

CRIMINAL CODE AMENDMENT (INFRINGEMENT NOTICES) BILL 2010

Second Reading

Resumed from 21 October.

DR A.D. BUTI (Armadale) [4.58 pm]: In many respects we applaud the purpose of the Criminal Code Amendment (Infringement Notices) Bill 2010. Indeed, we applaud anything that can be done to reduce the number of people who are incarcerated. In many respects it is surprising that that is what the bill attempts to do. The bill also seeks to reduce the need to use the judicial system. In other law and order avenues that the government is pursuing, there is an increased chance of a person being incarcerated.

It makes sense that the police be given an opportunity to decide whether to impose on-the-spot fines for minor infringements rather than proceed through the judicial system, which may be expensive and may take a long time. Under the proposed amendments, the relevant offences are disorderly behaviour in public, stealing when the value of the goods is less than \$500 and trespassers refusing to give their name or address or giving a false name and address. That is sensible.

Proposed section 721(3)(b) refers to prescribed classes of persons to whom an infringement notice cannot be issued. The explanatory memorandum states that one of the prescribed classes of people is a person under 17 years of age. It reads —

Regulations will be able to be made to prescribe classes of persons to whom an infringement notice cannot be issued, for example a person under 17 years of age.

I am not sure why that is the case.

Mr R.F. Johnson: As I understand it, existing laws prohibit an infringement notice from being given to a person under 17 years of age.

Dr A.D. BUTI: I am not sure whether that is something the minister might want to think about. The amendments are laudable in many aspects. I would have thought it would be advantageous for infringement notices to apply to people aged under 17.

Mr R.F. Johnson: I support your view, but I was advised that under other laws in place, they cannot apply to people under 17. I will get a full explanation for that.

Dr A.D. BUTI: I thank the minister. Although I am supportive of the general intention of this bill, a couple of negative consequences could develop. Reference has been made to these amendments giving the police the flexibility to decide how they can proceed. It is good to give the police flexibility. But we must be careful when giving police the ability to decide whether they will issue an infringement notice or take the judicial route to not make their task too onerous. If people expect to receive an infringement notice for stealing goods worth \$500 or less, will that be a deterrent? Could it send the wrong message? However, having said that, I applaud anything we can do to reduce the numbers going through the court system. That is a possible consequence the minister may want to think about. The other issue is that the police may not necessarily pursue a matter if they think an infringement notice will involve too much paperwork, or if they feel that the court system will be the appropriate way to proceed.

While the general thrust of the bill is appropriate, and I have noted what the minister said about youths aged 17 years and under, I am still not clear why they are among persons to whom an infringement notice cannot be issued. As the minister said, he will clear that up at a later stage, which I appreciate. The issue about police flexibility is good in one respect, but one has to ask whether the demands being placed on the police might be onerous and therefore result in the need to increase resources. If the police are to become, in some respects, mini judicial officers in deciding whether they will give an infringement notice or proceed under the normal system, it may increase the demands placed on them and therefore have resource implications such as the need to increase the number of police on the beat. The minister indicated that the idea is to free police from administrative tasks so that they can be on the front line. I think we all agree that the police should be visible. We can have all the tough laws we want in this world, but if people cannot see the police, a law is not so much of a deterrent. I therefore encourage the minister to look at the resourcing of police and police numbers if this bill is to pass and become law.

MR R.F. JOHNSON (Hillarys — Minister for Police) [5.06 pm] — in reply: First of all, I thank members for their contributions. I will get an answer for the member for Armadale. I cannot think off the top of my head why persons to whom an infringement notice cannot be issued include under 17-year-olds. I think it is because that sort of provision is in existing laws. It is probably to do with vehicles. A person over 17 years who has a driver's licence and commits a traffic offence can receive an infringement notice, but I do not believe that is the case with people under 17.

Dr A.D. Buti: It may be that a person under 17 years will not know whether to contest the infringement notice.

Mr R.F. JOHNSON: That could be the case, but I will provide an accurate answer later. I believe the member for Armadale is a lawyer; I am not, so I very often defer to members such as the member for Armadale for a legal opinion.

Ms M.M. Quirk: I think that says volumes about the clarity of the legislation.

Mr R.F. JOHNSON: The legislation is devised by very competent lawyers, as the member for Girrawheen will be well aware. We will certainly get the responses on that issue.

I will briefly answer some of the issues which members raised and which I have been made aware of. In relation to the review of the legislation, WA Police is committed to conducting a review of the criminal penalty infringement notice legislation at the 12-month mark.

Ms M.M. Quirk: Are you agreeing to our amendment, minister; is that what you are saying?

Mr R.F. JOHNSON: WA Police will do that as a matter of course.

Ms M.M. Quirk: It is not in the legislation; they don't have to.

Mr R.F. JOHNSON: I am telling the member that WA Police will. The review will include a statistical analysis of the operation of CPINs. It will look at how the new CPIN scheme has been operating—whether any problems have arisen with it and its possible expansion for other offences.

Ms M.M. Quirk: What is the problem with it being in the legislation, then, minister?

Mr R.F. JOHNSON: It is not necessary.

Ms M.M. Quirk: We think it is.

