

FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2019

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.47 pm]: I move —

That the bill be now read a second time.

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.

We are all aware of the death of Ms Dhu in Port Hedland in August 2014. Ms Dhu was arrested on a warrant of commitment for unpaid fines. In Ms Dhu's case, her fines totalled approximately \$3 622 and she was required to spend four days in prison to expiate the largest fine, at the rate of \$250 per day. While in custody, Ms Dhu experienced medical complications from injuries sustained in an earlier domestic violence incident. Tragically, Ms Dhu died a few days later on arrival at the health service. In 2016, the State Coroner handed down her findings from the inquest into Ms Dhu's death. The coroner recommended that imprisonment for fine default be subject to a hearing determined by a magistrate in the Magistrates Court. This bill implements that alternative recommendation.

The Attorney General has expressed his sincere apologies to Ms Dhu's family before and I do so, too. What happened to Ms Dhu was a tragedy. I am confident that this bill will go a long way towards preventing such a tragedy from occurring again in Western Australia. I turn now to the other key features of the bill.

Hardship: in keeping with the government's focus on protecting marginalised and vulnerable Western Australians, 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 hardship. In concert with the introduction of this concept are statutory principles to guide decision-makers under the Fines, Penalties and Infringement Notices Enforcement Act. The statutory principles provide that imprisonment for failure to pay a fine is truly an enforcement option of last resort, and that a person who is experiencing hardship that is affecting their ability to pay a fine or work it off should not be imprisoned for fine default. For the cohort of fine defaulters who have the means but not the inclination to pay—those recalcitrant few who thumb their nose at the system and accrue fines with no intention of paying them back, having ignored all other attempts at enforcement—a magistrate will be able to order imprisonment for fine default.

Licence suspension orders: this bill also restricts the Fines Enforcement Registry from issuing a licence suspension order for a debtor whose last known address is in a remote area. Licence suspension orders have a disproportionate impact on people in remote communities without public transport infrastructure, and can further entrench poverty and involvement in the justice system. The term "remote area" is defined in this bill to mean an area prescribed in regulations; however, regulations cannot prescribe any part of the Perth metropolitan region as remote.

Garnishee orders: this bill introduces a new regime of garnishee orders, which will be available as a fifth limb of an enforcement warrant. Garnishee orders, which are already in place in other jurisdictions, including Queensland, South Australia and New South Wales, will enable the Sheriff of Western Australia to go direct to a debtor's employer or to their bank to claim the moneys owed. Safeguards have been built into this process to require a protected amount to remain in a person's salary or bank account, again to avoid creating hardship. The protected amount will be prescribed in regulations. Provisions have also been included that will allow the sheriff to return moneys deducted under a garnishee order when he or she thinks fit. Employees will be protected from adverse treatment by employers as a result of a garnishee order, and privacy will be protected by prohibiting information about the offence that led to the order being included on the garnishee order given to an employer or bank.

Work and development permits: this bill looks to New South Wales, Victoria and Queensland for the introduction of a new scheme of work and development permits. When a debtor is experiencing hardship affecting their ability to pay or otherwise discharge their fine debts, they can enter into a consensual agreement to undertake approved activities with the support of an approved sponsor. Those activities could be, for example, drug and alcohol counselling, vocational or educational programs, unpaid work, or medical or mental health treatment. The key difference between these permits and the existing work and development orders, as they are known, is that these permits are effectively an agreement between a debtor, a sponsor and the registrar to undertake activities that will expiate the fine debt, whilst, under the current regime, a work and development order is an order supervised by a community corrections officer. We are hopeful that if given the option to complete treatment plans, programs and the like, debtors will be able to address the offending behaviour that led them to come into contact with the justice system in the first place and reduce the likelihood of them reoffending.

Fine expiation orders: this bill also introduces fine expiation orders to allow offenders who are already in custody for reasons other than fine default to expiate their fine debt. Currently, warrants of commitment serve this purpose. It is important to emphasise that a fine expiation order is not an authority to hold someone; it is only available when a person is in custody for other reasons. The Custody Notification Service, which launched in October 2019 and is operated by the Aboriginal Legal Service, includes a fines check with a view to ensuring people who are imprisoned apply for fine expiation orders and are able to expiate their fines while in custody.

Information sharing and time-to-pay arrangements: enhanced information-sharing powers for the registrar and sheriff are introduced through new part 7A of the act. The primary driver of increasing powers to access information is to assist the registrar and sheriff in making contact with debtors earlier in the process to encourage them to enter into time-to-pay arrangements and avoid the escalation of enforcement action, which, as we know, attracts fees and only increases debts. Amendments to the time-to-pay provisions for both infringements and fines will make it easier for debtors to enter into agreements to pay their debts, by either a lump sum or regular repayments.

Making it easier for courts to issue and administer work and development orders: the bill also amends the Western Australian Sentencing Act 1995 and Sentence Administration Act 2003 to make it easier for courts to make a fine enforcement work and development order at the point of sentencing. The Sentence Administration Act will be amended to allow more flexibility for community corrections officers in the administration of work and development orders, which is intended to lead to fewer cancellations of such orders.

Existing warrants of commitment: there are currently thousands of unserved warrants of commitment waiting for debtors across the state—a threat of imprisonment is hanging over their heads. This bill provides that the day after royal assent, all unserved warrants of commitment will be immediately cancelled, but their fines will stand and be strictly enforced using the more just and effective fines enforcement regime that I have just outlined. Anyone in prison for fine default alone will be released within 24 hours.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 3475.]

Debate adjourned, pursuant to standing orders.

House adjourned at 10.55 pm
