

FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2012

Committee

Resumed from 15 August. The Chair of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clause 39: Section 108 amended —

Progress was reported after the clause had been partly considered.

Hon MICHAEL MISCHIN: By way of reminder, I had pointed out to the Leader of the Opposition that clause 39 actually embraces two rather distinct areas. The area that I understand the Leader of the Opposition is most concerned about is the potential for over-recovery in subclause (3) of clause 39, which inserts some new provisions after section 108(7) of the principal act. In the event that there is any opposition to that clause, the distinction between the two components needs to be borne in mind.

Clause put and passed.

Clause 40: Part 9 inserted —

Hon GIZ WATSON: This clause deals with the transitional provisions. As I understand it, the bill in essence adds to the consequences that occur at already existing stages of the fines and infringement notice enforcement process. The transitional provisions operate so that some, but not all, enforcement actions currently in train will be able to make use of the new consequences. Warrants of execution already in train will be unable to make use of proposed part 7, division 6A, which relate to powers to immobilise vehicles, remove numberplates and cancel vehicle licences. However, as I read it, the bill will enable the use of the publication provisions. Notices of intent to suspend already in train will be able to make use of all the new consequences. Obviously, notices issued already will not mention the extra possible consequences provided for in this bill. I understand from the briefing that if the bill is passed, action will be taken to start changing the wording of infringement notices as fast as possible so that they specify all of the various consequences of not paying or electing a court hearing within the time limit, including the new consequences introduced by this bill. I also understand that there will be an intensive advertising campaign to increase public awareness. These measures will take some time, and it is important that the bill not be operative until after those issues have been dealt with. I will not move an amendment to the transitional provisions because I understand, from the briefing again, that the bill will not be proclaimed until 1 November 2012 to give these measures time to take effect, so that anyone who gets a fine or an infringement is fully aware of all the consequences if they do not pay or elect only a court hearing.

I ask the Attorney General to confirm that the bill will not be proclaimed before 1 November 2012 and to please detail the measures that will be taken in the meantime to ensure people will know the consequences that will follow from non-payment.

Hon MICHAEL MISCHIN: It is my understanding that because of a number of steps that need to be taken, the prospect of the bill coming into operation before March or April next year is remote. Changes have to be made to the TRELIS database—transport executive and licensing information system—and to other IT systems, and additional staff may have to be engaged. The member will note that clause 2 of the bill provides for the act to come into operation on a day fixed by proclamation and for different parts of the act to be proclaimed on different days. In practical terms, therefore, whenever it is proclaimed, it will be given effect only at such time as these other necessary logistic steps are put in place.

It is my understanding that the department proposes engaging a marketing agency for advertising the changes to the law. It will be a multimedia campaign potentially involving television, pamphlets and other forms of media. There will be information on the website and forms will have to be changed anyway, which will be another factor informing the date on which the bill comes into operation. There will need to be talks with not only prosecuting agencies directly within the control of the state government, but also local governments and so forth. Inserts will be sent out to those who are already in the system or who come into the system, informing them of the additional sanctions that may be imposed against them and the penalties that they may suffer under the bill if they do not pay their fines in a timely way or enter into a time-to-pay plan or other arrangements already in the act as it stands.

Hon GIZ WATSON: I thank the Attorney General for that additional information. I wonder whether there is any estimated cost of that marketing campaign. I realise the Attorney General might not be able to answer that question immediately, but I wonder whether there is any indication of the cost to publicise the anticipated new provisions.

Hon MICHAEL MISCHIN: The cost was estimated in the business case put forward by the department to the tune of \$200 000. That cost was calculated based on the costs resulting from the Western Australia Police campaign when the hoon laws were introduced regarding the impounding and seizure of vehicles and so forth.

Sitting suspended from 1.00 to 2.00 pm

The CHAIR: Members, before we progress to the Fines, Penalties and Infringement Notices Enforcement Amendment Bill, I welcome to the President's gallery a couple of visitors, a young lady by the name of Tania Jacquette from Martinique and Mr Bob Hines from Carlisle. Welcome to both of you.