Mr R.F. JOHNSON: It is not necessary. We will deal with the member's amendments during consideration in detail. I am answering in general terms the comments I believe the member for Girrawheen made in particular.

The member asked about the use of fingerprints and palm prints against the database. The bill will enable police officers to take a person's identifying particulars to confirm that person's identity when issuing a CPIN, as would be the case if the person had been charged with the offence rather than being issued with a CPIN. The person's identifying particulars may be compared with other information, whether or not in a forensic database, as soon as they are obtained. If identifying particulars were taken when a person was charged with the offence rather than being issued with a CPIN, that person would not be able to request his particulars be removed from the database unless that person were subsequently found not guilty. Does the member for Girrawheen agree with that?

Ms M.M. Quirk: Yes, but when they are issued with a CPIN and pay on time, they have to formally request that those identifying particulars be removed.

Mr R.F. JOHNSON: I will get some advice on that once we go into consideration in detail. I believe that is the case under this legislation. In comparison, once a person has paid the modified penalty associated with the CPIN, the person can request that his particulars be destroyed. He can request that and I suggest it will happen. In New South Wales, only a very small percentage of identifying particulars were taken—approximately 32 per cent—of the persons for whom a criminal infringement notice was issued. The ombudsman's report of April 2005 stated that there was little need to take fingerprints, as police found that, when they were satisfied with the identity of the offender, further verification was of little consequence. When an identity was an issue, a CPIN was perceived as inappropriate and the offender was usually arrested and brought into the police station where other legal processes were adopted. That is what has happened there.

The next question, which I think must have come from the member for Girrawheen, was about a CPIN forming part of a person's criminal history. The answer is: paying the modified penalty of the CPIN is not an admission of guilt and therefore will not form part of the person's criminal history. I suggest that is a good thing for many people, particularly young people over the age of 17, but under the age of perhaps 22 or 23. On the issue of consideration of hardship—internal review of issuing a CPIN, which issue the member for Girrawheen raised, CPINs provide a further option that police officers may use to deal with minor criminal matters rather than summons or arrest. CPIN recipients will have access to an adjudication process, and it will be possible for a CPIN to be withdrawn by a commissioned officer. I think there are some safeguards there. However, should a CPIN remain unpaid, this will be managed by the Fines Enforcement Registry. The Fines, Penalties and Infringement Notices Enforcement Act 1994 provides for cases of hardship to be considered by the registrar.

The member for Girrawheen also asked about police officer discretion. Police officers undergo rigorous training in the use of police discretion. The introduction of CPINs will have several safeguards, and police officers will

receive training and guidance on the use of discretion to use a CPIN. For example, WA police will develop regulations and operational guidelines to assist police officers in the use of their discretion. CPINs will undergo a phased rollout in both regional and metropolitan WA, and will be subject to ongoing evaluation and data monitoring during this time. Training for front-line officers, supervisors and staff support will be provided. As with all police business, CPINs will be subject to quality assurance, adjudication and complaint investigation.

I just pick up the other issue that the member for Armadale raised, other than the under-17s. He questioned whether this legislation was better for police. I can assure him that this is what the police want. They do not want to spend the time taking an offender from, say, a shopping centre back to the police station, going through all the formal charging of that person and then having to get the case heard before a court. They might go to court, as the member for Armadale would know, and spend half the day there, which is a waste of police time. This legislation is better for police and it is better for the offender. I think the offenders would prefer to simply cop it sweet, pay a fine, not spend all that time in court and not attract a criminal record in that instance. Is it better for police? Is it better for the offender? I think it is. I think everybody is a winner here.

The member for Armadale asked whether the penalty for property stolen and valued under \$500 would encourage the recidivist criminal to keep nicking stuff valued under \$500. I know it would not, because there are not that many chances given with the CPIN system. I think there are two or three chances given at the most, and after that the offender would be formally charged. This legislation is designed to try to give younger people aged over 17—first offenders; even perhaps second offenders—a short, sharp lesson that what they are doing is not right and they should not be doing it. That is when the CPINs would come to the fore.

The member for Armadale questioned whether there were resource implications. I have to tell him that this legislation is much better for police resourcing than the present system because of the time that will be saved. We are putting on, as the member has said, 500 extra police officers in our first five years of government and we are on track in doing that. There will be more police officers going out there doing front-line service, and I would prefer them doing that, as I am sure most members would, rather than wasting time taking offenders back to the station, going to court, and sometimes spending up to a day in court; and, if the offender does not turn up, the police might even have to go back to court again. Therefore, there is a lot of time saved; it is far better for resourcing. I think that probably answers most of the member for Armadale's questions. Once again, I thank him for what I think is his support for this bill; I think he is probably going to support it.

I know that the member for Girrawheen has some amendments on the notice paper, which I have to say, although they are commendable, are superfluous because a lot of the —

Ms M.M. Quirk: It is all right, I am happy for the bill to go to the committee upstairs to be reconsidered.

Mr R.F. JOHNSON: I am sure it probably will.

Ms M.M. Quirk: The minister has not learned his lesson.

