victim of domestic violence and tragically died in custody due to an undetected infection in her rib that her partner had broken three months earlier in a violent incident. Upon investigating Ms Dhu's death, the State Coroner at the time recommended reforms be made to the Fines, Penalties and Infringement Notices Enforcement Act.

I want to note in this house some of the circumstances around her death. It is 30 years on from the Royal Commission into Aboriginal Deaths in Custody, but we see this still happening in 2014. It is really important. The coroner said that when he saw footage of her treatment in the jail, he found it profoundly disturbing. When she was asked about her level of pain out of 10, Ms Dhu said it was 10 out of 10. Yet when she was taken by the police officers to hospital in Port Hedland, they told the nursing staff they thought she was faking it. I refer to an article in *The Guardian* headed "Ms Dhu endured 'inhumane treatment' by police before death in custody-coroner". Some of the nursing staff said, "This could be withdrawal from drugs". The article refers to her being dragged out of her cell and arriving in hospital with her head falling back on the wheelchair and her feet dragging along the floor. However, staff, whether they were at the hospital or were the police, failed to acknowledge her pain. I think a lot of that had to do with her Aboriginality. It is a real blight on our system and I wanted to note that now, 30 years on from the Royal Commission into Aboriginal Deaths in Custody. The only positive out of that is that we are here today talking about this very important change to an act that, hopefully, will mean these kinds of incidents never happen again in the state of WA.

One of the two recommendations the coroner made subsequent to Ms Dhu's death was that imprisonment for unpaid fines should be subject to a hearing determined by a magistrate. Further, she recommends that orders other than imprisonment must be available. Imprisonment should be the last resort available. That is exactly what this bill seeks to provide. It is a total injustice that someone, especially vulnerable people—victims of domestic violence, people experiencing extreme poverty and disadvantage on a range of levels, such as Ms Dhu—should be imprisoned simply because they cannot afford to pay a fine.

The changes contained in this bill are required to stop the disproportionately punishing effect the Fines, Penalties and Enforcement Act 1994 has on Western Australia's poor, vulnerable and First Nation people. As highlighted by the Law Society of WA in its briefing paper of April this year, headed "Imprisonment of Fine Defaulters", WA is the only state that continues to incarcerate people for non-payment of fines. The effect of this approach is costly to WA from a social but also from an economic perspective.

I would like to take this opportunity to express my sincere condolences to the Dhu family for the tragic loss of their beloved family member in 2014, and, as I have said, I really do hope this bill goes some way to preventing

similar tragedies. However, from research, it seems there is still a long way to go on this front. It points to the urgency and requirement for changes to this act.

I read in ABC news that Ms Keenan Dickie was imprisoned, also an Indigenous woman, who presented to police because she had been robbed. She also is a victim of domestic violence. When the police attended to her—her phone had been stolen and she had been assaulted—they told her she needed to go to a police station the next day because she had outstanding fines. She went to the Mirrabooka Police Station the very next day, willingly, and was arrested on the spot for those unpaid fines. I quote from an article that appeared on the ABC news website on 25 September this year. She said, "I was absolutely terrified." This was the first time Ms Dickie had been to prison. Only in WA can a victim of a violent crime be jailed for outstanding fines before the crime of the assault can be dealt with, even when the victim is suffering injuries. In the article I referred to she spoke of the pain of being put into a police van with what turned out to be a broken rib and taken to prison. Although many of the most disadvantaged groups in our community are affected by these laws, as many have pointed out, the group most affected is Indigenous women. Single mothers are being incarcerated in growing numbers for outstanding fines. Other members have already referred to the article titled "The Hidden Punitiveness of Fines" published in 2018 by Julia Quilter, from the University of Wollongong, and Russell Hogg. It outlines that converting fines to imprisonment has without a doubt had a devastating and disproportionate impact on women, and overwhelmingly on Aboriginal women. According to the article, in 2013, one in every three women going to prison did so solely to clear fines. Between 2008 and 2013, the number of Aboriginal women incarcerated for fines increased from 101 to 590. That is a staggering 480 per cent increase. Another totally unacceptable statistic is that the number of Aboriginal women going to jail for fine default climbed a shocking 576 per cent, from 33 in 2008 to 223 in 2013. According to this article, only 15 per cent of the prison population is female; however, women make up 22 per cent of the fine defaulter prison population. These statistics really paint a very dismal picture of the current system in which fine defaulters are jailed. It is crystal clear to me that the impact of these unjust laws is borne by women, and Indigenous women are consistently over-represented in the female fine defaulter prison population, with 64 per cent being Aboriginal. In many instances, women who have found themselves in prison for fine default have experienced many hardships, as mentioned already, including intergenerational poverty, domestic violence, drug and alcohol abuse, unemployment and sometimes all of the above. The presence of mothers, as with all mothers, is critical to the welfare of their children. Removing them as carers is entirely wrong and has untold effects on them, their children and, of course, extended families. The children need their care and mothers often have to rely on others in the community to care for their children.