Clause put and passed.

Clauses 41 to 68 put and passed.

Clause 69: Section 17 amended —

Hon MICHAEL MISCHIN: I move —

Page 65, after line 8 — To insert —

- (fa) a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 19 or 43 is not in force in respect of the vehicle; and

The purpose of this amendment is to insert a new paragraph so that a vehicle licence is not transferred if a licence suspension order under sections 19 or 43 of the principal act is in force. This reflects the current practice with these orders—that is, prohibiting the transfer of such licences when they are under suspension.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 70 put and passed.

New Part 4 Division 7A

Hon MICHAEL MISCHIN: I move —

Page 66, after line 16 — To insert —

Division 7A — *Road Traffic (Vehicles) Act 2012* amended

70A. Act amended

This Division amends the *Road Traffic (Vehicles) Act 2012*.

70B. Section 5 amended

In section 5(3):

- (a) in paragraph (e) delete “vehicle.” and insert:
vehicle; and
- (b) after paragraph (e) insert:
 - (f) a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 19 or 43 is not in force in respect of the vehicle; and
 - (g) the vehicle is not immobilised under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95C; and
 - (h) the vehicle's number plates have not been removed under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95F; and
 - (i) a vehicle licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95G is not in force in respect of the vehicle; and
 - (j) a vehicle licence cancellation order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95J is not in force in respect of the vehicle.

70C. Section 16 amended

- (1) After section 16(1) insert:
 - (2A) If a vehicle licence suspension order is made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*

section 95G in respect of a person, a licence held by that person in respect of the vehicle specified in the order is, by force of this section, suspended so long as the vehicle licence suspension order continues in force and during that period is of no effect.

- (2) In section 16(2) delete “Subsection (1) does” and insert:
Subsections (1) and (2A) do
- (3) After section 16(3) insert:
 - (4) If a vehicle licence cancellation order is made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95J in respect of a person, a licence held by that person in respect of the vehicle specified in the order is, by force of this section, cancelled.

70D. Section 125 amended

In section 125(8) delete “section 19 or 43.” and insert:
section 19, 43, 95G or 95J.

New part 4 division 7A consists of several proposed sections. It all comes back to a reference to the passage of the Road Traffic (Vehicles) Act 2012 and amendments to that act. Proposed section 70A amends the Road Traffic (Vehicles) Act 2012 so that it operates correctly with the amended *Fines, Penalties and Infringement Notices Enforcement Act*. Section 70B will insert five new paragraphs after existing section 5(3)(e) of the Road Traffic (Vehicles) Act 2012 to ensure that an application for the grant, renewal, transfer or variation of a licence is not granted if certain actions under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* have been taken, including vehicle transfer, immobilisation, numberplate removal, a vehicle licence suspension order or a vehicle licence cancellation order. Proposed section 70C amends section 16(1) to include new section 95G of the amended *Fines, Penalties and Infringement Notices Enforcement Act 1994* so that if a licence suspension order is made under section 95G, it remains suspended for as long as that order is in force. New subsection 16(4) is also inserted so that if a vehicle licence order is cancelled under section 95J of the amended principal act, it is, by force of this section, cancelled. Lastly, it inserts new section 70D, which amends section 125 so that the operations in this section do not affect the operations of the principal *Fines, Penalties and Infringement Notices Enforcement Act* sections 19, 43, 95G or 95J.

New part put and passed.

Clauses 71 to 73 put and passed.

New clause 74

Hon GIZ WATSON: I move —

Page 66, after line 27 — To insert —

74. Monitoring of Act by Ombudsman

- (1) For the period of 3 years after the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* and the *Fines, Penalties and Infringement Notices Enforcement Amendment (Taxation) Act 2012* and enforcement fees pursuant to regulations made under those Acts and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (2) The scrutiny referred to in subsection (1) is to include review of the impact of the operation of the provisions referred to in that subsection on Aboriginal and Torres Strait Islander communities.
- (3) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority’s participation in the operation of the provisions referred to in subsection (1).
- (4) The Ombudsman must, as soon as practicable after the expiration of that 3 year period, prepare a report on the Ombudsman’s work and activities under this section and furnish a copy of the report to the Attorney General and the Minister for Police and the Commissioner of Police.