Mr R.F. JOHNSON: There is not a lesson to learn, member for Girrawheen. I am just trying to see where the member has the amendments on the notice paper. I will find them by the time we get into consideration in detail. But I thank the member for Girrawheen for her cooperation; I appreciate it. Obviously, we would like this bill to get through both houses of Parliament, if it could, so that this particular option can be put in place. I think it will do a lot of people a lot of good.

The ACTING SPEAKER (Mr P.B. Watson): Yes, minister?

Mr R.F. JOHNSON: I beg your pardon; my good friend the Deputy Clerk has just given me a note of the amendments. He has found them for me, which was very quick. We will deal with this in consideration in detail when the member for Girrawheen moves her amendments. I thank the member for Girrawheen and the member for Armadale for their contributions.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Ms M.M. QUIRK: I would like to query the Minister for Police about why it was—I raised this in the second reading debate—that the second incarnation of the New South Wales legislation was not adopted. In other words, why were some of the modifications that improved the bill not enacted in this legislation to ensure that it would operate more efficiently and effectively and that some of the problems that had been found in New South Wales would not also occur here?

The ACTING SPEAKER: Member, you have to relate this to the short title of the bill.

Ms M.M. QUIRK: This relates to the use of the term “infringement notices” in the short title; I think that this should be the “infringement notices not paid a lot of the time act 2010”!

Mr R.F. JOHNSON: I know it is that time of the day when a bit of humour is creeping in and obviously the member wants a bit of humour in the short title of the bill. I have been there and I have done that!

Ms M.M. Quirk: It is a serious question, minister.

Mr R.F. JOHNSON: Then the member should put it in a serious way.

Ms M.M. Quirk: I did and the Acting Speaker —

Mr R.F. JOHNSON: I would advise the member not to canvass the Acting Speaker!

The ACTING SPEAKER: Be very, very careful!

Mr R.F. JOHNSON: Very careful! I am.

In relation to what the member for Girrawheen said, as I understand it, New South Wales had a trial initially and has had the legislation in place for three years. I think that I am right in saying that this legislation would be a trial for us to some extent; that is why we are going to review it after a year. We will carry out a review after a year. We do not need to put it in the legislation. I can assure the member that we will carry out the review.

Ms M.M. Quirk: It should be in the legislation.

Mr R.F. JOHNSON: The member may think so, but I do not think that it needs to be because what we are offering here is something that is better than what is already in place. There is no question about that. If the member for Girrawheen would sooner vote against this legislation, and she would sooner have people charged in the normal way, go to court, get a longer criminal record, possibly go to jail —

Ms M.M. Quirk: You are a slow learner, minister. It is about transparency. What have you got to hide about this issue?

Mr R.F. JOHNSON: I have nothing to hide. The member should not be so grumpy!

Ms M.M. Quirk: Okay; let us get on with it.

Mr R.F. JOHNSON: I hope that that answers the member for Girrawheen’s question.

Clause put and passed.

Clause 2: Commencement —

Ms M.M. QUIRK: This relates to the commencement of this legislation. The Minister for Police said earlier that there would be a phased rollout, subject to the ongoing evaluation, that there would be training of officers and that it would be done on a pilot basis. Can the minister give me a time frame for all those events to occur?

Mr R.F. JOHNSON: The time frame will be as soon as we get this legislation through Parliament and get it proclaimed. WA Police will then start implementing that phased rollout. As I understand it, it will initially be done predominantly in the metropolitan area, but we will then roll it out in some country districts as well. We are not going to try to cover the whole of WA in one day. It is important that we do this properly for everybody’s sake, and that is what I meant by saying what I said. We will evaluate as we go along; the police will be doing that on an ongoing basis.

Ms M.M. Quirk: Training was the other thing I mentioned, minister. Will that be done before the phased rollout, or during?

Mr R.F. JOHNSON: The answer to that is yes.

Ms M.M. Quirk: How will that be accommodated?

Mr R.F. JOHNSON: It will be done through the academy, and what is known as the blackboard, if the member knows what that is. It is the intranet site that provides information to officers.

Ms M.M. Quirk: How long will it be before it is prepared and ready to be actually used?

Mr R.F. JOHNSON: Nobody does anything until the legislation has passed.

Ms M.M. Quirk: Minister, this is: how long is a piece of string?

Mr R.F. JOHNSON: No, it is not. Do not get grumpy, please; I have been trying to be good to the member today! I am telling the member that the police will not do anything on this until the legislation has gone through.

Once the legislation has passed, they will have a clear case and will know what they have to do, and they will implement that.

Ms M.M. Quirk: Once the legislation gets through, you'll put out a press release, and then at some indeterminate time in the future you might actually start using the legislation. Do you think you're putting the cart before the horse?

Mr R.F. JOHNSON: Do not start talking to me about press releases; the member is a habitual press release releaser! The member really is!

The ACTING SPEAKER (Mr P.B. Watson): Minister, can we get back to the clause, please?

Mr R.F. JOHNSON: Exactly! I think the member for Girrawheen is being a little facetious; she is obviously in a hurry to get out somewhere tonight!

Ms M.M. Quirk: I have exercised restraint today, minister!

Mr R.F. JOHNSON: I am sure the member has!