Importantly, this bill will require only a magistrate for the Fines Enforcement Registrar to make the decision to jail a person for a fine default, and, critically, only as a last resort, instead of jail being the first and immediate option. The bill introduces a statutory concept of hardship that includes mental illness and disability, experience of family and domestic violence, homelessness, drug and alcohol problems, and financial difficulties, which will now be taken into consideration. That point on hardship is of paramount importance. There are two ongoing campaigns to assist those caught up in the net of the current fine incarceration system for fine default, including Free the People and Free Our Fathers. Free the People is a campaign organised by Sisters Inside, run by CEO, Debbie Kilroy. She is a well-known social campaigner and a leading advocate for the human rights of women and children through decarceration. This campaign has been incredibly successful and more so than I think Debbie would have expected. It has received worldwide attention and has received donations up to $450 000. That is from 8 500 donors. The goal is to reach 10 000 donations, and I think it is very much well on its way to doing that. This money will go towards women who find themselves incarcerated due to unpaid fines.

The compounding cost of fees and charges related to warrants following the non-payment of fines is huge and unpayable by many single Aboriginal women and mothers. As described by Debbie Kilroy on the GoFundMe page —

> The average cost for each warrant is approximately $3000. This includes the actual fine amount and then there are fees and costs added by the Infringement Registry. For example one woman had $9555 of fees and costs added to her original fines. The fees and costs are very expensive and the Registry will not negotiate to reduce the fees and costs. The fees are added for administration fees and the costs are the actual cost for each warrant that is released for each fine.

One can see that at $250 a day, for costs of this magnitude, it would take at least 40 days in prison to pay for the fees and costs alone. When the debt is managed by debt collection agency Baycorp, payment of fines by a third party directly to Baycorp to secure release from jail is not an option and the person simply remains in jail.

Free our Fathers is a campaign inspired by Free the People, whereby funds are raised to pay the fines of Indigenous men, many of whom have no criminal record and have not previously been sent to jail. This is highlighted by the organiser, Mervyn Eades, whom I know well as his business is located in my community. He is the CEO of Ngalla Maya in Redcliffe in my community and the chair of the First Nations Deaths in Custody Watch Committee. The removal of the father from a family to jail means that he is exposed to career criminals in mainstream jail. He

is worried about how incarcerating fine defaulters affects them. When Mr Eades started his campaign, he was able to instigate the release of two fathers within 24 hours because they had no prior criminal record. The campaign has the support of the national coordinator of the national trauma recovery project, Gerry Georgatos, who is reported as stating on NITV news in February this year —

> In Western Australia people can be incarcerated for the inability to afford fines, so if they fall behind or they breached an agreed payment plan, they can be incarcerated …
>
> The laws need to understand that fines have to be affordable for everyone … We have thousands of warrants out there but [people] can't afford to pay their fines.

This bill seeks to address the problem of seizing drivers' licences in lieu of the payment of fines. This has a particularly devastating effect in remote and regional areas, as other members have already touched on, where there is very limited, if any, public transport and reliance on personal transportation via car and so forth is much, much greater. Once a licence is seized, a person in a remote or regional area has absolutely no means of transport, and that leads inevitably to driving unlicensed and therefore potentially additional fines.

The system of jailing for fine default was extensively reviewed in 2016, with many of the problems highlighted in the report "Fine defaulters in the Western Australian prison system", released in April 2016. The rate of jailing fine defaulters has increased significantly as a result of people's inability to pay and has led to the incarceration of a higher proportion of Indigenous men and women, many of whom have no previous criminal record or jail time. As well as reforming the current act of 1994, this bill will seek to expunge all unserved warrants of commitment, and anyone in prison for fine default alone will be released within 24 hours.

The Law Society of WA also stated in its briefing paper that the current act is not consistent with the recommendations of the Royal Commission into Aboriginal Deaths in Custody. With Australia's poor record of reform following the recommendations of the royal commission, which concluded 30 years ago, one can see the urgency of the reforms in this bill to assist in preventing another tragedy similar to Ms Dhu's.

I think it is fair to say that the current laws are a severe blight on WA and our human rights record, and have a disproportionate impact on the poor, disadvantaged and vulnerable and, especially and particularly, on Aboriginal people in WA. I commend the bill to the house.

MS J.M. FREEMAN (Mirrabooka) [11.49 am]: I am really pleased to stand here and speak about the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019. However, in a way it is really sad that we have to look at changing these laws because the way we administer fines in Western Australia has led to deaths in custody. It seems to me that this legislation is a commonsense approach to the pursuit of fines. We hear on talkback radio about the number of people who have not paid fines. It is an issue that has perplexed this and previous governments. The expectation is that we control aspects of our civil society by fining people who do not comply with laws—not only laws about parking or driving and much more serious laws incurring higher fines and penalties, but also laws about how we register our dogs and cats. We all know that for a variety of reasons some people do not pay those fines, and that is a complex issue. Later in my contribution, I will talk about some of the reasons why people may not be able to make appropriate arrangements to pay those fines when they are still at an affordable amount. I see no good reason to imprison people for these sorts of fines.

