FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2019

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [11.43 am]: I move —

That the bill be now read a second time.

I stand before the house today to introduce a bill that will significantly change the way fines are enforced and recovered in Western Australia, to make the system more just, equitable and effective. It would be remiss of me if I did not begin this speech with recognition of the work of my good friend and colleague Hon Paul Papalia, MLA, who in his former role of shadow Minister for Corrective Services was relentless in holding the previous government to account on the issue of imprisonment for fine default. For many years, I, too, have voiced the need for significant change to the Fines, Penalties and Infringement Notices Enforcement Act 1994. This bill delivers those necessary changes.

I, and I am sure many of my colleagues on both sides of the chamber, have received continuous correspondence from all corners of the state and from interstate calling upon us to reform our fines enforcement legislation, and particularly the practice of imprisoning people for fine default alone. This bill responds to these calls and implements longstanding Labor Party policy.

It is unfortunately the case that a tragedy became the catalyst for these overdue changes. We are all aware of the death of Ms Dhu in Port Hedland in August 2014. Ms Dhu was arrested on a warrant of commitment for unpaid fines. In Ms Dhu's case, her fines totalled approximately $3 622, and she was required to spend four days in prison to expiate the largest fine, at the rate of $250 per day. While in custody, Ms Dhu experienced medical complications from injuries sustained in an earlier domestic violence incident. Tragically, Ms Dhu died a few days later on arrival at the health service. In 2016, the State Coroner handed down her findings from the inquest into Ms Dhu's death. The coroner recommended reform of the FPINE Act. In particular, the coroner recommended that imprisonment be removed as an option for enforcing payment of fines or, alternatively, that imprisonment for fine default be subject to a hearing determined by a magistrate in the Magistrates Court, and that orders other than imprisonment also be available. This bill implements that alternative recommendation.

Consistent with the coroner's recommendation, the Fines Enforcement Registrar will no longer have the power to issue a warrant of commitment and authorise the imprisonment of a debtor. Only a magistrate will be able to issue such a warrant, on application by the registrar, and only when the registrar has attempted every other applicable enforcement option. This, together with other changes to the FPINE Act, which I will highlight shortly, will minimise the number of people in respect of whom a magistrate will be able to even consider issuing a warrant of commitment.

I have expressed my sincere apologies to Ms Dhu's family before, and I do so again now before the house. What happened to Ms Dhu was a tragedy. I am confident that this bill will go a long way towards preventing such a tragedy from occurring again in Western Australia.

I now turn to the other key features of the bill. Firstly, I advise the house that the bulk of the amendments in this bill relate to fines enforcement, rather than the enforcement of infringement notices. The simple reason for this is that an unpaid infringement notice cannot land a person in jail. I want to assure the house that I am also committed to looking into infringement reform, with work on that second tranche of amendments already underway. However, in the interest of ending the practice of sending to prison vulnerable people who do not have the means to pay or otherwise work off their fines, I felt it prudent to pursue and progress this suite of amendments first.

Hardship: In keeping with this government's focus on protecting marginalised and vulnerable Western Australians, this bill introduces a statutory concept of "hardship", which includes mental illness and disability, experience of family and domestic violence, homelessness, drug and alcohol problems and financial hardship. In concert with the introduction of this concept are statutory principles to guide decision-makers under the FPINE Act. The statutory principles, which I note are an Australian first, provide that imprisonment for failure to pay a fine is truly an enforcement option of last resort, and that a person who is experiencing hardship that is affecting their ability to pay a fine or work it off should not be imprisoned for fine default.

It is important to note that this bill implements the alternative recommendation of the Dhu inquiry and provides that imprisonment for fine default is an option, however remote. It is important that imprisonment be available as a means of enforcement for the cohort of debtors who have the means but not the inclination to pay—those recalcitrant few who thumb their nose at the system and accrue fines with no intention of paying them back, having

ignored all other attempts at enforcement. This bill draws a careful distinction between those who can pay but refuse to do so and the many experiencing hardship who cannot pay and should not be further entrenched in poverty.

Licence suspension orders: this bill also goes further than other Australian jurisdictions in restricting the issue of a licence suspension order for both fines and infringement notices. Members may be aware of the Australian Law Reform Commission's report "Pathways to Justice" on its inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples that was tabled in the federal Parliament on 28 March 2018. Among the myriad recommendations in that report was a recommendation that the states and territories should avoid the suspension of drivers' licences for fine default, particularly in remote areas. This bill implements that recommendation by restricting the Fines Enforcement Registry from issuing a licence suspension order for a debtor whose last known address is in a remote area. Licence suspension orders have a disproportionate impact on people in remote communities without public transport infrastructure, and can further entrench poverty and involvement in the justice system. The term "remote area" is defined in this bill to mean an area prescribed in regulations; however, regulations cannot prescribe any part of the Perth metropolitan region as remote.

