

**FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT
AMENDMENT (TAXATION) BILL 2012
FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2012**

Cognate Debate — Motion

On motion by **Hon Simon O'Brien (Minister for Finance)**, resolved —

That leave be granted for the Fines, Penalties and Infringement Notices Enforcement Amendment (Taxation) Bill 2012 and the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012 to be dealt with cognately.

Second Reading — Cognate Debate

Resumed from 2 May.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [9.27 pm]: I note that although we will be debating these bills cognately, the opposition will take a different position on each of the bills when it comes to the vote; obviously the vote will need to be conducted separately for each bill. Labor will oppose the Fines, Penalties and Infringement Notices Enforcement Amendment (Taxation) Bill 2012, but will support the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012, although we will oppose a couple of clauses in that bill also.

The driver of this legislation package is the fact that there are some 740 000 outstanding fines in Western Australia, amounting to about \$251 million owed to the state by approximately 47 000 individuals. We are told that those figures are accurate as of March this year. Some of the \$251 million that is owed is, in fact, subject to an arrangement for those owing to make payments over time, but that accounts for only about a quarter of what is owed. The system that was put in place in the mid-1990s under the principle act that we are amending dealt with unpaid fines by creating an optional provision for the courts to suspend driving licences. The thinking behind the policy at the time was that suspension of a driver's licence was better than a jail sentence. However, with some 46 000 suspended licences and some 4 500 people who have been caught driving while under suspension, the question now must be: is suspension actually effective?

We are told that the measures set out in the bills we are considering are to be directed at the worst offenders—that is, those whose licences have already been suspended, and those who owe \$2 000 or more in unpaid fines. We are told that this group numbers about 45 000 people. The Fines, Penalties and Infringement Notices Enforcement Amendment Bill gives the Fines Enforcement Registry a number of powers to respond to this group of people. They include immobilising vehicles, using wheel clamping, which the offender can get out of if they sign up to an arrangement to pay over time; removal of licence plates and registration being suspended; seizure of assets to recoup the moneys owed; and the power to publish the names and identifying information of offenders. Those provisions are set out in clause 25 “Part 5A inserted” in the main bill, and the Labor Party will oppose them. We say exercise all the powers outlined in the legislation to recoup the money that is owed, but giving the Sheriff the power to publish names and other detailed information about the offenders has not been demonstrated anywhere to result in more people paying moneys owed. If we have the power to recoup the money by selling assets, how does the publishing of the name and address take us forward at all? Given we are dealing with what is described as the worst of the worst—that is what we have been told these legislative prohibitions are directed to—what effect will the so-called name and shame result in? It may well have an effect on members of the offenders' families or loved ones, but it may well be that people who are named and shamed are wrongly assumed to owe that money. There has been a very high profile case in which action was taken against the late John D'Orazio for allegedly driving under a suspended licence, when he had not actually received the notifications.

The problem with the provisions that give the Sheriff the power to publish on the internet have been canvassed before in this chamber concerning other legislation. Once material is posted on the internet, it can be reposted by others over and again. Despite a matter perhaps being resolved and perhaps being found to be incorrect, that material, once published on the internet, can go on for ever and ever. We see in the bill some measures to mitigate the effects of publishing forever by amending the provisions relating to publishing. In the event a person with the fines, for example, has taken out a restraining order and the Sheriff is aware of that, no identifying information will be published. The bill also amends the Equal Opportunity Act to provide that it is an offence for an employer to discriminate against someone whose details have been published. Those two provisions are good, but they are not perfect. There are laws against discriminating against someone on the grounds of age, gender and pregnancy, for example, but those kinds of discrimination happen every day, and proving that they have happened is, in fact, very difficult.

The other area in the major bill we will oppose is clause 39, which amends the principal act by inserting new section 108(8) to allow the enforcement fee to be over and above the actual cost recovery amount of certain fees. We say that is unnecessary and wrong and is, frankly, unlimited. While the provision for charging above-cost recovery fees appears in the main bill, the power to do that is in the Fines, Penalties and Infringement Notices Enforcement Amendment (Taxation) Bill 2012. A separate bill was needed because the government recognised that it was putting in place a new form of tax. We will oppose the taxation bill.