I do not know what members think, but it seems to me that there are many more fines now than there were when I was growing up. Maybe I just did not get myself into much trouble! We seem to want to fine people into good behaviour, and sometimes those fines can become really difficult and complex for people who have ongoing difficulties organising their lives, maybe because they are unemployed or dealing with other social issues. Fines become one of the issues that least concerns them.

The member for Kingsley pointed out an issue highlighted by the television broadcast *Total Control*—a great piece of art that the ABC is delivering to our community—which discusses some of the broad and complex issues faced by many of the Aboriginal communities in our country, particularly in Queensland. The member for Kingsley said that Deborah Mailman turned up and wanted to pay cash for her mother's outstanding parking fines, but could not. I will come back to that later. That happens quite often in Western Australia because we do not have arrangements to pay off fines. People going in to pay a fine are increasingly finding that their fine has increased because they have missed an important date.

Dr D.J. Honey: Will the member take an interjection?

Ms J.M. FREEMAN: Yes, I will take an interjection.

Dr D.J. Honey: Further to the member's first point, does she think that there is some circularity here? In the early days of settlement, people were jailed for everything, so fines were introduced as an alternative to jail, but perhaps now the proliferation of fines has perversely led to more people being jailed.

Ms J.M. FREEMAN: Our legal and justice system has this sort of dual aspect to it. We have a really good justice system that penalises people for really serious crimes, and that is what the member for Mount Lawley was talking about. If someone harms, assaults or kills someone, the nature of civil society is that their liberty should be removed. Then there is this other side of the way that we make laws, whereby we say that this is how someone needs to behave for our civil society to operate efficiently so that we do not clog up the roads, people have private property rights and our dogs do not cause harm. Then we attach fines to that. We in this place know that we then increase the fines, when they do not seem to be acting as a deterrent. We come in here and say that they are not acting as a deterrent, but then we use the justice system to make people comply with that. A good critical discussion of how we form civil society around those things and how we want to run an efficient, cohesive and inclusive civil society without this penalty aspect to it is a really important debate.

I have raised in this house before that there are some innovative ways of enforcing fines for traffic offences and speeding and all that sort of stuff. Why are we not saying to people that if they do not have any penalties over the time that they have had their licence, in their next round we will reduce how much we charge, because administratively they have not cost us as much as someone who has had those fines? I think the member is right that throughout our community we use the penal system that we inherited from the British when it colonised Australia. That necessarily needs a much more sophisticated debate than what I can give today, but I want to get on to this matter and what happens when we try to pay infringements.

As I said, it is a commonsense approach. It is a fairer criminal justice system. Prisons should be for criminals, not those people in our community who have not paid fines. That is my view. It is supported by the Law Society of WA, the Law Council of Australia, the Australian Law Reform Commission and the Coroner's Court of Western Australia. The member for Belmont raised this issue. I was really distressed to see the imprisonment of the woman at the Mirrabooka Police Station. I have an ongoing and valued relationship with the Mirrabooka Police Station because it does important work in the community I represent. It is disappointing that what people in the community heard when that was highlighted was that the Mirrabooka Police Station had been arbitrary or cruel or harsh in its treatment of this woman, who had just gone there because she had been told by other police that she had outstanding warrants. That is a fault of the system that she had those outstanding warrants.

My understanding, from listening to the Commissioner of Police the next day and speaking to people at the Mirrabooka Police Station, was that that really distressing situation basically resulted from this unworkable legislation, whereby the police are left with no discretion. The night before, they had discretion to say to her that she had these outstanding warrants, but clearly she was in hospital and she needed to front up and talk about these outstanding fines and the warrants for those. They had a little discretion in that matter. I apologise to her as a representative of the Mirrabooka region—not of the police, obviously. The fault is not with the police. The fault for her ending up incarcerated at that point is with this place and Parliament not changing these laws.

This legislation does not totally do away with a person being imprisoned for not paying their fines, but it makes that a very last resort. It alters the process that leads to imprisonment for fines to involve greater procedural justice. It introduces work and development permits and a capacity to consider a number of hardship criteria that prevent a defaulter from making payments. As the Attorney General said in his media release —

> "This Bill draws a careful distinction between those who can pay their fines but refuse to do so, and the many experiencing hardship who cannot pay and should not face enforcement measures that further entrench them in poverty.

We know from the debate in this place about the unintended consequences of incarceration for fine defaulters. We know that 73 per cent of women fine defaulters are considered to be unemployed; 22 per cent of fine defaulters are women, who make up only 15 per cent of the regular prison population; and 31 per cent of all women in prison in 2012–13—I am sure there is more recent data—were imprisoned for only fine default. We have heard today that Aboriginal women and the Aboriginal population are overrepresented in the fine default space. This government is committed to reducing the numbers of Aboriginals incarcerated in Western Australia, which is frankly an absolute indictment on us. I am pleased that the state government, under the McGowan leadership, has made reducing the incarceration of our First Nation people a priority and a measure of our performance

This idea that a fine defaulter can compensate for their fines by spending time in prison is a fallacy, and a cost–benefit analysis shows this. An average fine defaulter spends just a few days in prison. It costs $770 a day to keep a person in prison. In the case of a short-term prison stay to expunge a fine, it costs the taxpayer $250 day, so it makes no sense. It costs the taxpayer just under $500 to incarcerate a person for not paying their fines. If a person has not paid their fines, this is not the way to compensate the taxpayer.

