FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2012

Committee

Resumed from 27 June. The Deputy Chair of Committees (Hon Brian Ellis) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Progress was reported.

The DEPUTY CHAIR: With the indulgence of members, we will deal with the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012 first.

Clauses 1 to 3 put and passed.

Clause 4: Section 3 amended —

Hon MICHAEL MISCHIN: The proposed amendments fall into a number of categories. It may be convenient if I deal with them seriatim as they arise. One tranche of these amendments deals with amendments that are consequential upon royal assent having been received for the Road Traffic (Vehicles) Act 2012, which altered some of the definitions in the Road Traffic Act and the like. They need to be picked up by this bill, because, of course, a large proportion of the fines, penalties and infringement notices that it deals with relate to road traffic–type offences. Clause 4 in particular amends the definition of "number plate" so that it has the meaning given to it once section 3 of the Road Traffic (Vehicles) Act 2012 comes into operation. As I have mentioned, that act has received royal assent, although it is my understanding that it has not been proclaimed and commenced operation. I move —

Page 3, lines 17 and 18 — To delete the lines and insert —

number plate —

(a) before the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — has the meaning given in the *Road Traffic Act 1974* section 5(1); or

(b) after the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — has the meaning given in that section;

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Section 5 amended —

Hon MICHAEL MISCHIN: I move —

Page 4, lines 8 to 13 — To delete the lines and insert —

(2) Delete section 5(4) and insert:

(4) For the purposes of the service of any document under this Act, a person's last known address may be taken to be the person's current address shown in the records of —

(a) the Director General; or

(b) the Electricity Retail Corporation.

The amendment to clause 5 arises out of an approach I have had from the Minister for Transport when he pointed out that due to the manner in which the current Fines, Penalties and Infringement Notices Enforcement Act is framed, there are impediments to the Fines Enforcement Registry when searching for address records using a wider group of databases than are currently specified in the act. Members will recall that the idea was that the Fines Enforcement Registry could draw upon the records held by Synergy for electricity records. But another problem has become apparent that where an address has been used in an infringement notice, a prosecution notice or a court order, the FER cannot draw on the TRELIS address that may be available to it by way of the manner in which the act is framed. The purpose of the amendment to clause 5, therefore, is to broaden the sorts of records that may be taken into account by the FER to ascertain a known address. One of the anomalies that has arisen is that although departmental officers may, through other sources, understand that a person's address has changed and the address they have on the databases they can currently draw on may be inaccurate or false, they cannot actually draw upon their knowledge and are locked into the addresses that appear on the prosecution notices and the like. The purpose of the amendment to clause 5 is to permit them to draw on other information.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 6 put and passed.

Clause 7: Section 10 amended —

Hon MICHAEL MISCHIN: I move —

Page 5, line 6 — To insert after "*Road Traffic Act 1974*" —

or, after the *Road Traffic (Administration) Act 2008* section 4 comes into operation, a road law

This again is a consequential amendment so that records can continue to be accessible under the operation of the Road Traffic (Administration) Act 2008.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 8 to 23 put and passed.

New clause 23A —

Hon MICHAEL MISCHIN: I move —

Page 17, after line 24 — To insert —

23A. Section 48A inserted

After section 47B insert:

48A. Order to attend for work and development: cancellation

(1) If —

(a) an order to attend for work and development is issued under section 47 or 47A; and

(b) it is not reasonably practicable to serve the order on the offender personally,

the Registrar may cancel the order to attend for work and development and make or again make a licence suspension order in respect of the offender.

(2) For the purposes of subsection (1), section 43(2) to (9) (but not section 43(4)), with any necessary changes, apply and a licence suspension order may be made even if section 42 has not been complied with.

Inserting new clause 23A into the bill will in effect insert proposed section 48A into the substantive act. This proposed section is to be inserted after section 47B of the principal act. It will provide specific power for the registrar to reimpose a licence suspension order when it is not possible to serve an order to attend a work and development order program. Currently, if there is no response to that and the order cannot be served, the licence suspension cannot be reimposed, so this new clause will correct that situation. Proposed section 48A(2) will ensure that the reimposition of a licence suspension can occur in all the circumstances described in section 43, other than section 43(4), even if the requirements of section 42 of the principal act have not been complied with. It will deal with an anomaly that prevents the reimposition of a licence suspension order if certain circumstances that are intended to occur do not in fact occur.

New clause put and passed.

New clause 23B —

Hon MICHAEL MISCHIN: I move —

Page 17, after line 24 — To insert —

23B. Section 53A inserted

After section 52 insert:

53A. WDO: effect of cancellation

(1) If a WDO is cancelled under section 52, the Registrar may make or again make a licence suspension order in respect of the offender.

(2) For the purposes of subsection (1), section 43(2) to (9) (but not section 43(4)), with any necessary changes, apply and a licence suspension order may be made even if section 42 has not been complied with.

The purpose of new clause 23B is to insert proposed section 53A after section 52 of the principal act. The effect of this is to provide a power for the registrar of the Fines Enforcement Registry to reimpose a licence suspension order when a work and development order to which an offender is subject has been cancelled. Currently there is no such power, so when such an order is cancelled, licence suspension cannot be reimposed as was originally intended.