I hope that has answered the member for Girrawheen's question. It will be done in a most professional and stable way through the academy and through the blackboard site. Once the Commissioner of Police is happy that people have received the information and training through those two avenues, that is obviously when they will start implementing this part of the legislation. It is hoped that the training will start in the first half of 2011—so, hopefully within the next six months. I hope that the Criminal Code Amendment (Infringement Notices) Bill 2010 will go through Parliament quickly, and then within about six months is the time police are aiming for for implementation.

Ms M.M. QUIRK: Minister, has any assessment been done on the cost of the implementation of this legislation? We have heard on many occasions in this place, and in other places, that, for example, each time legislation comes in, the police need to change the information technology systems they have in place. I want to know whether that has been costed. I know that it is expected that, ultimately, there will be savings elsewhere—for example, within the court system and through the fact that police officers will no longer be required to attend court and expend lots of overtime and other salary time waiting around to get on in court. What cost assessment has been done of the costs of, for example, training and IT modifications, and any other issues that relate to the implementation of this legislation?

Mr R.F. JOHNSON: The training is all part of an ongoing situation with police; they add to their training regime at the police academy and they add to the blackboard on a daily or weekly basis—we are not quite sure which, but I think it is certainly done on a regular basis. There will be some costs but they are basically to do with the upgrade of some IT so that it can deal with this measure. There will not be a separate budget allocation for that to occur; it will be found within the existing police resources budget allocation.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Chapter LXXIII inserted —

Ms M.M. QUIRK: Minister, clause 4 provides for regulations to allow infringement notices to be issued for Criminal Code offences. The minister's press release and second reading speech stated the kinds of offences that he contemplated would be dealt with under this regime. Can the minister clarify whether it will be possible, for example, to add additional offences by way of regulations?

Mr R.F. Johnson: Yes.

Ms M.M. QUIRK: Will they not be subject to the scrutiny of this Parliament?

Mr R.F. Johnson: All regulations can be disallowed.

Ms M.M. QUIRK: I refer to other than the disallowance through the delegated legislation committee.

Mr R.F. Johnson: That is the scrutiny of Parliament, as it is with so much other legislation.

Ms M.M. QUIRK: It is not the same level of scrutiny. The other thing I wanted to ask in that context was, presumably, refusal to give name and address is not one that could be subject to this regime by its nature?

Mr R.F. Johnson: I am advised that the answer is no.

Ms M.M. QUIRK: Given that that is, if the minister likes, a nuisance offence, it is an offence that a lot of people end up in the lockup for. Given that identifying material is taken, is it not possible to issue an infringement notice for that offence?

Mr R.F. JOHNSON: I am advised that it is not something covered by this legislation. I am also advised that it is not a Criminal Code offence, but of course if somebody refuses to give their name and address and they are in the process of committing some sort of antisocial act, criminal act or whatever, they can be arrested and taken to the police station, where the police would have a better case for establishing the identity of that person. But it is not covered in this bill.

Ms M.M. Quirk: Is that because it is not a code offence?

Mr R.F. JOHNSON: Yes.

Ms M.M. Quirk: Was it considered?

Mr R.F. JOHNSON: No. It could be considered at a later stage, but it has not been considered at this stage.

Dr J.M. WOOLLARD: Clause 4 states that the Governor may make regulations under this code under the Criminal Procedure Act. During the second reading debate, when we looked at part 2 of the Criminal Procedure Act that deals with alleged offenders without prosecuting them, we saw that the act only provides for monetary penalties. During the second reading debate we had some discussion about other forms of penalties, and during her contribution the member for Girrawheen stated that monetary penalties could have severe repercussions on some people. I have not had the opportunity to look at the criminal procedure acts of other states and territories, but I was wondering whether other criminal procedure acts consider dealing with alleged offenders without prosecuting them, and whether the minister is able to inform the house whether there could be penalties other than monetary penalties imposed on alleged offenders. For example, do any of the other states or territories impose community work orders? I think that a community work order would cause less hardship for some people and their families than having to pay an amount of money. I support this bill and what the minister wants to do, but I wonder whether there could be some flexibility to consider other forms of penalties. Minister, it does not have to be done here and now; I would be quite happy if the minister gave a commitment to consider this between the transmission of the bill from this house to the upper house as I think it could be an alternative. As has been the case when we have looked at other legislation, if people receive community work order penalties, they have all the support services there, minister, and the reason they committed the crime might be picked up. Rather than their just paying the fine and then going on to become a repeat offender, maybe that could be an opportunity to get in there and work with that person and get him on the straight and narrow if that person has not been on the straight and narrow. Have the police looked at other penalties? Would the Minister for Police be willing to look at this before the Criminal Code Amendment (Infringement Notices) Bill 2010 goes to the upper house, to see whether there are forms of penalties other than prosecution that could be used?

Mr R.F. JOHNSON: It could not be done under this bill. Under this bill, the police have two options: one is to issue an infringement notice, which is a monetary fine; or they could charge the person, and the person would then have to appear in court. If they charge the person, the person appears in court, and the court finds the person guilty, the court can decide whether to issue a monetary penalty or to give the person a community-based work order. That is an option for the court, but the member has gone a long way down the track; she has gone through all these processes to the court, and I question whether she really wants people to be put through the mill to get to that stage. The government believes, and certainly I believe, that for relatively minor criminal offences such as stealing goods worth less than \$500 and disorderly conduct, it is much more appropriate to issue an infringement notice so the person will have to pay a fine for bad or criminal behaviour, and that will be a short, sharp lesson. It will save the police an awful lot of time and an awful lot of court time, and it will save the person from going to court. A repeat offender who is charged and taken to court could go to jail.