Mr K.M. O'Donnell: Do you mind taking an interjection?

Ms J.M. FREEMAN: I do not mind taking an interjection at all.

Mr K.M. O'Donnell: When people were arrested in the old days, police held them for 24 hours. If a person did one day in prison, it was for 24 hours. If a person was arrested at eight o'clock at night, they didn't get out until eight o'clock the next day. However, if a person was handed to the prisons in the morning, by midnight that was classified as one day—five past 12 is another day. A person did not need to spend two full days in prison. The police ended up taking on a process similar to that used in the prisons. When people found out about that, they were handing themselves in at 10 minutes before midnight —

Ms J.M. FREEMAN: I think the member has spoken about this before in this house. Perhaps he can do that again another time. There is no doubt that wherever there is a capacity for someone to game the system, they will game the system. The member for Cottesloe raised a point before about how we now fine people and that circular process. I have the view that when we bring in laws to stop certain poor behaviour, often the only people who are caught by those laws are those who 99 per cent of the time behave how we want them to in a civil society. People who are going to pervert the process will just find another avenue to do the same thing. I believe in having positive legislation. We need to start thinking about how we can encourage positive actions, rather than penalising negative behaviours, that bring about a society that we want to see.

If we look at jurisdictions such as Denmark and Sweden—I am an old socialist, so we can hold those up—we can see that they do much more of that proactive policy and legislating than we do.

I always thought that people in Western Australia had to front a magistrate if they received an infringement; that is how bad this is—I did not realise this. People in Victoria have to front a magistrate before they get a warrant of commitment. If people in WA receive an infringement and then fail to pay the fine, it goes to the Fines Enforcement Registry. If they fail to make any sort of arrangement at that point, no property is seized but their licence is suspended. If they drive, they end up in prison because they violated the suspension of their licence. The warrant of commitment is simply issued by the Fines Enforcement Registry. In other jurisdictions in other states, a magistrate has to do this. The person might not have to front up themselves but at least a magistrate makes that decision. This is just a paper issue. That procedural aspect is concerning. I am really pleased that this legislation will change that.

One of the foundations of this bill, as outlined in the explanatory memorandum, is that it will be easier for offenders to enter into time-to-pay arrangements with the Fines Enforcement Registry. I want to focus on this.

[Member's time extended.]

Ms J.M. FREEMAN: I do not know whether members opposite are aware of this arrangement. I certainly raised it with former government ministers. Members on this side of the house are aware of this because I have raised it in our party room meetings. This issue really concerns me. Do members know what would occur if they turned up to pay a fine, like Deborah Mailman, but they could not pay the total fine, and they wanted to enter into an arrangement to pay? They may have received a $500 fine because they pulled out into an intersection when the light was green. There was a car in front, the car turned the corner and they were stuck there. When they turned the corner behind that car, the camera flashed because it sensed that that car went through a red light. They thought they were doing something totally appropriate. If a car pulls out in front of someone, they have to stay behind the white line. That is the rule. If the person in the car who is waiting to turn beyond the white line turns as soon as the light turns red, they will not get flashed.

I do not know what the roads are like in the electorates of members opposite, but I have large intersections in my electorate in which two cars can pull out to wait and then they are both able to turn. The person in the car behind will get stung for $500 every time. The person I just referred to got stung. They did not think they were doing something illegal, but they were willing to cop the fine. They could have been receiving the Newstart allowance. Our Premier has said that Newstart is not sufficient to meet day-to-day living expenses such as rent and all those other things, including the costs involved in having kids in schools. Maybe people are on a pension and they cannot meet all their expenses because they have medical bills to pay and things like that. If they suddenly receive a $500 bill, they accept that they have breached the law. They cannot argue with the law; it is too difficult. They front up to the Mirrabooka transport office to find out how they enter into an arrangement to pay the fine. The officer says, which is what I say when a constituent walks into my office, that they have to default on that fine. The only way they can enter into an arrangement to pay that $500 fine is to default. It will go to the Fines Enforcement Registry and then they can enter into an arrangement, but the fine will increase to $650. It is wrong, and it happens only in Western Australia.

I raised this when the opposition was in government; I have raised this while we are in government, and I was told that everyone points to another person. The police say that it cannot do anything because it does not have the system to take partial payments. Fines enforcement says that it cannot change the default charge, but the police could have the discretion to take partial payments. There must be some way a person can walk in, before it gets to fines enforcement, and say, "I want to enter into an agreement that when it goes to fines enforcement, I will start to pay it off", and then we do not attach the additional charge. Maybe that is the way to do it. It might not be a perfect

science. It might not have all the bells and whistles of a proper computer system, but there must be some logical way that we can sort this.