New clause put and passed.

Clause 24 put and passed.

Clause 25: Part 5A inserted —

Hon SUE ELLERY: Clause 25 inserts a new part 5A. The critical part of that is division 2, which provides for publication of relevant details of persons on the registrar's website. Proposed section 56D(2) of division 2 provides that if, in relation to a person, there are one or more outstanding orders to pay, or outstanding registered fines, the registrar may cause some or all of the relevant details of the person to be published on the registrar's website. Proposed section 56C in division 1 provides that the relevant details of a person are, for an individual, the individual's surname; the individual's given names; the street, and the suburb or town, in which the individual resides; whether there one or more outstanding orders to pay, or outstanding registered fines; and the aggregate amount owed by the individual. For a body corporate the relevant details are the registered name of the body corporate; the street, and the suburb or town, at which the registered office of the body corporate is located; whether there are one or more outstanding fines to be paid; and the aggregate amount owed by the body corporate. This is one of the powers that will be given to the registrar of the courts. We say that it is appropriate that the government do all the things that it currently has the power to do, such as immobilisation of the vehicle, removal of licence plates, or suspension of registration, and even the seizure of assets, to recoup the money that is owed to the government. But we say that giving the sheriff the power to publish the details of the name and address of the person has not been demonstrated anywhere to have any direct link to people paying back the money that they owe.

What the government wants to do is recoup the money that people have flagrantly not been paying. That is the point of this bill. However, the government already has the power to recoup that money by selling the person's assets, for example. Therefore, how will publication of the name and address of the person get the government anywhere? We are told that in this legislation we are dealing with the worst of the worst offenders. I am not sure how the publication of the names and addresses of these persons will have any greater effect on getting them to pay the money that they owe than anything else that the government might do. What will be effective is selling the assets of these people—not the publication of their names and addresses.

This provision may well have unintended consequences for the families and loved ones of the people who are caught up in this. It may also be the case that the people who are named and shamed have been wrongly identified. The problems with provisions that give the sheriff the power to publish the names and addresses of persons on the internet have been canvassed before in this chamber when we have debated other legislation. Material that has been posted once on the internet can be reposted by other persons forever, despite the matter having been resolved or found to be incorrect; it can go on and on.

There is a provision in this bill, which we did not see in previous bills, and which will help mitigate, I guess, the publication of a person's details, that states that in the event that the person has taken out a restraining order, and the sheriff is aware of that, no identifying information about the person can be published. The bill also amends the Equal Opportunity Act to provide that it is an offence for an employer to discriminate against a person who has had their details so published. That is good, but it is not perfect. The laws against discriminating against a person on the grounds of age, gender and pregnancy are in place. However, that kind of discrimination is difficult to prove. So, for those reasons, we will oppose clause 25, because it inserts provisions that we say are not necessary. The government already has the power to achieve the primary objective of the bill, which is to recoup moneys that are owing to the state. The most powerful thing the government can do is sell the person's assets. Publishing a person's name and address on the internet does nothing to get the money back, but it can cause great difficulty for other people who might be living in that house, and it can cause great difficulty if a person is wrongly identified. For those reasons, we will be voting against clause 25.

Hon MICHAEL MISCHIN: It is my understanding that the publication provision is one that has been essentially copied from Tasmania where, I am informed, it worked quite successfully. People who may be prepared to try to dodge the system may not appreciate the fact that they are exposed for having done so and

must accept responsibility for their actions or inactions. If they are concerned about the effect on other members of their household, that is something they need to bear in mind when they choose to avoid the payment of legitimate fines, penalties and infringement notices in excess of the threshold provided by the bill and choose to decline to enter into the several generous means that are provided to fulfil their obligations.

Publication would happen only in the specific circumstances that are prescribed in the bill. They are circumstances in which a fine is registered; at least 28 days have elapsed since the day on which the fine was imposed; the fine, and any enforcement fees have not been paid in full or recovered in full under an enforcement warrant; no time to pay order is in force; no arrangement has been entered into in respect of any enforcement warrant; the person has not completed a work and development order that has been made; no discharge of the liability to pay under section 53(5) of the act has been made; and either the person has not appealed against the fine or the appeal has been disposed of. We are looking, therefore, at someone who has avoided their obligation not only in one instance, but also all the way along the line. I suppose short of imprisoning them, naming and shaming is a fairly innocuous means of going about getting them to appreciate the consequences of their disregard for the authority of the court or for the authorities that have imposed the fine or issued the infringement notice against them. Only a fairly small proportion of people would fulfil those criteria, and in any event we are looking at the worst of the worst of defaulters. It is the government's view that using both stick and carrot is a legitimate means of trying to encourage people to fulfil their obligations to the law and indeed to the solemn orders of the court requiring them to pay fines.

Hon SUE ELLERY: The Attorney General referred to the circumstance in Tasmania. I think the expression he used was that it had worked well there. Can the Attorney General give me some information about how the Tasmanians were able to measure the name-and-shame component of the changes they made to recoup fines that showed it made the system work well?