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

Work and development permits: this bill looks to New South Wales, Victoria and Queensland for the introduction of a new scheme of work and development permits, which is linked to the new statutory concept of hardship I mentioned earlier. When a debtor is experiencing hardship affecting their ability to pay or otherwise discharge their fine debts, they can enter into a consensual agreement to undertake approved activities with the support of an approved sponsor. Those activities could be, for example, drug and alcohol counselling, vocational or educational programs, unpaid work, or medical or mental health treatment. The key difference between these permits—WDPs, as I will call them—and the existing work and development orders, or WDOs, as they are known, is that these WDPs are effectively an agreement between a debtor, a sponsor and the registrar to undertake activities that will expiate the fine debt, whilst, under the current regime, a WDO is an order supervised by a community corrections officer. We are hopeful that if given the option to complete treatment plans, programs and the like, debtors will be able to address the offending behaviour that led them to come into contact with the justice system in the first place and reduce the likelihood of them reoffending. The work to implement the new WDP scheme is already underway but the scheme will not commence until the infrastructure for its successful rollout is in place. It is envisaged that the WDP provisions of the bill will commence after the bill's other provisions.

Fine expiation orders: this bill also introduces fine expiation orders to allow offenders who are already in custody for reasons other than fine default to expiate their fine debt. This will be of significant assistance to debtors who are already in custody, allowing them to clear or reduce their outstanding fines so that when they are released from custody, they do so with less financial burden. It is important to emphasise that a fine expiation order is not an authority to hold someone; it is only available when a person is in custody for other reasons. The Custody Notification Service, which will shortly be launched and will be operated by the Aboriginal Legal Service, will include a fines check with a view to ensuring people who are imprisoned apply for and are able to expiate their fines while in custody. In this context, the bill provides for a restricted power for the registrar to continue to issue warrants of commitment until the substantive provisions of the bill commence. I reassure members that this is restricted only to circumstances in which a debtor is already in custody for other reasons. This will allow those debtors to expiate their debts while in prison and leave custody with less of a financial burden. This restricted power will fall away once the substantive provisions of the bill commence, including the fine expiation order regime I have just spoken about.

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

Making it easier for courts to issue and administer work and development orders: the bill also amends the Western Australian Sentencing Act 1995 and Sentence Administration Act 2003 to make it easier for courts to make a fine enforcement WDO at the point of sentencing. Section 57A of the Sentencing Act currently restricts the court's ability to make a WDO unless satisfied by evidence on oath that the debtor does not have the means to pay, does not have a vehicle licence, and has no property to seize and sell off to pay their debts. This stringent requirement has proven to be a barrier to the courts making WDOs at this early stage, meaning more debtors are referred to the registry for escalating enforcement action and accumulating fees. This bill will allow a court to satisfy itself of those matters without evidence on oath from the offender and removes consideration of a vehicle licence altogether, improving flexibility for the courts to make WDOs directly. The Sentence Administration Act is amended to allow more flexibility for community corrections officers in the administration of WDOs, which, again, is intended to lead to fewer WDO cancellations.

I conclude my speech with this: the bill before us today represents a just, new approach to the enforcement of fines in Western Australia. As I read this bill into the house, there are thousands of unserved warrants of commitment waiting for debtors across the state—a threat of imprisonment hanging over their heads like the sword of Damocles. This bill provides that the day after royal assent all unserved warrants of commitment—all of them—will be immediately cancelled, and anyone in prison for fine default alone will be released in the first 24 hours. For the cohort who are in prison for fine default alone, their outstanding balances will be wiped out. For those who are not in prison but who are subject to unserved warrants of commitment, their warrants will be cancelled, removing the fear of imprisonment for fine default; but their fines will stand and be strictly enforced using the more just and effective fines enforcement regime that I have just outlined.

I commend the bill to the house.

Dr D.J. Honey: I congratulate the Attorney General for progressing under duress, and I also move that we adjourn the debate.

Mr J.R. QUIGLEY: I will note for *Hansard* that my friend from Cottesloe's reference to duress was in reference to an early onset hay fever attack as I started my speech, rather than any political comment. Thank you very much, member for Cottesloe, for that recognition.

Debate adjourned, on motion by **Dr D.J. Honey**.