- (5) The Ombudsman may identify, and include recommendations in the report to be considered by the Attorney General about, amendments that might appropriately be made with respect to the operation of the provisions referred to in subsection (1).
- (6) The Attorney General is to lay (or cause to be laid) a copy of the report furnished to the Attorney General under this section before both Houses of Parliament as soon as practicable after the Attorney General receives the report.

This amendment is to make a provision for an evaluation. It was interesting to learn in the briefing, as it is not apparent from the bill, that apparently this is a trial only, approved by cabinet to operate for three years in the metropolitan area. The bill does not contain a sunset clause. The second reading speech states that there will be an evaluation after three years, but the bill does not contain an evaluation process. The proposal for both the duration of the scheme and its evaluation is therefore policy only and not legislatively binding. Nor is it clear what the terms of evaluation will be. I refer in particular to the impacts on Aboriginal people and people on low incomes. I note the contributions from some of the members opposite on the likely impact on people on low incomes in rural and regional Western Australia. There is not any requirement for the evaluation to be tabled in Parliament. Therefore, I move this amendment to insert an evaluation clause, which I hope will be supported by the house. The wording of the proposal is similar to the amendments that I moved previously, which were supported by this house, when we debated the Criminal Code Amendment (Infringement Notices) Bill 2010.

The amendment on the supplementary notice paper requires that the operation of the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012, should it become an act, be monitored by the Ombudsman. This amendment is in the same terms as one this chamber accepted to the Criminal Code Amendment (Infringement Notices) Bill 2010. It makes accurate the claim in the second reading speech that this is, in effect, a trial, and makes clear how the trial should be assessed. It indicates who will do that assessment, and that that assessment will be provided to the house. I seek the support of other members of this place for this amendment. It does not do anything to detract from the operation of the bill or offend the policy of the bill; it simply fulfils what was stated in the second reading speech, which is that this trial will be evaluated. With those comments, I seek the chamber's support for this amendment.

Hon MICHAEL MISCHIN: The government will not support the proposed amendment for two broad reasons, and I will deal first with the one related to the need for such a review.

The amendment proposes that a monitoring and review role be imposed upon the Ombudsman for the amendments to the principal act. As I have already indicated to the chamber, these enhanced measures are for a trial period of three years, after which they will be rigorously evaluated. During that time the enhanced measures will apply to the metropolitan area only, although some of the provisions in the bill—for example clauses 18 and 19—will have a positive impact on Aboriginal people in remote areas.

The evaluation will be conducted by the department's own skilled evaluation unit, which operates at arm's length from the operational area of the department, such as the Fines Enforcement Registry and Sheriff's Office, those being the offices that will implement the new measures. The department has the relevant expertise, and in many cases seeks peer review from other experts such as the Australian Institute of Criminology when conducting evaluations of this character. The whole evaluation process will be monitored according to a strict governance policy to establish its effectiveness and any flaws in the process.

The other objection to the amendment is as a matter of principle. The long title of the Parliamentary Commissioner Act 1971 states that it is —

An Act to provide for the appointment of a Parliamentary Commissioner for Administrative Investigations with functions relating to the investigation of administrative action taken by or on behalf of certain departments and authorities and to the deaths of certain children and for incidental purposes.