Hon MICHAEL MISCHIN: I am relying, for part of that assessment, on what was said by my predecessor in the other place in the course of answering an objection similar to that raised by the Leader of the Opposition in this place. It is my understanding that not necessarily just one feature can be said to have worked but rather it is the suite of features that are in play that achieve that end. It is my understanding that our provisions have been modelled on those. I am not aware—I must confess that I have not inquired into it—of any of the adverse consequences that the Leader of the Opposition mentioned. We must agree to disagree, I think, on the philosophical basis of whether this is a legitimate means to try to enforce orders made by courts and other authorities in respect of fines and other monetary penalties. I do not think we will get agreement on that in this place but the government's view is that this is a legitimate means of adding to the suite of measures to try to achieve the end of having a small number of people fulfil the obligations that others are expected to bear, and if they feel embarrassed about it, so be it.

Hon SUE ELLERY: My concern is not whether they are embarrassed about it. I agree with the Attorney General's assessment—he is quite right—that it is the suite of measures that go to recouping the money. The practical measures that have been put in place to recoup the money have made the measures in Tasmania a success. There is no evaluation or research anywhere to show that the name-and-shame component adds any additional money to the pile that is recouped under these new measures.

Hon GIZ WATSON: The Greens (WA) will oppose this clause. I spoke on this matter during the second reading debate. We do not support the publication provisions that this clause will introduce and believe they are unnecessary because the legislation, as amended, already provides a range of other inducements, as Hon Sue Ellery pointed out. Further, we have concerns about a potentially negative impact. We are seeing a trend in the government's legislation. We have seen naming-and-shaming provisions in the Prohibited Behaviour Orders Bill 2010 and the Community Protection (Offender Reporting) Amendment Bill 2011. The Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012 actually goes further than those two bills because it allows the publication of the details of a debtor who has already had a penalty imposed, whose whereabouts are known, and who is not a risk to community safety, at least in relation to this offence. If the motivation for the publication of a debtor's details is the public shaming and humiliation of the individual, certainly shaming a person can be constructive and regenerative and, if carefully managed, can be a useful tool in reducing crime. However, it can also have negative impacts, including stigmatisation and, conversely, the granting of undue high status—a badge of honour—on those who are named and shamed. No evidence has been provided about the likely impact of publication in the context of this bill.

I will not address the comments I made in the second reading debate, but I want to press the Attorney General further regarding what I understood from my briefing on the bill, which was a while ago now, that the bill does not allow a publication to occur if a person is protected by a restraining order. For example, a woman might be hiding from a violent partner. On reading the bill I cannot find any such provision. It does not appear to me to be in proposed section 52D(2) or among the amendments made to the other acts in part 4. Can the Attorney General

indicate where in the bill there is a provision that prevents the publication of the details of a person who is protected by restraining orders?

Hon MICHAEL MISCHIN: Perhaps I can deal with the last aspect first. Proposed section 56D(2) restricts the circumstances under which the registrar can cause relevant details to be published—that is, if he has grounds to suspect the person is a child and that there are orders prohibiting publication and so on. Otherwise, as far as the operation and the efficacy of the provisions are concerned, there was an evaluation, as I understand it, in 1994—a bit before my time in this place—when the Fines, Penalties and Infringement Notices Enforcement Act was passed, and there was an evaluation after three years of its operation. The intention is that the operation of these amendments also be evaluated three years after they come into operation to determine their efficacy; and, in any case, it is the departmental policy that the legislation will apply only to the metropolitan area for the time being, so that there will be some means of convenient evaluation and to tweak the provisions as necessary. Otherwise, I think we get back to the philosophical question—I understand and respect it—that the Greens (WA) prefer to not have a naming-and-shaming provision or a publication provision. The government thinks that is a useful mechanism that will apply in a very, very small proportion of cases, and only when all or most other methods are exhausted and the very restrictive criteria set out in proposed section 56B are satisfied.

Hon GIZ WATSON: I am sorry; could the Attorney General tell me what page proposed section 56D is on? I am just trying to follow whether that is a new section —

Hon Michael Mischin: Page 21 of the bill.

Hon GIZ WATSON: Yes, I have it.

Hon SUE ELLERY: I am not trying to be obtuse, but I am looking at proposed section 56D(2), which the Attorney General says is the provision we ought to rely on to test the proposition that a person who has taken out a violence restraining order is protected from having their details published. If we step through proposed section 56D(2), it states —

> The Registrar must not cause any relevant details of a person to be published under this section if the Registrar has grounds to suspect —
>
> (a) the person is a child;

We can rule that one out —

> or
>
> (b) all of the following conditions are satisfied —
>
> (i) there are one or more outstanding registered fines in relation to the person;
>
> (ii) an order prohibiting the publication of the person's name was made in the proceedings in which any of those outstanding registered fines was imposed;

That is not a violence restraining order proceeding; that is a fine proceeding —

> (iii) the order is in force.

Can the Attorney General step me through how a violence restraining order application pops up in the proceeding in which the fine was imposed?

Hon Michael Mischin: I think I see where you're going, and I am taking advice on that even as we speak. You make a good point.

Hon SUE ELLERY: Yes.