The current Road Traffic Code, or subsidiary legislation, has no provision for part payment of traffic infringements. The only legislation that enables part payment of fines is the Fines, Penalties and Infringement Notices Enforcement Act. Again, I will put on the record that people continually approach my office with issues around fines. In June 2013, Mr Thatcher had a $150 traffic fine and as a pensioner it was really hard for him to pay it. In March 2015, two constituents, Mr Mourach-Gunning and Leslie Cucel, came in. One had a speeding fine and the other had rolled over a stop line. I was fined for rolling over a stop line once. In 2017, Mr Yambayamba was fined $300 for proceeding beyond the stop line at a red traffic signal—that is where you pull out and there are two lanes. Also in 2017, Ms Jansen was fined for speeding by no more than nine kilometres an hour. She had no income, was on a Newstart allowance and struggling to get work while supporting her autistic daughter. In June, Mr Lee was fined $550 for driving with a child under seven years old in the front seat. In May this year, Ms Jackson was fined $300 for a traffic infringement and could not afford it.

I will give members some insight into how I deal with this. I donate a sum of money to a local organisation and then say to these people, "Go to this organisation, get a payment and if you can, pay them back." But, frankly, it is not our job to pay someone else's fines because we do not have a fines enforcement system that will help these people. It is unsustainable; we need to fix the system. These people are distressed when they find out that it is not possible to pay off the original sum in instalments, although they want to. A couple of these people went to the organisation for the lump sum of money, paid the fine and then paid the organisation back in instalments. We need to fix the system. We have an imperfect system that disadvantages the economically disadvantaged and vulnerable members of our community. It makes them fine defaulters. It adds to the big number of fine defaulters that hits the front page of newspapers and is the topic of the radio shows like 720 ABC, and Geoff Hutchison says, "What are you doing about all these fine defaulters?" However, some of those fine defaulters were people who wanted to enter into part payments before they became fine defaulters.

Mr P.A. Katsambanis: When I made my contribution I spoke about us being bolder. I discussed the court side of that. You're talking about the infringement notices side. The court side of that—the agreement to make an instalment payment should be done on that day, or could be done anytime. They shouldn't even need to attend anywhere if they didn't have to. They could go online and make that sort of agreement.

Ms J.M. FREEMAN: I think you can go online and make that sort of agreement —

Mr P.A. Katsambanis: Without escalating the cost of the fine.

Ms J.M. FREEMAN: Yes, that is the point. Let us not escalate the cost of the fine.

Mr P.A. Katsambanis: We are totally in full agreement here. That's what I meant by bolder and bigger.

Ms J.M. FREEMAN: Yes, that is the point. If we cannot fix it and have a system for people to be able to make part payments, there should be a window of opportunity after they have gone into the default system to enter into a payment scheme without having an additional escalation of the fine.

Mr K.M. O'Donnell: Now that you are in government—I'm not being disrespectful—are there plans afoot for people to be able to pay even part of an infringement?

Ms J.M. FREEMAN: I understand that the Minister for Police is really committed to fixing this issue, but that the issue is bound up in the computer systems, and that is a costly fix at this time. But I understand that she is really committed; she herself has told me that she is really committed to finding a solution to this. I think the member for Hillarys is right; in flicking over to a system that allows them to pay, maybe we can be bold and investigate whether there is a window of opportunity to make it so that, even if they get on the computer and make an arrangement to pay just a week after it kicks in, they will not get an additional fine. For those people who want to pay their fine, they will not have to incur additional costs. I will lobby for that, and I hope the member for Kalgoorlie does, too.

Mr K.M. O'Donnell: I thoroughly agree.

Ms J.M. FREEMAN: Yes, let us all get behind lobbying for this.

I want to also talk about private car parking breaches of contract, or fines dressed up as breaches of contract. I could go on about this for some time, but I am running out of time. I have raised this issue with both the current and previous Ministers for Commerce—Minister Johnston and now Minister Quigley. For me, the issue began with a proliferation of private car parking management services handing out breach of contract notices and requiring payment of $65 or more per breach, under threat of clamping the vehicle if it was not paid. It is interesting to note that some places, such as the area outside the Mirrabooka ice-skating rink, have progressed straight to clamping in their no-parking areas; they do not even do the whole, "If you park here, you can only park here for four hours and if you go beyond that you will get a breach". If it looks like a fine, if it quacks like a duck—all that

sort of stuff—but they cannot levy fines, because it is a private business. With regard to breach-of-contract fines, when people park at the property they have limited free parking. They pass a sign that states that they are entering into a contract with the provider to park for a limited time, and that if they overstay, it is a breach of contract. I would argue that in shopping centres and businesses that are free and un-ticketed, the $65 breach charge is not a legitimate amount for liquidated damages; they argue that it is liquidated damages for loss. I say that if the parking company were to recover a genuine pre-estimated loss, it would be around $10 or maybe $15, given that these parking areas are free; but it is instead an excessive and unconscionable sum of $65. Clearly, the $65 breach is vastly better than the cost of removing a clamp, which can be whatever the company wants to charge—$150 or $200.

I understand that the City of Stirling is currently discussing a local law ban on clamping, and it did that at Tuesday night's community and resources committee. Its intention is to consult and make a local law to ban clamping in the City of Stirling. That will then have to come to this Parliament and the Joint Standing Committee on Delegated Legislation. It may be no choice of ours if this Parliament rules that it is invalid, if it does not fit within the parameters of delegated legislation, despite the fact that it may have overwhelming support. That is of real concern to me.