The Ombudsman, or parliamentary commissioner, is really not geared to this sort of an evaluation of whether a fine and penalty recovery process is optimal or the problems that may arise with it. If there are complaints about the way the department is administering the law and conducting itself in respect of particular fines and recovery actions, then that is something the parliamentary commissioner is equipped to investigate and report on to Parliament. However, this is an evaluation process as to the viability of a policy of recovery in a broad area involving many hundreds of thousands of infringements over time, and the parliamentary commissioner would not be, in the government's view, the appropriate officer to conduct that sort of exercise. Where we are looking at things like specific powers, where there is an increase in powers and an oversight as to how those powers are being exercised—as there is contemplated by, for example, the Criminal Organisations Control Bill—then one can understand a role for the Ombudsman in overseeing the way the powers are carried out. But here is an entire

raft of measures that are aimed at a different purpose, and the Ombudsman is being asked to evaluate them and their outcomes, which is not strictly within the sort of expertise he would have.

The government cannot support this amendment. I have already indicated that it is the government's intention to rigorously evaluate the outcomes of what is proposed and to make such amendments as may be necessary to overcome any difficulties exposed. But the Department of the Attorney General has the expertise and experience in the unit established for that sort of purpose.

Hon GIZ WATSON: I am disappointed with that response because, as I noted, the chamber supported a similar amendment to the Criminal Code Amendment (Infringement Notices) Bill, which is not dissimilar to this bill in some of its elements dealing with fines-related matters. I think there is merit in having an independent body doing the assessment, because it will be evaluating some of the matters raised in debate in this place in regards to any adverse or unforeseen impacts—for example, the impact of the naming and shaming aspect of this legislation, which has been raised by a number of members. I think the Ombudsman does have a role in the administration of this legislation, should it become an act, in determining whether that is a fair process. I persist with the amendment and hope I might get support from others for it.

Hon MICHAEL MISCHIN: I do not want to labour the point, but the Ombudsman would still have the jurisdiction to deal with complaints about the manner in which the naming and shaming provisions are used, just as he will in the manner in which the immobilisation and all the other features are used, in the same way as he would now in respect of complaints about the way the department or its officers are implementing the act. But that is a very different thing from expecting the Ombudsman to be able to conduct a rigorous and long-term analysis of something over a period of three years with all the data that would need to be routinely processed to work out just how the act is working. That is a very different thing and, with respect, I do not think that is his area of expertise. In defined little areas, for example, whether infringement notices are being utilised in an appropriate case, there may be some argument for that. I do not have that provision in front of me to see how it was framed, but I would have thought that the burden that this amendment imposes on the Ombudsman is simply unreasonable and not within the Ombudsman's remit.

However, I am prepared to consider any submissions Hon Giz Watson may wish to make about things that the department ought to consider in its evaluation of the efficacy of these provisions and to think about whether they will be included in the evaluation. I will not promise anything, but I am prepared to consider it if the member feels that certain things should be looked at as part of the assessment process.

Hon SUE ELLERY: I rise to indicate that, having listened to the debate, the opposition will support Hon Giz Watson's amendment. I do not accept the proposition the Attorney General put to us in his most recent contribution that it would be beyond the expertise of the Ombudsman. From time to time, legislators have given the Ombudsman a variety of roles. The one that I was most familiar with was when the government gave his office the responsibility for conducting reviews into the deaths of children who had come into contact with the Department for Child Protection. The Ombudsman's office had no particular expertise in that area, Parliament gave him that responsibility and he gathered resources and people and set up a separate little investigative unit to do just that. The Attorney General may have other reasons for opposing the amendment, but I do not think it is valid to say that it is beyond the Ombudsman's expertise. He does what he is asked to do by the Parliament and he garners the expertise and resources he needs to do that.

Hon GIZ WATSON: I just reiterate one of the other differences between what the Attorney General proposes for an evaluation and what this amendment proposes. The amendment specifically requires that the report be tabled in Parliament, and obviously it has the independence of a separate body in the Ombudsman. Therefore, my questions are: Will the evaluation report be tabled in the house? Will the evaluation report be first presented to the Attorney General before it is tabled in the house? I just want to know the process that the Attorney General envisages for this evaluation.