Dr J.M. Woollard: You were just saying that for a repeat offender, a community work order would be an option for the court, rather than sending the offender to jail.

Mr R.F. JOHNSON: The court could also give the offender a community work order rather than a monetary penalty in the form of a fine. That is a decision for the court, but the offender would incur a criminal record, as I understand it. If an offender appears before the court, it will be a criminal charge that will go onto the offender's record, and I do not think that that would be great for offenders, particularly young offenders. We are trying to do something here that will hopefully steer some of the younger people away from that path, and by that I mean —

Dr J.M. Woollard: Give them a first chance.

Mr R.F. JOHNSON: Yes, or a second or even third chance. There is no set criteria for how many chances they get. If an offender commits another offence while committing offences that come under this legislation, an infringement notice would not be issued. The offender would not be charged for a certain number of offences. I would suggest that if the offender bashes someone up and steals something worth less than \$500, the offender would almost certainly be charged with assault and stealing, and that would not be subject to an infringement

notice; certainly not. That would be a chargeable offence and the offender would go through the normal processes. This is for relatively minor offences.

Dr J.M. Woollard: Thank you, minister. That clarifies my concerns.

Ms M.M. QUIRK: I move —

Page 4, after line 3 — To insert —

723. Annual statistics to be tabled in Parliament

As soon as is practicable after the end of each financial year that this Chapter is in operation, the Minister shall cause to be tabled in each House of Parliament the following statistics with respect to the operation of this Chapter for the financial year:

- (a) the offences for which infringement notices were issued;
- (b) the total number of infringement notices issued;
- (c) the number of infringement notices for which fines were paid;
- (d) the number of infringement notices challenged in court; and
- (e) the number of infringement notices for which fines remained unpaid.

724. Review of Chapter

- (1) The Minister shall carry out a review of the operation of this Chapter as soon as is practicable after this Chapter has been in force for three calendar years.
- (2) The Minister shall prepare a report based on his or her review of this Chapter and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

I think this is self-explanatory. I said in my contribution to the second reading debate that, given what the minister has said about the various statistics and details the police will be collecting as a matter of course, I could not see how this amendment could present a problem. If the minister would prefer, perhaps the Corruption and Crime Commission could have oversight of this matter; I know how well that would go down with the police.

Real problems have been raised in New South Wales about certain aspects of the operation of its act; this is, in fact, in the original form of that act. It does not have the modifications that closed some of the loopholes. It seems to me to be very sound and prudent to have mechanisms through which we can find out how the legislation is operating. Similarly, at the end of three years, which I think is a not unreasonable time, the minister could, as the Ombudsman has done on two occasions in New South Wales, appoint someone of his own choosing to review how the legislation is operating. It may well be that the review finds that the legislation is going fantastically well and recommends expanding the number of offences that come within the scheme. The minister assumes that this is all about collecting negative information to justify a finding that this legislation is not warranted. However, it is more about information and the issues that I have raised earlier.

The fact is that in New South Wales a disproportionate number of marginalised people, including Aboriginal offenders, homeless people, and people with mental illnesses, are being caught under this scheme, and that is undesirable. This will make it necessary to prove that those who are given these infringement notices have the ability to pay; to determine whether there has been net widening; to determine whether the number of cautions that have been issued have decreased because of the scheme; to see whether the Fines Enforcement Registry will have more people on its books because of the legislation; to determine whether people are being informed of their right to have identification material, such as fingerprints and DNA material, expunged from the record; and to determine whether criminal penalty infringement notices have been used illegitimately in criminal histories and presented in courts, as has happened in New South Wales. It would be great to be able to look at all those things in the context of a review. I think it has made the legislation in New South Wales better and I really do not at all understand why the minister has issues with this.

Mr R.F. JOHNSON: I am sure that the member has a copy of the New South Wales Ombudsman's report.

Ms M.M. Quirk: Is that the second one you're going to read? Is it 2009 or 2005?

Mr R.F. JOHNSON: This is the first. It is 2005.

Ms M.M. Quirk: Yes, it is the first report. Then they made some improvements, and the 2009 report is the second report, which relates to Aboriginal offenders, which the Ombudsman found was okay, after they had made those improvements. Read the first report.

Mr R.F. JOHNSON: I am talking about the first report, from 2005. The Ombudsman concluded that —

The CINs trial has largely been successful —

Ms M.M. Quirk: “Largely”?

Mr R.F. JOHNSON: It is better than slightly.

Ms M.M. Quirk: Keep reading. It would be better if you read the whole report.

Mr R.F. JOHNSON: It states —

The CINs trial has largely been successful in providing police with a further option to deal with minor offences in a simple and timely fashion. This has been achieved without denying the recipient the opportunity to elect that a court determine the matter.