Breaching a contract often results in wheel clamping, so people have to pay $65 for the breach plus the fee to remove the clamp and any other fee that is awarded.

MR K.M. O'DONNELL (Kalgoorlie) [12.40 pm]: I, too, rise to talk about the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019. I would like to speak from a personal perspective as a former police officer. I will talk about fines, penalties and going to jail.

When I transferred to Kalgoorlie in 1984, I started out on shift as a general duties officer, but shortly thereafter, within months, I became the warrant officer. Within the police department a warrant officer is someone who gets warrants from the courts for unpaid fines, bench warrants for not turning up to court and warrants of apprehension from interstate for non-payment of fines. Basically, my job as a police officer in the 1980s was to grab the keys to the van, hop in with my hundreds of warrants, and drive around to pick people up for non-payment. I then brought them back to the station and locked them up. Many a time people go to court and get a fine. Back in the 1980s in Kalgoorlie–Boulder, the courthouse, in its wisdom, did not produce warrants gradually; that is, it did not write up the warrants that were outstanding every week and pass them on. It could be months before we got the warrants, and I am talking about a bible-thick pile of warrants; it was huge. I would then spend the next day writing the police pages to attach to each warrant.

When I first started, for some warrants, one day equalled $5. By the time I left I saw that one day equalled $200. How times have changed. I was telling the member for Mirrabooka that when I first started arresting people on warrants, one day meant 24 hours and two days meant 48 hours, but for three days they got a discount of one day. In the old days we kept people in the police lock-up for 24 or 48 hours. The prisons did not want anybody in their custody for that short a time. They could not refuse us, but we had a memorandum of understanding in the goldfields to not take prisoners out to the prison. That meant police, who were not trained to be prison officers, had to keep custody of those prisoners. If a warrant was not served, we sent it to the central warrant bureau in Perth, where it would be held until that person came to our notice days, months or years down the track. Sometimes people would even bob up in the eastern states. They would change the address on their driver's licence over there and, bingo, we would get an alert and send the warrant over. If a warrant came here from the eastern states and we approached the person, there were only two alternative outcomes. One was that they could give us the money that the interstate jurisdiction wanted for the non-payment of fine. If they said that they did not have the money, they would have to be arrested there and then, on the spot. When I did not apprehend them one time, a commissioned officer told me that I could be prosecuted for neglect of duty. I always believe in time, place, circumstance and the CSA—the common sense act! I ask the Attorney General: if other states and territories have fines enforcement legislation, will they continue to send warrants of apprehension to Western Australia? If we do not jail people for unpaid fines, will we still jail people from states such as New South Wales and Victoria who have outstanding fines? Most of the warrants I got from other states were for speeding, parking and electoral fines and did not warrant jail. That was my opinion, but I had no say in the matter. I have a say now and I agree with the government on this issue.

In my time I arrested a shedload of people for warrants—thousands and thousands. In some instances, those arrests were thoroughly deserved and I thoroughly enjoyed making them. I loved it, because some people cause so much grief to a community and I enjoyed arresting them whenever I could. That does not mean that I picked on them, but my face lit up when I saw their name on a warrant. A week before the fair came to Kalgoorlie and Boulder, I pretended that I did not see the person concerned, but I happened to see them the day before the fair. Seven days in the bin while the fair was on was a good result but, of course, that occurred hypothetically!

The police got warrants of commitment from the courts for fines, and it was money or the body. We also got given warrants of execution, and it was money or property. That eventually changed when a sheriff started doing that sort of stuff. I have arrested many people for disorderly conduct—fighting, urinating and swearing in the street—many of whom were first-timers who were not able to pay their fine. It will be good that people will have an alternative. The previous government brought in work and development orders, which meant that whenever a police officer arrested an offender on a warrant, as soon as they got to the lock-up they could say, "I want to do a work and development order." The police would then have to spend time filling in forms so that the person could do a work and development order, which they had no intention of doing but they just wanted to get out of the lock-up. The warrant would come back and we would start all over again. We would arrest them, but this time they could not do a work and development order. When I saw that they were going to introduce work and development permits, I thought, "Yes, I do agree with them", but after my reading of the legislation, I strongly recommend that the police have no part in that. I would have pushed to make sure that that never happened. I see that the Fines Enforcement Registrar will be doing that, which is a good thing, because the time it takes the police to fill in forms so that an offender can do a work and development is a disgrace. I hated them. They annoyed me and were a waste of our time when people wanted us on the road.

When somebody is arrested on a warrant, they have to be placed in the back of a van, taken to the police station and processed, which is, again, time consuming. Once the police officer has done that, at times the sergeant will say, "Drive them straight out to the prison." That person is then put straight into the prison system, and some of them are in prison for the first time ever. They have not been violent; they have not murdered, killed or raped anybody. They are not drug dealers, violent criminals or perpetrators of domestic violence. They were charged with disorderly conduct by swearing and have a $500 fine and the next minute, they are looking at eight or nine days, whatever it is, in prison, and straightaway they have to go to prison. They are mixed in with hardened criminals. They are not put in the remand section with people who are awaiting court appearances et cetera; they are in the sentenced section with the murderers, rapists and violent criminals. Some people say that they deserve it, but if we look back on the minor infringements and penalties, we see that people do not deserve that. Nobody tends to win out of that. The person going into jail does not win. His or her family does not win. The kids are without one of their guardians or parents. It is not on.