Hon MICHAEL MISCHIN: I have to say that the Leader of the Opposition's question has also perplexed my advisers. Might I suggest, because clause 25 appears, on my assessment, to be a fairly discrete part of the bill and is not affected by other aspects of the bill, we can defer that and I will have this looked into. If there is a deficiency in that area, I will have that addressed posthaste, because it is my view that it concerns the people who are meant to be protected, whether as protected witnesses or as potential victims who are requiring the protection of a violence restraining order and the like, and there is a legitimate issue that needs to be addressed and that protection provided. We can come back to this at the end of the bill.

Hon GIZ WATSON: I will comment on that because I raised it in the first place, and I am glad that Hon Sue Ellery has pointed out the problem with this clause and that it could be rectified. I appreciate that the Attorney General probably wants to defer this clause, but we could insert a new paragraph (a) or (b) that simply says "subject to a restraining order". The Attorney General probably wants time to consider that.

Further consideration of the clause postponed until after consideration of clause 73, on motion by Hon Michael Mischin (Attorney General).

Clause 26: Section 63 amended —

Hon MICHAEL MISCHIN: I move —

Page 23, after line 20 — To insert —

***vehicle licensing law* —**

(a) before the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — means the *Road Traffic Act 1974*; or

(b) after the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — means that Act;

The purpose of the amendment is to insert a definition of vehicle licensing law so that it refers to section 3 of the Road Traffic (Vehicles) Act 2012, when that act comes into operation upon receiving royal assent. This is the insertion of several words in the insertion of vehicle licence law at the appropriate place.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 27 put and passed.

Clause 28: Section 68A amended —

Hon MICHAEL MISCHIN: I move —

Page 25, after line 7 — To insert —

(2) After section 68A(4) insert:

(5A) If the Sheriff cancels an arrangement made under subsection (1) and a licence suspension order is not in force in respect of the debtor and the amount specified in the warrant under section 21A(3) or 45(4), as the case requires, the Registrar may make or again make a licence suspension order in respect of the debtor.

(5B) For the purposes of subsection (5A) —

(a) if the cancelled arrangement related to a warrant issued under section 21A — section 19(2) to (9), with any necessary changes, apply and a licence suspension order may be made without the issue of a further order to pay or elect under section 17 or further notice of intention to enforce under section 18; or

(b) if the cancelled arrangement related to a warrant issued under section 45 — section 43(2) to (9), with any necessary changes, apply and a licence suspension order may be made without the issue of a further notice of intention to enforce under section 42.

This is similar to the amendments contained in new clauses 23A and 23B that were accepted earlier. It proposes to insert a new subsection (5A) into section 68A of the principal act to clarify the existing practice when—should a time-to-pay arrangement be made under section 68A(1) of the principal act fail; in other words, when a person does not pay their agreed instalments under a time-to-pay order—the registrar can reimpose a licence suspension order. Proposed subsection (5B) permits the registrar to do so without having to comply with the requirements of sections 17, 18, 42 and 43 of the principal act.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 29: Section 68B inserted —

Hon PHILIP GARDINER: I refer to clause 29 and proposed section 68B(1)(c) and (d). As we go on from here, what concerns me in the bill are the clauses concerning immobilisation, removing numberplates and causing vehicles to not be able to be used. That causes me particular concern because I think that a host of families may have one person in their household with fines for speeding, for instance, that have accumulated beyond $2 000. That person has a family or partner with children. What is more, they might even live in the country. What is

more, the children or the mother might get sick and someone might have to drive someone somewhere for assistance, sometimes urgently. That causes me to worry, unless I am missing something, about the extremes that this penalty will cause some families.

In late June I sought information from the former Attorney General's office to try to get a breakdown of how these fines are to be applied across socioeconomic areas—the information is not available—or how it might be applied across heritage or, if we like, Aboriginal and non-Aboriginal people. Having had a bit of experience with Aboriginals—although I am sure a lot of non-Aboriginals are in similar circumstances—I know that some of them have incurred a lot of fines. One of my former employees had fines up to $14 000 or $15 000 or $18 000; I cannot remember now, but it was such a huge amount. I could not believe someone could ever get fines of that much. In the end, without any of those draconian measures about which we are now talking, he finally entered into a payment arrangement and got it paid down to a degree, but then he had other people coming in to help him. This was a chap who was not a criminal through stealing things; he just got drunk and drove and all that kind of stuff, and got fined. Now he is an exemplar for his people. My worry is that we will not achieve the objectives by being draconian. I think that is one of the points Hon Max Trenorden made when he made his original speech about this in late June.

I do not have the information about the socioeconomic strata. I do not have the information on Aboriginal versus non-Aboriginal and the relative impact it has. I do have the information about metropolitan and non-metropolitan areas. About 25 per cent of the people who will be affected by this legislation live in country areas. My concerns are not limited to those living in the country, but those people are at the extreme end and would be more seriously affected than people who can walk out the door and catch a train or a bus or whatever if they lose their car or licence or have their wheels clamped. I would like to move an amendment. I move —

> Page 25, lines 19 to 22 — To delete the lines.