We will vote against two parts of the Fines Penalties and Infringement Notices Enforcement Amendment Bill, proposed part 5, which gives the power to publish on the internet and proposed section 39, which adds a provision to collect from someone, not just the moneys outstanding, not just the cost of recovering those, but more beyond that. However, we will support that bill at the second and third reading stages. We will oppose the Fines Penalties and Infringement Notices Enforcement Amendment (Taxation) Bill, as that is the enabler to recover more than just what is owing, plus costs. With those comments, I will conclude my remarks.

HON GIZ WATSON (North Metropolitan) [9.34 pm]: I rise to speak on the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012 and the Fines Penalties and Infringement Notices Enforcement Amendment (Taxation) Bill 2012. These bills amend the Fines Penalties and Infringement Notices Act 1994, and the main changes in the principal bill are in respect of infringement notices only. Enforcement warrants can be issued if the person owes a total of \$2 000 or more and has not entered into time-to-pay arrangements for that. If an enforcement warrant is issued, the person will no longer be able to elect to have the charge to which the infringement notice relates determined by a court. In respect of fines only, fines can be registered at any time rather than only after a 28-day time limit has expired. In respect of both infringements and fines, the Fines Enforcement Registry will be able to access information about the debtor's address via information held by the person's electricity supplier. From the briefing, I understand that is because the address used for enforcement purposes is the same address as the address on the person's motor driver's licence. However, enforcement will be made difficult if a licence is renewed only every five years but in the meantime the person has moved house and forgotten to inform the Department of Transport.

Adults may have details of their debts published on the internet. The infringement notices threshold of \$2 000 does not apply to this aspect, but this information must not be used to discriminate against the person, including for the provision of goods and services and accommodation. If an enforcement warrant is used, this may or may not be simultaneous with the suspension of a person's motor driver's licence. Additional possible powers associated with an enforcement warrant are the immobilisation of the person's vehicle or removal of the person's numberplates and suspension of the vehicle licence, and, 28 days later, the cancellation of the vehicle licence. Authorisation is given for debt collection fees to be imposed that are greater than the actual cost of the debt collection fee. That is why Hon Sue Ellery pointed out in the second reading debate that this bill introduces a new tax because it is a tax rather than cost recovery.

The second reading speech states that these measures will be subject to evaluation three years after the commencement of their operation and that the legislation aims to respond effectively to around 45 000 debtors who owe more than \$2 000 worth of fines or infringements yet have failed to pay despite the various notices issued by the prosecuting authorities and the Fines Enforcement Registry, and to respond effectively to those infringements or to fine debtors whose drivers' licences have been suspended by the Fines Enforcements Registry but who nonetheless continue to drive.

To give members an idea of the numbers, it is estimated that about 4 500 cases were dealt with by the Magistrates Court in 2011. On 1 May 2012, the Attorney General said in the other place that roughly in excess of \$240 million is outstanding, representing 280 000 individuals with 722 000 unpaid fines or infringements for speeding, travelling without a ticket, parking, no driver's licence, failure to return numberplates, failure to vote, driving under the influence of alcohol, failure to transfer vehicle licences, unlicensed vehicles, disorderly conduct, stealing, breach of bail, not wearing a seatbelt, and cannabis-related offences. The Attorney General also said that over the last 10 years the imposition of fines by courts has dropped off and that he suspects the reason for that is the courts see fines as ineffective, hence that is a further reason for the legislation to ensure that a fine means something and will be either paid or translated into a work and development order. I note that the accuracy of the Attorney General's suspicion is questionable. A 2007 report of the New South Wales Sentencing Council entitled "Judicial perceptions of fines as a sentencing option" found that the use of fines had decreased over the last 10 years in New South Wales also. However, fines remain by far the most common sentencing option in the local courts in New South Wales. The amounts of fines have increased and fines are regarded by the judiciary as an integral weapon in the sentencing arsenal. The judiciary generally takes for granted that fines act as a deterrent, despite some recent research to the contrary.