I would say 99 per cent of the warrants that I wrote when we could not find the person and serve the warrant were for very nomadic people who were hard to locate. I would just send it back to Perth where it would sit. For about six months in 1990 I did a stint in Perth, which was very unusual for me as a police officer, at the central warrant bureau. Again, my job was as a warrant officer, to go around East Perth, the city and Highgate serving warrants on people and getting their money. At some businesses I put stickers on items of property in their shop and said that they could not sell those items until they had paid their fine. One day at the bureau I was bored, so I started going through warrants that were 20 or 30 years old and I started doing searches on the computer. The police department had entered some people two, three, four, five, up to 15 times. When I put their name in, they came up, so all of a sudden I started to match people with the warrant and send the warrants out to addresses where they were believed to be. It opened up a can of worms, because all of a sudden people were getting warrants from 20 years ago. They were being resurrected. It was in the media, but no-one asked me, "Was it you who did it?" No-one asked, so I did not say. But I kept doing it and I was clearing it. Also, 20 years after the fact, people would invariably have the money to pay the fine, which they did.

Did I take gratitude out of arresting people for fines? For a few people, yes, I did, and I would say there are police out there for whom it would be the same. But, overall do we enjoy it? No, we do not. Sending people to jail for fine defaulting is not viable. I do not believe it is acceptable, and it is not warranted or justifiable in this day and age. I thoroughly agree with the government on this one. Other people will say that if we do not jail them, it is a waste of time and we are just letting them do what they want. No; I hope and wait to see all the different initiatives that the government will bring forward as alternatives once this bill comes into law. I hope that volunteering will be included. As an example, the country is not like the metropolitan area, but I would say that volunteering in the country would be good. If somebody has to pay a fine, they could do a shift at St Vincent de Paul Society and help with cleaning and moving things around. They could be sent to Foodbank to help stock the shelves. Some people think that is a waste of time. To me, I firmly believe that once a person volunteers, they will want to do it again and again. The first time I volunteered, I was smitten by it. I thoroughly enjoy volunteering whenever the opportunity comes up. We should use initiatives like that. People could help tidy up cemeteries, or help remove rubbish on roadsides. People could go to alcohol and drug lectures or meetings. I do not think they should get a pass just for turning up. If they are not involved, not trying and not making an effort, they should not be allowed to cut out their fine.

Prison is for punishment; I do not think anyone would disagree with that. We need to have prisons, sadly. It would be great if we did not need them. However, I would prefer prisons to be used for murderers, rapists, violent criminals, drug dealers, and even domestic violence perpetrators, not fine defaulters. Jail should be used as a last resort.

When I was a young police officer, I sat in court many times, and when I heard the magistrate talk to the offender and their lawyer about possible alternatives, I would think, "How hard is it? Put them in jail. It's not that hard." That was my opinion when I was young, but now that I have matured—not got old, but matured—I believe that we need to look at alternatives.

[Member's time extended.]

Mr K.M. O'DONNELL: I believe that people throughout the state accept what the government is trying to do in this bill. We should allow this to proceed. Let us run with it. If it does not work, in years to come, down the track, a government may revisit it and change the rules. I reckon we should run with this and give it a go. I believe that a community can in some way be gauged by how many prisons and prisoners it has. In the goldfields, we have one prison. If we had to have two, that would be very embarrassing. The brand-new prison in Kalgoorlie–Boulder is hardly utilised. That is a good sign. One block has not been opened, and I hope it will not need to be opened.

I have a few questions about this bill. How much money has been written off or is not expected to come in once this bill comes into law? Previously, people would pay fines, and people will still pay fines.

Mr P. Papalia: They are not the ones we are talking about—it is the ones who are not paying their fines.

Mr K.M. O'DONNELL: Yes. There will always be a percentage of people in the low socio-economic field who will not pay their fines.

Mr P. Papalia: And who end up in prison.

Mr K.M. O'DONNELL: Those people should be dealt with in some way. Predominantly, this bill will help a lot of people. That is my opinion. I would love to find out the figure, going forward, of how many people who do not pay their fines are recidivists. I hope there is a double-figure percentage of people who do not default again on paying their fine.

I note in the bill that the registrar will take on a lot more work—the registrar will do this, the registrar will do that, the registrar will send out this letter et cetera. Will those registrars be budgeted for increased staff? Instead of a situation in which fines come through and the registrar just accepts money, and issue the warrant if the fines are not paid, now they are going to be sending out follow-up letters, ascertaining whether a person meets the criteria for hardship, and various other things. I assume that, when people pay their fines, the Department of Justice receives money back into its coffers to run its operations. Will it now get more money to compensate for what it will not get? If the money is going to come in to supplement that loss of income, where will it come from? What department will be doing the work and development permits? I am assuming it will be corrective services. I hope that the police play no part whatsoever in work and development permits, or completing any forms once a person has been arrested. My reading of this is that everything is done before a matter gets to the stage of a warrant. Once it reaches the warrant stage, that is the end of it. It is the money or the body—one or the other. I also hope that we can spend more money on various initiatives, so that those offenders who are copping the fines and not paying them are taught financial management so that, should they want to pay off the fine in the future, they can do so.