The trial has identified a number of legislative and procedural issues for consideration by Parliament and relevant agencies. We recommend that these be acted upon prior to any further rollout of the CINs scheme.

They were acted upon, and we will learn from any issues that came to the fore in New South Wales.

Ms M.M. Quirk: How?

Mr R.F. JOHNSON: Because the police will be aware —

Ms M.M. Quirk: You will learn, and the police will learn, but we in this chamber will not learn, because there will be no mechanism to table this information and no mechanism to review it.

Mr R.F. JOHNSON: Of course there will.

Ms M.M. Quirk: You are saying “we will learn”, when you mean you will learn, if you’re still the minister.

Mr R.F. JOHNSON: Hopefully I should be the minister; I think I will be, but one never knows in this world.

Ms M.M. Quirk: It is getting dangerous on those school crossings, minister!

Mr R.F. JOHNSON: When I say “we”, I mean the police and me as the minister overseeing it. The police will obviously take into account any problems that they have had in New South Wales because —

Ms M.M. Quirk: We already know what they are. Why do we not incorporate it in this legislation?

Mr R.F. JOHNSON: You’re getting grumpy again! That is why —

Ms M.M. Quirk: I am absolutely amazed.

Mr R.F. JOHNSON: Listen to what I have to say. The member has not even heard what I have said. She cannot resist interjecting on me, I know that. I have that effect on her! Police will have learnt a lot from what has happened in New South Wales. They will ensure that those same mistakes will not happen in WA, in my view, because they have had the benefit of seeing what has happened. I have more faith in the police than perhaps the member has. We are now talking about the member for Girrawheen’s amendment. The first part of the member’s amendment reads —

As soon as is practicable after the end of each financial year that this Chapter is in operation, the Minister shall cause to be tabled in each House of Parliament the following statistics with respect to the operation of this Chapter for the financial year:

- (a) the offences for which infringement notices were issued;
- (b) the total number of infringement notices issued;
- (c) the number of infringement notices for which fines were paid;
- (d) the number of infringement notices challenged in court; and
- (e) the number of infringement notices for which fines remained unpaid.

I believe virtually all of that information will be produced in the police annual report. I know the member thinks that it takes a long time to come out and she wants it here quicker. I believe it is more appropriate that it is in there rather than have a separate issue —

Ms M.M. Quirk: That information is not recorded for other offences at the moment. If the minister can give that undertaking, that is a start.

Mr R.F. JOHNSON: It will be my wish —

Ms M.M. Quirk: But that sounds like an operational matter, in which case the minister cannot intervene.

Mr R.F. JOHNSON: I can ask for the statistics of certain crimes, certain events and a certain number of infringement notices to be delivered within the annual report. I can ask for that to be done. It is not a direction in the sense the member is perhaps thinking of. If I ask things of the police, they very often do them. To some extent there is a flaw in the member for Girrawheen's amendment because of course the Attorney General is responsible for the Criminal Code and that is what this comes under.

Ms M.M. Quirk: No; it is under this part.

Mr R.F. JOHNSON: No; it comes under the Criminal Code. We are amending the Criminal Code. It will be up to the Attorney General to do that rather than me. It all gets a bit messy. I would prefer to have it whereby the annual report the police issue is in fact carried out in the normal way. Proposed paragraph (c) reads —

the number of infringement notices for which fines were paid;

They are not fines; they are modified penalties.

Ms M.M. QUIRK: I just cannot understand. I need an explanation from the minister about why he has an objection to this. I do not understand why the minister is resisting it, number one.

Mr R.F. Johnson: Because I think it is unnecessary, that is why.

Ms M.M. QUIRK: That is the minister's opinion, but I am sure most of us in this Parliament would not agree with him.

Mr R.F. Johnson: And that's the member's opinion. We have different opinions. We will have to agree to differ.

Ms M.M. QUIRK: The minister has already told us that most of this information will be obtained anyway. The minister made the comment, which I find absolutely extraordinary, that, "We'll have the original legislation such as they had in New South Wales. We will not be mindful of what they learnt in New South Wales. We will just forge ahead —

Mr R.F. Johnson: I did not say that at all!

Ms M.M. QUIRK: Yes, you did.

Mr R.F. Johnson: I did not.

Ms M.M. QUIRK: The minister said he would review it after his mistakes.

Mr R.F. Johnson: I suggest you re-read *Hansard* tomorrow. The member may be a bit embarrassed, but I did not say that. I said we have the benefit of seeing what went wrong.

Ms M.M. QUIRK: But the minister has not acted on it. It has not been included.

Mr R.F. Johnson: We have not started yet!

Ms M.M. QUIRK: There were amendments to the original bill in New South Wales. The minister has effectively adopted the original NSW act and has not adopted the amendments that may close up all these loopholes. I am still seeking an explanation as to why the minister did not do that.

Mr R.F. Johnson: Because the problems were largely operational, and not necessarily to do with their bill.

Ms M.M. QUIRK: For example, one of the pieces of legislation was to clarify the position on cautions. There was some issue that police officers felt they no longer had the capacity to issue cautions. There was also an issue of whether it was in the public interest to issue a criminal infringement notice and whether in fact it was one that would be better dealt with in court. There was also —

Mr R.F. Johnson: But they are all operational issues.