There will be other clauses to which this immobilisation and removal of numberplates will apply, but this is the first instance. Really, what we have to make up our minds about as a chamber is whether we are happy to have this immobilisation of vehicles and removal of numberplates so that no-one in a household can drive the car, despite only one element of the household having the high fines, or whether we want to prejudice the whole household, including the children and women who may be in it.

Hon MAX TRENORDEN: While the Attorney General and others are looking at the impact of what Hon Philip Gardiner has moved, I have a few words to say on this; this is the core of my objection to the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012 and the reason I will be voting against it.

I will quote from the second reading speech, and a short part of the explanatory memorandum. The second reading speech states —

> However, we appear to have now reached a point at which licence suspension is, to some extent, reaching the limits of its effectiveness as an enforcement tool.

The next paragraph states —

> Those people who continue to drive while disqualified not only demonstrate a contempt for the sanctions imposed by the law, but also pose a risk to themselves and other road users by driving when they should not be, and while uninsured.

The next paragraph states that the measures —

> … are quite deliberately aimed at the estimated 45 000 people who, firstly, have managed to accumulate over $2 000 worth of infringements and fines; secondly, have disregarded the many warning notices issued by both the prosecuting authority and the Fines Enforcement Registry over a significant period; and thirdly, in all probability, continue to drive their cars in contravention of licence suspension.

Two paragraphs later, the last sentence states —

> … before a person is subject to the new measures, one of which is an aggregate unpaid infringement amount of at least $2 000. Thus the new measures target only serious or recalcitrant offenders.

Proposed section 95E of the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012 relates to the immobilisation of vehicles, and proposed subsection (1) provides that it is an offence for which a penalty of $2 000 applies if a person removes a vehicle that has been immobilised under a warrant without reasonable excuse.

Proposed subsection (2) provides that it is an offence, and a penalty of $2 000 applies if a person interferes or removes a wheel clamp or other immobilisation without reasonable cause. I just say to the people who wrote and worked through this bill: what sort of lunatic do you think I am? The beginning of the second reading speech states that the system is not working, so our way to fix the system is to give us more of the same. We will bring out a clamp and clamp people's wheels and we will take their numberplates away. How will that be any different from the previous provisions? If I pulled up $2 000 in fines, am I going to be concerned about getting an oxyacetylene system and cutting a clamp off my car? Am I going to be concerned about then driving it? No, I am not. I quite agree with the argument that people actually do that, but I think it is an insult to the intelligence of the people of this place to say that those same people will not have the same consequences; that they will not remove the clamp and they will not go and buy another set of plates, which will be freely available from the local hotel. They will be like confetti. But if someone is not prepared to spend the money, they will just use a screwdriver and remove the plates from the car next door and put them on their car. That is a very simple process, and they will drive a vehicle, just like they have being doing for the past X period of time. This proposed section of the bill is an absolute nonsense and I refuse to support it.

The DEPUTY CHAIR (Hon Brian Ellis): Hon Nigel Hallett.

Hon Sue Ellery: Hello!

Hon Kate Doust: He's in the house!

Hon NIGEL HALLETT: It is nice to be in tonight; I heard the bells earlier.

Several members interjected.

The DEPUTY CHAIR: Order, members!

Hon NIGEL HALLETT: Happiness—why don't you have that pill? You will be fine.

Hon Kate Doust interjected.

The DEPUTY CHAIR: Order!

Hon NIGEL HALLETT: I want to put some views across about this proposed section of the bill. I think, with other members, these are the parts that we found did not work and will not work. It is disappointing that the other side did not support us on that for that part of the bill. One instance that stood out to me in recent times was a young chap I know who was driving and was stopped by the police. The officer said, "You haven't got a licence." He said, "What do you mean I haven't got a licence?" The police officer said, "You haven't paid your fines." He said, "I haven't got any fines." His girlfriend at the time had put all the notices in the bin; he did not know because he worked away. Fortunately, he had been stopped by a good policeman who did not impound his car. With this legislation there is no way that we can guarantee that the offender will be notified; it is all "we assume". If we are going to do that, we will put families in jeopardy. People might work away, it could be a single mum, it could be any situation—there is no guarantee. On any morning of the week, if members drive down the highway to Bunbury and see a car that has been left there after dark, they will see that it has no numberplates. Hon Max Trenorden is dead right; if offenders want to drive, they will get the numberplates from another car. This proposed section is complete nonsense and I cannot believe the government is trying to introduce it. However, there are different ways to get the fines paid. In the eastern states there was an amnesty on paying fine money, and over 60 per cent was recouped in three months. Has this part of the bill been thought about? I do not think so. I certainly support that this gets knocked out and that we look at getting something that will work, not this draconian method that we are looking at now.

Hon MICHAEL MISCHIN: There is plainly a lot of feeling about a number of aspects of this. I doubt that anything that I can say will persuade those who have a strong feeling about this to think otherwise. As for the situation that Hon Nigel Hallett mentioned, this young fellow needs to find himself another girlfriend, I think, if she is putting him in jeopardy by throwing his mail away without him having the opportunity to read it. Apart from assumptions, there are a number of stages under the bill and under the act as it currently exists to advise people of their liability. Sure, errors can occur.