It was stressed during the briefing that the intention of the bill is to move away from passive enforcement; that is, a person's licence is suspended by a computer and if the person continues to drive, it is up to the police to catch

them. Despite the existing provisions in the Fines, Penalties and Infringement Notices Enforcement Act, it seems that the seizure of property and work and development orders are not enforced much. The idea is that the enforcement process will now be prosecuted more accurately until the matter is finalised. I also understand from the briefing that the Sheriff's Office of Western Australia will be provided with four vehicles and staff, with half working north of the river and the other half south of the river. If a person has had their motor driver's licence suspended for about three months and she or he still does not arrange to pay, or elect in the case of an infringement, then for an outstanding fine, or when \$2 000 or more is outstanding in infringements, an enforcement warrant will be issued and, after that, the Sheriff's officers will put a warning notice on the person's car. If the person still does not arrange to pay, their vehicle will be clamped, and the clamping will not necessarily be at home. It may be at a shopping centre or another car park, but not in a clearway or similar area where vehicles are not permitted to remain. If after clamping there is still no payment within about 48 hours, the car will be unclamped, but its numberplates will be removed for 28 days. If there is still no payment, the vehicle licence will be cancelled, which means that the vehicle will have to be taken over the pits before the licence can be regained. Making arrangements to pay the debts will stop the process. Alternatively, I understand that the person will be able to arrange for one of the other enforcement options to be used instead of action involving their car—for example, seizure and sale of other goods.

By way of background, as stated in the second reading speech, the Joint Standing Committee on Delegated Legislation has previously identified that the enforcement fees set out in schedule 2 of the regulations to the act are higher than mere cost recovery, bringing their validity into question. In May 2009, the committee published its report, which said in relation to the Fines, Penalties and Infringement Notices Enforcement Amendment Regulations (No. 2) 2007 that the fees were effectively over-recovering the cost of fines enforcement by 325 per cent and that the justification given by the government for this was as follows —

While the fees are intended to cover the cost of enforcement activities they also act as an incentive to pay unpaid infringements on time and also as a penalty for late payment. Therefore unlike other fees in the court system they are not voluntarily paid for a service, but are rather imposed on an offender. Given the unique nature of these fees and the inherent incentive value for on time payment, it is considered appropriate policy for these fees to recover costs. Legal advice from the State Solicitor's Office confirms that the over recovery of costs for these fees is (likely) legally valid.

Notwithstanding this, the committee concluded that the fees were an unauthorised tax not contemplated by the empowering legislation. The second reading speech for this new legislation indicates that the subsequent legal advice provided to the government is that the act needs to be amended if over-recovery is to be authorised; hence the separate taxation bill and clause 38 of the longer bill. The government's reasons for this given in the other place were explained on 1 May this year as being incentive to pay, as already described. In addition, although there is over-recovery of costs for infringements, there is under-recovery of costs for court fines. Taking the two together, the fees do not over-recover costs in a global sense. That is an interesting argument. A further reason given at the briefing is that Western Australia is not the only state to over-recover costs of enforcement. In 2006–07, WA over-recovered its enforcement costs by \$48 net, South Australia by \$61 net, Victoria by \$36 net, and Queensland by \$30 net.

There are some other issues in the bill that I want to touch on. With regard to the suspension or cancellation of vehicle licences and the removal of numberplates, on 12 November 2009 during debate on the Road Traffic Legislation Amendment (Registration Labels) Bill, this house was told that should an unlicensed motor vehicle be involved in an accident, the Insurance Commission of Western Australia would meet the claim of a victim if there was proof of negligence by the driver, and the commission might then pursue that driver for those losses. Again, my understanding from the briefing that I received is that, similarly, when the driver of a vehicle who has had their licence suspended or cancelled under this bill is negligent and an accident happens, the Insurance Commission of WA will still meet the claim of any third party victim who is injured, even if the driver cannot be identified—for example, with a hit and run or when no numberplates are on the vehicle. So my question to the parliamentary secretary with carriage of this bill is: is my understanding correct with regard to that matter—I am not expecting the parliamentary secretary to answer that question now, but perhaps when he responds to the second reading debate—and is there any evidence that removal of numberplates leads to an increase in the stealing and use of other people's numberplates?

Debate adjourned, pursuant to standing orders.