Hon MICHAEL MISCHIN: There are just a couple of things. Firstly, regarding the parliamentary commissioner taking on such functions as Parliament should assign, yes, the parliamentary commissioner does have responsibility to investigate certain deaths of certain children but in very defined circumstances and looking into particular cases. Once again, that is consistent with his function of ascertaining whether there has been any failing in the manner with which an agency conducts itself, rather than doing general evaluations based on the statistical evidence of the operation of a statute that involves many hundreds of thousands of cases.

I take Hon Giz Watson's point about tabling the report. I am prepared to entertain that in due course. I am not going to give an assurance on it; there may be one reason or another that it cannot be. However, I have no problem in principle with tabling the report. I expect that it would be tabled, or at least the outcomes would be available because, in the end, they will inform government whether these provisions are working and how they need to be fixed. What was the second thing that the member was after? There was the tabling of the report and something else.

Hon Giz Watson: Whether it would go to the Attorney General first.

Hon MICHAEL MISCHIN: I hope it would go to me first—yes. As a matter of principle, I do not have a problem with the report being tabled but, yes, I would like to see what my department has been up to first and to make some decisions about whether anything needs to be done about it.

Hon GIZ WATSON: I guess that adds to my argument about why an independent evaluation is a good idea! I understand that is the process; if there is a departmental evaluation, it would go through the minister prior to being tabled in this house. I appreciate that the Attorney General indicated he is likely to have the evaluation report tabled in the house, but that is not an absolute commitment at this stage. Therefore, I still support our amendment.

New clause put and a division taken, the Chair casting his vote with the ayes, with the following result —

Ayes (14)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Kate Doust
Hon Sue Ellery

Hon Adele Farina
Hon Lynn MacLaren
Hon Ljiljanna Ravlich
Hon Linda Savage

Hon Sally Talbot
Hon Ken Travers
Hon Max Trenorden
Hon Giz Watson

Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (16)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies

Hon Wendy Duncan
Hon Phil Edman
Hon Brian Ellis
Hon Donna Faragher

Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett
Hon Alyssa Hayden

Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Ken Baston (*Teller*)

Pairs

Hon Robin Chapple
Hon Jon Ford

Hon Col Holt
Hon Robyn McSweeney

New clause thus negatived.

Postponed clause 25: Part 5A inserted —

The clause was postponed on 15 August.

Hon MICHAEL MISCHIN: As members will recall when we were dealing with clause 25, Hon Sue Ellery and I think Hon Giz Watson had raised the issue —

Hon Giz Watson interjected.

Hon Sue Ellery: She raised it. You gave the answer and I said the answer doesn't answer the question.

Hon Giz Watson: It was my idea.

Hon MICHAEL MISCHIN: Hon Giz Watson and Hon Sue Ellery raised an issue about the protection of persons from publication of their details if they are protected under a violence restraining order or, I suppose, more broadly, if there is some other reason why their safety may be endangered by the publication of their names, addresses and so forth. I accept that, notwithstanding some comment that had been made in the other place, there is a hiatus, a deficiency, in the bill in that respect. I have proposed an amendment to clause 25. I move —

Page 22, after line 6, to insert —

or

- (c) the person is a person protected under a violence restraining order, or police order, in force under the *Restraining Orders Act 1997*; or
- (d) the publication of the relevant details would endanger the person's safety.

I trust that that will meet the concerns that have quite legitimately been raised by Hon Giz Watson and the Leader of the Opposition.

Hon GIZ WATSON: I think that has accommodated our concerns and I appreciate the amendment that the Attorney General has moved.

Hon SUE ELLERY: I indicate for the record that it was, indeed, an issue raised by Hon Giz Watson. She raised it before we rose. The answer was given by the parliamentary secretary. We could not find the solution that he said was there, so he has come up with a solution in a form of words that does, indeed, specify that a person

protected under a violence restraining order, or anyone for that matter who might be endangered if their personal details are published, is protected. That is good. I thank the Attorney General for the work he did overnight.

Amendment put and passed.

Postponed clause, as amended, put and passed.

Title put and passed.