Ms M.M. QUIRK: Neither of those are operational; they are legislative. The minister read the recommendations for legislative change from the Ombudsman's report. If it is legislative change, that is non-operational.

Mr R.F. Johnson: The NSW legislation is different from our legislation.

Ms M.M. QUIRK: Yes, that is right.

Mr R.F. Johnson: The member said we have just picked up New South Wales and that is what we are using.

Ms M.M. QUIRK: The minister did, as it originally was.

Mr R.F. Johnson: No, we are not. We picked up the concept from there.

Ms M.M. QUIRK: Let us put it another way. The minister says these amendments are not necessary.

Mr R.F. Johnson: Yes.

Ms M.M. QUIRK: How are we going to ascertain, by information gathered by police, that there is not net widening and that it does not disproportionately apply to Aboriginal offenders and other marginalised members of our community, such as people with mental illness? How will we make any assessment through the material that is gathered about people's ability to pay? How will we determine whether people were adequately informed about the right to ask for identifying material to be destroyed?

Mr R.F. Johnson: I am advised that will be part of an evaluation report after 12 months.

Ms M.M. QUIRK: Which no-one in this chamber will get to see other than possibly the minister. He will not read it.

Mr R.F. JOHNSON: I appreciate my adviser's diligence. I have been advised that the Ombudsman, once again, says —

It is difficult at this stage, on these figures alone, to conclusively —

Ms M.M. Quirk: Which report is the minister quoting from?

Mr R.F. JOHNSON: This is the 2005 report. On page 72 it says —

It is difficult at this stage, on these figures alone, to conclusively determine if the concerns about significant net widening from the introduction of CINs are founded. In fact, the existence or not of net widening is likely to be determined only after the CIN scheme has been extended and in operation for some years.

That is saying this cannot be evaluated in advance. We have to wait and see what happens. The advice I have received is that this will be quite a large evaluation process. It will take place after 12 months. But the member is not satisfied with that.

Ms M.M. Quirk: What are the criteria? It may well not be seen as important, by way of interjection; it might not be seen as a desirable policy outcome. It might not be considered important whether it disproportionately impacts on Aboriginal people. If that is not something that is considered from a policy perspective as being important, it is not likely to form part of the evaluation.

Mr R.F. JOHNSON: Of course it is important. I am advised that would be part of the evaluation.

Ms M.M. Quirk: We are just guessing, minister. It is unsatisfactory.

Mr R.F. JOHNSON: I am telling the member that the advice I have been given is that that will be part of the evaluation.

Ms M.M. Quirk: The whole basis upon which the opposition was agreeing was that this was worth trialling; it was worth looking at. If it made a positive difference to the use of police resources and would streamline what happens in courts, we were certainly in favour of it. Frankly, the minister is failing to convince us that we will have any way of assessing this whatsoever.

Mr R.F. JOHNSON: That is obviously the member's opinion. I recognise the member for Girrawheen's tactics. She does this to me every time. If the opposition does not support this legislation, we will see more people —

Ms M.M. Quirk: Minister, I have said we are supporting it, but it is unsatisfactory.

Mr R.F. JOHNSON: I suggest the member supports it. I accept that the member for Girrawheen always criticises me. That is what goes with the territory as far as I am concerned.

Ms M.M. Quirk: No, it does not. That is illegitimising what are legitimate concerns.

Mr R.F. JOHNSON: I have just explained —

Ms M.M. Quirk: No, you haven't.

Mr R.F. JOHNSON: I have, but the member is not listening because she does not want to hear it. That is the trouble. I have told the member that after 12 months an evaluation will take place that will look into all the areas that the member has said are significant; and I agree with her.

Ms M.M. Quirk: Will the minister table that evaluation in this place?

Mr R.F. JOHNSON: If I am able to, I will, yes. I will have to check with the police, obviously. I do not have a problem.

Ms M.M. Quirk: You're the minister. You can tell them to do that.

Mr R.F. JOHNSON: I can request stuff from them. I very rarely direct them in certain areas because I do not think that is appropriate. I certainly would not direct them on operational issues. I believe that if they have valuable information I would be more than happy to share it in Parliament. Is that a commitment?

Ms M.M. Quirk: Lots of wriggle room, minister.

Mr R.F. JOHNSON: I am putting a genuine offer that I will do my utmost to try to provide the member or this Parliament with the results of the evaluation. I think a lot of the information will come in the police annual report. Once the evaluation has taken place, I want to see who the legislation significantly impacts on. The member seems predominantly concerned that it will affect Aboriginal people. I do not necessarily agree with that.

Ms M.M. Quirk: That is what happened in New South Wales, so I suspect that the minister has not read the 2009 Ombudsman report.

Mr R.F. JOHNSON: Look, my view is that —

Ms M.M. Quirk: Is the answer, no, you haven't read that report?

Mr R.F. JOHNSON: No, I have not read the report.

Ms M.M. Quirk: All right.

Mr R.F. JOHNSON: I do not get the same time as the member does.

Ms M.M. Quirk: Any assertions that you make as to what happened or didn't happen in New South Wales are not based on any factual —

Mr R.F. JOHNSON: It is based on the facts that my advisers have here, and they are advising me. They studied all of this stuff, I can assure the member. They are advising me of the information that I am passing on to the member tonight.