DR D.J. HONEY (Cottesloe) [12.42 pm]: I rise to make a very small contribution to this debate on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019. I note at the outset that, along with the rest of the opposition, I support the bill. This is an interesting topic, which can be seen from the size of the bill. This is a relatively straightforward concept, but this is quite a thick bill that takes some effort to go through. I suspect that is due to the technical nature of fines and how they are applied. However, there is a question of how we drive behaviour. I enjoyed the contribution of the member for Mirrabooka on this topic, and I resonate with her views that we need novel solutions. One of the problems we have as a collective group of legislators is that there is a temptation to engage in a race to the bottom, if you like—or perhaps it is a race to the top—on how harsh we are going to make a penalty. I think, in part, this is driven by the current format of the news cycle. The government of the day is looking to say that it has done something about a particular problem, issue or behaviour that it wants to stop, and that the community is concerned about, and looks to apply a fine. It can be seen that there can be some justification. We are trying to achieve a modification of behaviour. Someone or some group is doing something that we collectively think is undesirable. We do not want them to do it, but how do we achieve a suitable outcome? I have a great concern personally about this race to the bottom, or race to the top, depending on how we want to view it, for more severe penalties. For a lot of people, whether a penalty is $1 000 or $10 000 is immaterial. Once it has a few zeros on the end of it, it is an insurmountable obstacle for the person. It will not modify their behaviour any more or any less if more zeroes are added to the end of it. It will simply create another problem that the government is trying to deal with in this legislation; that is, once it is a certain amount of money, they have to be jailed if they do not pay it. Obviously, the government is looking for solutions here.

We do need consequences for actions. We do want to achieve a modification of outcome, and that means there needs to be either consequences for actions or some reasonable certainty that the person's behaviour is going to be modified in some other way. The bill addresses some of that. It looks at the potential for someone who has committed an offence that is fineable to participate perhaps in a detoxification program or some other program that allows them to modify their behaviour. Otherwise, for some people, simply a consequence for an action will modify their behaviour. There needs to be a subtlety to it.

In the middle of this year, a number of members from my party visited Kalgoorlie. We spoke with some of the shopkeepers. The police in Kalgoorlie have adopted a practice that if the value of shoplifted items is less than $500, they will not charge the person who is responsible. It turns out that it is predominantly kids who are carrying out the shoplifting, and they have great acuity in mental arithmetic! They can add up a basket of items that they have picked up off the shelves with no intention of paying for them. They can add that up and determine that it is below the $500 threshold. In fact, a number of shop owners recounted to us that groups of children were saying, "Right; we're at $497—let's leave." In that case, there was a genuine attempt by police to limit the number of particularly children who are interacting with the law. We spoke to one business owner in particular who produced little knick-knacks. That business shut down because so many groups of children were stealing $499 worth, or whatever, of goods; below the $500 threshold. They walked out and did not receive any consequences for their actions, and it was quite devastating. People in sports goods stores were really suffering as well.

I guess in all of this we do want to have some consequence, but I absolutely resonate with the point that jail should always be the last resort, unless it is the most egregious behaviour. In large part, jailing someone for this sort of penalty is not going to, in the great majority of cases, make much difference to their behaviour, unless it is someone who is perversely refusing to pay a fine—that is, they can afford it but they are just doing it to rail against the system.

Mr P.A. Katsambanis interjected.

Dr D.J. HONEY: Yes, rage against the machine, member for Hillarys.

Otherwise, I can see very little benefit. As a number of members have pointed out, quite the opposite in fact—sending people to jail in many cases is purely a way to educate them to be better criminals. In fact, far from society being protected or being improved by that action, we are making society worse because we are taking someone who was a minor offender and turning them into a person who could be a serial offender, particularly in the criminal area.

In public debate during my lifetime, I do not think I have ever observed a greater trend to less tolerance in the community. It is funny; in a lot of ways people say they want a more tolerant and open society, but in fact there seems to be less tolerance for a diversity of behaviour and a greater propensity to impose penalties—actually, legal penalties on people for behaviour and for what they say. I think that part of how we deal with this issue is to have a much greater tolerance and a genuine acceptance of diversity of behaviour. Referring again to the 20-second grab that seems to drive so much of public discourse, collectively we need to have a greater investment in other ways to deal with people's poor behaviour. Again, I refer to the antisocial behaviour in Kalgoorlie, although it is an issue in a number of communities. Many of the issues that arise out of antisocial behaviour are fineable but, in fact, the cause of that antisocial behaviour is groups of people who have nothing to do and nowhere to go.

Debate interrupted, pursuant to standing orders.

[Continued on page 8944.]