Hon Max Trenorden: Mr Deputy President, I am having great difficulty hearing. The microphone is not working. With the Attorney General having his back to us, which is not his fault, we just cannot hear.

Hon MICHAEL MISCHIN: I will try a bit of a pirouette.

As I was saying, in the circumstances related by Hon Nigel Hallett, we cannot help some people having girlfriends who are going to throw their mail away without having had the opportunity to read it and expose them to problems like that. No law will avoid the problem of stupidity or malice. We cannot legislate against that. The act as it currently stands has a variety of means of ensuring that as much as is reasonably possible, without having a police officer go out to each individual person with a piece of paper on each occasion and serving it and

trying to track down people, people are notified of their obligation. Most would know it anyway, particularly those who have been given fines by a court.

As far as infringement notices are concerned, we are not talking about people who have accidentally missed one notice; we are talking about people who have been given several notices and have either ignored them or have knowingly had false addresses in order to avoid receiving correspondence. Furthermore, there is a check in the current bill to ensure that the Fines Enforcement Registry has access to a variety of databases that are probably more accurate than the ones that it possesses at the moment. The government will be taking whatever steps are necessary to ensure that the opportunity to know and be informed of the fact that there is a fine is maximised.

Everyone can come up with an anecdote about where the system fails somewhere. There are provisions in the act by which the example that Hon Nigel Hallett gave of the fellow—legitimately, I assume, rather than just a story—not having received notices because of someone else's stupidity can be corrected. But there are stages that have to be gone through before we even get to the stage of the immobilisation of a vehicle. There are people who have already got their licences suspended. There are people who have not entered into time-to-pay arrangements. There are people who claim not to have received notices that have been sent to them at their addresses. Once access to these other databases is achieved, it would be almost impossible to track them down. Even so, if they can persuade the relevant authorities that they have not received the appropriate notices and that there has been some error, they would be relieved of the action.

Getting back to the question of immobilisation, Hon Phil Gardiner raised the question of people in country areas. As I pointed out, the policy will be that for the first several years, these things will be applied to the metropolitan area in order to determine their efficacy. Apart from that, there is a provision in the bill, proposed section 95C(2), which states —

> A vehicle must not be immobilised under a warrant at a particular place unless the Sheriff is satisfied that immobilising the vehicle at that place will not —
>
> (a) cause the vehicle to be parked in contravention of a written law; or
>
> (b) cause undue inconvenience to persons other than the debtor.

The circumstance that Hon Phil Gardiner has raised of one debtor in a household who is so irresponsible that they want to put the rest of their family's convenience and perhaps amenity at risk will be saved from his or her own irresponsibility by proposed section 95C(2)(b).

Hon Philip Gardiner: Sorry; which page did you say that was on?

Hon MICHAEL MISCHIN: It is on page 28 of the bill.

The government is going to quite considerable lengths to ensure that, as much as reasonably possible, injustices will not occur. If one does happen to occur in a particular instance, relief can be sought, because proposed section 68B(2) states —

> When the Sheriff takes the first enforcement action under a warrant issued under Part 3, the Sheriff must give the debtor a notice explaining that —
>
> (a) the debtor may apply to the Magistrates Court for an order cancelling the warrant; and
>
> (b) the application must be made within …

It then gives a certain time. Proposed section 95D states —

> (1) The Sheriff may at any time remove the immobilisation of a vehicle that has been immobilised under a warrant.
>
> (2) If —
>
> …
>
> (b) the warrant ceases to be in force,
>
> the Sheriff must remove the immobilisation of the vehicle as soon as practicable.

There are considerable discretions in the legislation that can be nuanced to the particular case at hand to relieve the sorts of problems that have been identified by not only Hon Nigel Hallett, but also Hon Philip Gardiner and, obliquely, I suppose, Hon Max Trenorden. The argument that somehow additional measures ought not to be imposed because the last lot of measures have not been foolproof and 100 per cent effective is simply a flawed argument. At one point, as I explained in the second reading speech, debtors would suffer the consequence of being imprisoned in default of payment. That was pre-1994. Now the vast majority of those people pay their fines because of consequences such as licence suspension. Although it does not work in every case, it is a far preferable option to do that than to say that it has not worked in all these cases so let us get rid of the idea of the Fines, Penalties and Infringement Notices Enforcement Act because it has not entirely worked. If we want to go

back to the days of imprisonment, I will listen to that suggestion, but I am not sure that the Minister for Corrective Services would be too keen on a blow-out in his budget, and I am sure that an awful lot of members in this place would not think it appropriate as a first resort. Yes, I expect that people will avoid the consequences from time to time. It is my expectation and the government's expectation, however, that we will see a vastly improved recovery rate for these sorts of fines and infringements. If it does not work, we will know about it within about three years and we can try something else. I would be keen to hear how Hon Max Trenorden might suggest we improve the system, as this does not seem to be such a good idea to him.