Ms M.M. Quirk: They found that two-thirds of Aboriginal offenders never paid their fine. How are we going to get over that problem here?

Mr R.F. JOHNSON: I do not know the number because I am not in charge of the Fines Enforcement Registry. Does the member know how many Aboriginal people do not pay their fines through that registry? Does the member know that, because I do not know it? Does it matter? We are all Australians; we are all West Australians. We do not have one law for Indigenous people and another law for non-Indigenous people.

Dr J.M. WOOLLARD: I think that the minister was actually correct when he said that if the member for Girrawheen's amendment was going to go into the legislation, it would go in as an amendment to the Criminal Procedure Act rather than in the Criminal Code; that is, the Criminal Procedure Act has sections that deal with the issuing, form and content and service of infringement notices. I think that that would be —

Ms M.M. Quirk: These provisions are being inserted into the code.

Dr J.M. WOOLLARD: I think it could be, but at the moment the member's amendment has it under the Criminal Code. If the amendment was going to go in, I think it would need to go in under the Criminal Procedure Act. I believe that, firstly, the minister has given an assurance that he will try to put the statistics into the annual report, but I cannot see why the member for Girrawheen or any other member or, in fact, I as the member for Alfred Cove, could not at the end of 12 months ask the Attorney General who has coverage —

Ms M.M. Quirk: I'm sorry; you're on the wrong side of the chamber! I can tell you that every time I ask the police for information, I'm charged \$1 000. I have to get it out of the FOI and I'm charged money, member.

Dr J.M. WOOLLARD: If the member put a question on notice to the Attorney General about how many offences have been involved at the end of 12 months, I believe that we should get all of that information —

Ms M.M. Quirk: Why shouldn't we all have access to that information in this chamber? Why should we have to question everything? Why can't it be provided up-front, member?

Dr J.M. WOOLLARD: For something like this because there are different forms of infringement notices, maybe it is the regulations rather than the act that is the best —

Ms M.M. Quirk: Perhaps ask the minister; I'm not entertaining your questions.

Dr J.M. WOOLLARD: Minister, I think it would be under the Criminal Procedure Act if we were going to look at an annual report on these issues, but I think that it could be dealt with both in the report and also through a question on notice to the Attorney General.

Mr R.F. JOHNSON: I thank the member for Alfred Cove for her comments. The member for Girrawheen is mainly concerned about Parliament being aware of the outcome. I am happy to give the member a commitment that once the evaluation has been done, I will be happy to table in Parliament all the relevant information that is applicable to the concerns or interests that the member has. Obviously, I would have to wait to see what there is to ensure that there are no sensitive —

Ms M.M. Quirk: So would that be 12 months after commencement of the legislation?

Mr R.F. JOHNSON: Yes.

Ms M.M. Quirk: Okay.

Mr R.F. JOHNSON: About then, yes.

Ms M.M. Quirk: About then.

Mr R.F. JOHNSON: All right; it might be 13 or 14 months. I do not know. It depends how long it takes to do the evaluation. However, I am holding out an olive branch and I am trying to tell the member that I have no problem with us being open and accountable and giving the member the information that she wants. I always try to do that, and the member knows that. The only caveat I put on that is that if there is any sensitive operational information that would have to be left out, but the main information that I know that the member is looking for —

Ms M.M. Quirk: Look at what we've sought; none of that is sensitive operational information, I can tell you that now.

Mr R.F. JOHNSON: That is fine. I do not think that that will be a problem at all, and I am happy to give that commitment to the member.

Amendment put and a division taken with the following result —

Ayes (22)

Ms L.L. Baker	Mr F.M. Logan	Mr E.S. Ripper	Mr P.B. Watson
Dr A.D. Buti	Mr M. McGowan	Mrs M.H. Roberts	Mr M.P. Whitely
Mr R.H. Cook	Mr M.P. Murray	Ms R. Saffioti	Mr B.S. Wyatt
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens	Mr D.A. Templeman (<i>Teller</i>)
Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley	
Mr J.C. Kobelke	Ms M.M. Quirk	Mr A.J. Waddell	

Noes (24)

Mr F.A. Alban	Dr E. Constable	Mr A.P. Jacob	Dr M.D. Nahan
Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr C.C. Porter
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr D.T. Redman
Mr J.J.M. Bowler	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	Dr J.M. Woollard
Mr G.M. Castrilli	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)

Pairs

Mr C.J. Tallentire	Dr G.G. Jacobs
Mrs C.A. Martin	Dr K.D. Hames
Mr J.R. Quigley	Mr M.W. Sutherland
Ms J.M. Freeman	Mr I.M. Britza

Amendment thus negatived.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Extract from *Hansard*

[ASSEMBLY - Tuesday, 9 November 2010]

p8351b-8363a

Dr Tony Buti; Mr Rob Johnson; Ms Margaret Quirk; Acting Speaker; Dr Janet Woollard

Third Reading

Bill read a third time, on motion by **Mr R.F. Johnson (Minister for Police)**, and transmitted to the Council.

Sitting suspended from 6.00 to 7.00 pm