

**CRIMINAL CODE AMENDMENT (INFRINGEMENT NOTICES) BILL 2010**

*Introduction and First Reading*

Bill introduced, on motion by **Mr R.F. Johnson (Minister for Police)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR R.F. JOHNSON (Hillarys — Minister for Police)** [12.12 pm]: I move —

That the bill be now read a second time.

The Criminal Code Amendment (Infringement Notices) Bill 2010 introduces a new scheme into Western Australia by which infringement notices can be issued for Criminal Code offences that are considered relatively low level or minor. Historically, infringement or penalty notices have been used for myriad offences of a regulatory nature, such as parking offences, minor traffic offences, fare evasion, littering, breaches of requirements for heavy vehicle drivers, and breaches of business registration and reporting requirements. More recently, there have been moves in Australia and the United Kingdom to expand the use of infringement notices for offences usually characterised as criminal in nature. In the United Kingdom, summary or public order offences such as being drunk and disorderly and threatening behaviour may be dealt with by way of a penalty notice for disorder. In New South Wales, criminal infringement notices, or CINs, can be issued for eight nominated criminal offences, including common assault, shoplifting, offensive conduct and offensive language. Victoria is currently undergoing a three-year trial to issue infringement notices for offences such as shop theft, disorderly or offensive conduct and alcohol-related offences. The arguments for the transition of infringement notice schemes from offences of a regulatory nature into areas traditionally viewed as being the province of the criminal justice system have largely focused on the potential productivity—time—savings for police and the criminal justice system, with the attraction for affected persons being a quick and relatively simple process whereby the payment of a fixed penalty expiates the offence with, usually, no record of a conviction, notwithstanding the implied admission of culpability.

The key objectives of any such scheme are to reduce the administrative demands on police in relation to relatively minor offences by providing a quick alternative to arrest for police officers in dealing with minor matters; to reduce the time taken by police in preparation for and appearance at court; to allow police to remain on front-line duties rather than having to take the offender back to the police station; to provide an additional general tool in the array of responses available to police; to provide police with greater flexibility in their response to criminal behaviour; to save the court system the cost of having to deal with relatively minor offences and thereby reducing both court time and trial backlogs; and to provide a diversionary option for the community as a means of avoiding court appearances for minor offences, yet still providing an incentive for behaviour change.

It is proposed that criminal penalty infringement notices, or CPINs, be issued for the following Criminal Code offences: disorderly behaviour in public, under section 74A; stealing, under section 378—however this will only be in cases where the value of goods is less than \$500—and trespasser refuses name and address or gives false name and address, under section 70B.

The WA Police support this bill. The introduction of CPINs will allow police more flexibility when they are enforcing minor incidents of crime. It is not mandatory for police to issue a CPIN under the scheme proposed in the bill. Police may exercise their discretion to caution, summons, arrest or, indeed, to issue a CPIN on a case-by-case basis. Therefore, police officers will be able to issue a CPIN at their discretion to eligible persons. To be eligible for a CPIN, the person must be at least 17 years of age and that person's identity must be confirmed. As part of the identification requirement, the person may be treated as though he or she were a "charged suspect" under the Criminal Investigation (Identifying People) Act 2002. This enables fingerprints and a photograph to be taken, and in certain cases for a DNA profile to be taken. The police officer would then consider all the circumstances of the offence, and determine whether a CPIN would be appropriate. Operational protocols will guide police as to the matters they should consider when determining whether it is appropriate to issue an infringement notice.

One of these considerations will be whether restitution or compensation to a victim is possible. Police will be able to return property to lawful owners "on the spot" at the same time a CPIN is issued to a person. However, in the event in which the property has been damaged, consumed or is unrecoverable under whatever circumstances, the person will not be eligible to receive a CPIN and would instead be summoned to appear in court so the court can exercise its discretion in determining restitution/compensation for the owner.

The offence of stealing is an indictable offence that can also be tried summarily where the value of the property in question does not exceed \$1 000. The powers and safeguards provided for the investigation of indictable offences apply. In practice, this will mean that police are able to use their investigative powers before deciding what enforcement action to take—that is, whether to issue an infringement notice or to proceed by charge and summons. A person who receives an infringement notice for stealing and elects to have the matter dealt with by the court has the same legal rights and liabilities as would apply if the matter had originally proceeded by charge and summons. If the police issue an infringement notice but subsequently find that in the light of further information it is preferable to take the matter to court, the police may withdraw the notice and proceed by charge and summons.

Where a person is issued with a CPIN for any offence, the person can then elect to either pay the fine or have the matter heard in court. Unpaid fines would be referred to the Fines Enforcement Registry. That mechanism will allow people to contest the facts of a case when they argue that they did not commit the offence for which the CPIN was issued. Even when issued with a CPIN, it is obviously necessary for people to have the capacity to contest in court the facts by which they are charged by that notice. The proposed scheme is considered advantageous as it is a means of diverting low-level offenders from the court system when the likely outcome would be a fine. The prosecution and the court system are saved the cost of having to deal with these more minor offences and this scheme will also assist with court time and trial backlogs as well as saving police time and resources.

The operation of the CPIN scheme will be subject to ongoing monitoring and will be evaluated after the first 12 months to ensure that the proposed scheme has met its aims. The evaluation will examine, amongst other things, the impact of the use of infringement notices on resource implications, case length and case flow, the impact of the trial on vulnerable defendants, and the effect, if any, on sentencing outcomes of trial offence matters that are determined by the court.

I commend the Bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.