Hon MAX TRENORDEN: I will renominate at the election after the next one and come back and argue that point, Attorney General. My point—I am serious about this and I do not think the Attorney General has addressed it—is that those people who have the attitude that they do not mind building up $2 000 worth of fines will not care about another $2 000 worth of fines as a result of either playing around with a numberplate or messing around with a clamp. In due course, the government will have to deal with those people. My argument is that it is a small number. I make the point that the Attorney General is right. If he looks at the record, he will see that I voted for those measures in 1994. I have supported the provisions of the legislation right through until now. I agree that it is best not to send these people to prison, but what about the small number identified in the second reading speech and in provisions of the bill who refuse to comply with the law? When they cut off the clamp or steal someone else's plates and put them on their car, what is the government going to do with them? I can assure the Attorney General that as sure as the sun comes up tomorrow morning, those people will be on his books. What is he going to do with them? I say to the Attorney General that in dealing with those people the bill is a nonsense. They are purse slingers; I do not argue with him about the provisions he has talked about. But I have common sense and enough confidence that those people who are in a difficult position will find a way of arguing their way out of it or of finding some relief. I have concerns about the time factors involved in the regions, particularly deep in the regions, where it is not easy to get access to the right people and get the timings and those things working. I have no doubt that after a period they will work. I accept that, but I have doubts that the people the Attorney General is concerned about now who flout the law time after time and drive without a licence will be stopped once by these provisions. The people who have that disregard for the law will remove the clamp and steal someone else's stolen plates, which will be current until the police catch up with the plate, and that will be the case for a period of time. They will drive with immunity for some weeks. The system will know that and the people who live in this world will understand those factors and will manufacture those plates for their own purposes. After the passage of this bill the position will be no different than it is now with the serious offenders we are trying to affect.

I have not changed my mind, Attorney General. I do not believe the provisions of this bill aimed at serious offenders at the top end will change their behaviour one iota. Those people who sell oxyacetylene sets will do well and the people who sell the plates at the local pub will do all right. But in the next period, hopefully, the Attorney General will still be in office, and he will have to come back with this, but I suspect the Attorney General after him will have to come back with a set of provisions that will not work either. We need to bite the bullet and put these people back in jail or do something of a serious nature or they will keep on thumbing their noses at us.

Hon PHILIP GARDINER: I have the feeling that the Attorney General has started with the premise that the people not paying fines are largely self-made people who can deal with reality and have sufficient education to understand how to deal with the law in a way that assists them, who can understand some of the consequences and who know how to go about it. I am sure there are some among these 394 000 parties who are just like that. But I can tell the Attorney General, I bet they are in the minority. The thing is, the Attorney General does not have the numbers; he does not have the data; and he has not made any investigation to find out what section of the community he is dealing with. He is making assumptions and framing a law that he thinks will make a difference when he does not know who the population is that we are trying to deal with. All we know is that they do not pay their fines; we do not know any more than that, except that we have some categories of the offence grouping.

It is very difficult to extrapolate from this, but in the category of speed-related fines that are not paid, 80 per cent are recidivists. In the category of licence-related fines, 110 per cent are recidivists. To my mind, that suggests—this is tenuous in itself—that people on low incomes are more likely not to pay their fines than people on higher incomes. But we are referring to data when we do not know the population characteristics. The minister is starting from the point that most of these people are educated and know how to handle the law and deal with it to their advantage and are able to protect themselves. I am starting from the point that most of these people do not have a clue about which step to put in front of the other with regard to these procedures. The minister, with his background, should surely have seen that. I have seen it, and the minister has seen much more of it than I have seen, so he must realise that he is often dealing with people, especially in low socioeconomic areas, who just do not know what to do. They have given up, which is back to what Hon Max Trenorden is suggesting. They give

up because they have been hit this way and that way; they think it is an injustice. Our behaviour is rational to ourselves—we all know that—and these people have given up.

I can see how the minister has tried to build in some protection in the bill—I acknowledge that—and gives discretion to the sheriff. But we also give discretion to the police in areas, especially in the area of traffic where they have mandatory responsibilities. We have only one chance of arguing with police officers when we receive a traffic infringement notice and that is on the kerbside. If the police are wrong, people cannot get out of it when they go to a Magistrates Court. We are giving sheriffs a great deal of discretion. I would love to be able to trust that discretion, too, because they are in a service industry, but it is a service industry with a hard twist; that is, it also has a regulatory function, and I understand the difficulties of that arrangement. I am concerned about provisions of the kind we are talking about. Those draconian measures are too big a risk to particular families, and therefore I think they should be removed from this bill.

Amendment put and a division taken, the Deputy Chair (Hon Brian Ellis) casting his vote with the noes, with the following result —

Ayes (5)

Hon Philip Gardiner	Hon Max Trenorden	Hon Alison Xamon *(Teller)*
Hon Lynn MacLaren	Hon Giz Watson	

Noes (25)

Hon Liz Behjat	Hon Kate Doust	Hon Nick Goiran	Hon Simon O'Brien
Hon Matt Benson-Lidholm	Hon Wendy Duncan	Hon Nigel Hallett	Hon Sally Talbot
Hon Helen Bullock	Hon Sue Ellery	Hon Alyssa Hayden	Hon Ken Travers
Hon Jim Chown	Hon Brian Ellis	Hon Col Holt	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Donna Faragher	Hon Michael Mischin	
Hon Mia Davies	Hon Adele Farina	Hon Norman Moore	
Hon Ed Dermer	Hon Jon Ford	Hon Helen Morton	

Amendment thus negatived.

Hon PHILIP GARDINER: I do not know whether this is quite the right time, but there are subsequent clauses that concern the same issues about immobilisation of vehicles, removal of numberplates, and preventing vehicles from being used by households. But given the view that I saw, where members took that significant divide on this amendment, I am afraid I do not see any point in moving the further amendments that I have proposed.

Several members interjected.

Hon PHILIP GARDINER: It makes a statement, but what is the statement worth? The government needs to have a change of heart.

Clause put and passed.

Clauses 30 and 31 put and passed.

Clause 32: Part 7 Division 6A inserted —

Hon MICHAEL MISCHIN: The purpose of the two amendments to clause 32 standing in my name on the supplementary notice paper at serials 5/32 and 6/32 is to substitute references to the Road Traffic Act 1974 with the phrase "a vehicle licensing law", as has been defined by the amendment to clause 26, to reflect the changes in the law occasioned by the passage of the Road Traffic (Vehicles) Act 2012. I move —

Page 32, lines 18 and 19 — To delete "the *Road Traffic Act 1974*," and insert —

a vehicle licensing law,

age 35, lines 21 and 22 — To delete "the *Road Traffic Act 1974*," and insert —

a vehicle licensing law,

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 33 to 35 put and passed.

Clause 36: Section 101C amended —

Hon MICHAEL MISCHIN: I move —

Page 42, lines 11 to 28 — To delete the lines and insert —

36. **Section 101C amended**

(1) In section 101C(1)(d) and (e) after "issued" insert —

by the Registrar

(2) After section 101C(1) insert:

(2A) Evidence —

(a) that a vehicle licence suspension order was made under section 95G or a vehicle licence cancellation order was made under section 95J;

(b) of the details of a vehicle licence suspension order made under section 95G, or a vehicle licence cancellation order made under section 95J, and of the matter to which it relates;

(c) that a vehicle licence suspension order made under section 95G had not, at a particular time, been cancelled;

(d) that a vehicle licence cancellation order made under section 95J had not, at a particular time, been cancelled to the extent that the order would disqualify a person from holding or obtaining a vehicle licence;

(e) that a document issued by the Sheriff under this Act has been served on a person in accordance with section 5;

(f) of any matter relevant to the service of a document issued by the Sheriff under this Act,

may be given by tendering a certificate to that effect in the prescribed form signed by the Sheriff.

(3) After section 101C(3) insert —

(4) Unless the contrary is proved, it is to be presumed that a certificate purporting to have been signed by the Sheriff was signed by a person who at the time was the Sheriff.

This amendment to clause 36 to amend section 101C of the principal act refers to sections 95G and 95J, which upon the passage of this bill will have the effect of clarifying that the sheriff can sign evidentiary certificates that fall under the sheriff's powers.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 37 and 38 put and passed.

Clause 39: Section 108 amended —

Hon SUE ELLERY: This clause inserts a new section 108(8) to allow the fee charged for enforcing the law to be over and above the cost recovery amount of certain fees. We say that is unnecessary, wrong and unlimited. Although a provision currently exists to charge a fee, proposed section 108(8) will allow the amount of that fee to be over and above the estimate or the actual cost of recovering the moneys owed. The bill will allow and provide for mechanisms whereby the moneys owed can be repaid, and a fee can be charged for the cost of executing the recovery of the moneys owed; and, more than that, that fee has no cap and does not have to be related to or limited by the actual cost of recouping the amount owed. We say that that is unnecessary and is nothing but flat out revenue raising. It is not hypothecated and the money raised over and above cost recovery will not be spent on an education campaign to remind people of the consequences of not paying their fines. The money is not tied to anything; it is just a way for the government to increase revenue, and we think that is unreasonable.

Hon MICHAEL MISCHIN: There are a couple of components to clause 39. Subclauses (1) and (2) merely supplement section 108(3) by permitting regulations to be passed that will prescribe enforcement fees in connection with proceedings under part 3 of the principal act and provide for the new recovery procedures that are set out in the bill. Those subclauses fall into a somewhat different category from the one about which the Leader of the Opposition has expressed some concern. I think the provision she is particularly concerned about is

subclause (3), which prescribes that the amount of an enforcement fee prescribed under this section may be more than the amount, or an estimate of the amount, needed to allow the recovery of expenditure incurred in connection with the matter to which the enforcement fee is imposed or that is relevant to the scheme or system under which the enforcement fee is imposed, and that it provides for an exception in proposed subsection 108(9). As I have explained, that provision regularises what has been the situation since about 2008 whereby it is necessary to prescribe enforcement fees that may be over and above the actual cost of the service to enable modified penalties and the like to encourage people to pay on time and pay the full amount. Without that provision, we will end up with the sorts of arguments that dogged the act back in 2007 and have caused the problem that needs to be rectified by not only the passage of these amendments in this particular form, but also the taxation bill that we dealt with a while ago.

Progress reported and leave granted to sit again, pursuant to standing orders.