

FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2012

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [7.59 pm]: I move —

That the bill be now read a second time.

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

The Fines, Penalties and Infringement Notices Enforcement Act 1994 commenced on 1 January 1995. Over the years since its introduction it has provided the state with a cost-effective means of enforcing fines and infringements. During this time some 3.7 million fines and infringements totalling over \$1 billion have been registered with the Fines Enforcement Registry. As at 6 March 2012, 739 793 fines and infringement notices were outstanding, totalling \$251 million. Of this amount, \$56.7 million is subject to time-to-pay arrangements. Further, as at the same date, 47 878 people had had their licences suspended for nonpayment of fines and infringement notices.

However, the central importance of the 1994 act was not its capacity to recover moneys due to the state. Prior to 1994 all persons with either outstanding infringements or fines were committed to jail in default of payment. About 7 000 admissions to prison in 1994 were for fine and infringement default, at a significant cost to the prison system and the public purse.

Licence suspension has been a cost-effective enforcement measure, which has subsequently been adopted by almost every other state in Australia. 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. As the number of people subject to licence suspension has increased, the propensity for people to continue to drive while their licence has been suspended has increased. The reality is that a significant proportion of the 47 878 people whose licences have been suspended by the Fines Enforcement Registry are continuing to drive. In 2011 the Magistrates Court received some 4 500 lodgements for the offence of driving while disqualified, where the disqualification was imposed by the Fines Enforcement Registry. 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 measures in this bill today are not targeted at the person with a one-off transgression against road traffic law or a local government by-law. They 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.

Before I turn to the key features of the bill, I should briefly comment on the structure of the balance of this speech. The current act separates infringements and fines into two different parts. I intend to maintain this separation in introducing the amendments and, as some of the new measures apply equally to both infringements and fines, I will not necessarily refer to clauses in sequential order.

The government's first major policy initiative is implemented through amendments to part 3, "Infringement notices", of the current act. Amendments in clause 9 of the bill, which add new definitions to section 11 of the act, introduce the concept of "aggregate unpaid infringement amount". This is important as it determines a monetary threshold above which a person with outstanding infringements may be subjected to these new measures. Clause 14, which inserts a new section 21A into the act, specifies the conditions which need to be satisfied 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.

Another key policy feature is introduced through clauses 10 and 11, which amend sections 17 and 18 of the act. Up until now it has been the practice, based on the interpretation of the provisions of current section 45(2), that no two enforcement actions can operate at the same time. In other words, if a licence suspension order is in place and the registrar decides to issue a warrant of execution, then the licence suspension order must be uplifted before the warrant is issued. While this currently poses few problems, it will do so when the new enhanced

measures are utilised. The amendments to section 17 and 18 allow the registrar to maintain a licence suspension order while at the same time initiating one of the new enhanced measures.

Another preliminary matter addressed in the bill relates to a policy change introduced by clause 11(5) which inserts a new paragraph (da) into section 18(5) of the act. As the legislation currently stands under section 21, a person subject to an infringement notice can elect to have the alleged offence tested in court at any time up until the modified penalty is paid. The change made at clause 11(5)(b) will mean that when the enhanced measures are applied, the person's ability to elect will cease.

The government's enhanced enforcement measures are based on a new approach to notification and enforcement processes. People who have their infringements or fines registered with the Fines Enforcement Registry will face a different process of notification and enforcement. Currently, when a fine or infringement is registered with the Fines Enforcement Registry the person is sent a "pay or elect" notice which advises the person to either pay the outstanding amount, or make time-to-pay arrangements, or elect to have the matter brought before a court. This will not change under the current proposals.

Following this notice, where no response is forthcoming, the person would currently receive a notice of intention to suspend licence, pursuant to current section 18 of the act. For both infringements and fines this will be replaced by a notice of intention to enforce, in clause 20, which replaces current section 42. This notice will contain a warning that an enforcement warrant may be issued if payment is not made. An enforcement warrant will allow the sheriff to use the enhanced enforcement measures introduced in this bill. Essentially, the same process will apply to outstanding fines.

Giving notices to persons with either outstanding fines or infringements often involves substantial practical difficulties because, although it is a requirement of the Road Traffic (Licensing) Regulations 1975 that a person must notify the Department of Transport of any change of address, not everybody does. To ensure that the Registrar of the Fines Enforcement Registry will have access to the most up-to-date address information, clause 56 sets out amendments to the Electricity Corporations Act 2005 to allow the registrar to have access to certain information held under that act.

Clause 14 introduces a new section 21A into part 3 division 2 of the act and is a key enabler for the new enhanced enforcement measures. What is significant here is that any of the three enhanced measures introduced in this bill can apply to persons with outstanding infringements and fines. The government has been concerned that the enforcement of outstanding infringements, especially those with significant amounts accumulated over time, generally does not go beyond licence suspension. This will change with the introduction of the "enforcement warrant", which is a name given to a broader form of the current "warrant of execution". Accordingly, the sheriff will have several additional options to recover moneys owed.

As these enhanced enforcement measures—wheel clamping, numberplate removal and, ultimately, seizure and sale of goods—are to be used to enforce large outstanding infringements as well as fines, the hardship provisions in clause 17, which amends section 27A, will also apply to enforcement warrants issued in respect of a person with an infringement. Further, in light of the serious implications of these measures, clause 34 adds a new section 101AA into the act. This will allow persons subject to an enforcement warrant to apply to the Magistrates Court to cancel the warrant. This ability to challenge an enforcement warrant can only be used if the person can show that he or she received none of the numerous notices referred to in clause 34—proposed section 101AA(7)(a) to (e). Clause 18, by replacing section 32 of the act, ensures that the person's ability to enter into time-to-pay arrangements remains unaffected.

Clauses 18 and 19, which replace sections 32 and 39(1) of the act respectively, are particularly noteworthy amendments. The government for some time has been concerned about the significant number of Aboriginal people in regional and remote areas driving without a valid driving licence. Some of these people have had their licence suspended for non-payment of fines. This change will mean that the Fines Enforcement Registry will be able to register time-to-pay arrangements immediately after a fine is imposed. A benefit of this, for example, is that in some cases arrangements for voluntary deductions from social security payments can be made immediately, reducing the potential for future licence suspension and the consequences of driving without a licence.

A final initiative which is to apply to all persons with significant outstanding fines or infringements, whether or not an enforcement warrant is issued, is a move by the government to publish on the internet the names and other relevant details of those persons who exceed a threshold of outstanding fines or infringements. Clause 25 of the bill introduces into the act a new part 5A—"Publication of details of persons on Registrar's website". This part introduces new sections 56A, 56B, 56C, 56D and 56E into the act. Section 56D will permit the Registrar of the Fines Enforcement Registry to publish relevant details concerning a person specified in section 56C. Proposed section 56D(2) contains important protections relating to children and to people who are protected by virtue of

other legislation—for example, a restraining order. Proposed section 56E provides the registrar with the authority to remove a name from the website as soon as practicable in particular circumstances.

I will now turn to the three key measures to be introduced by the government under the heading of enhanced enforcement measures. Firstly, clause 32 introduces part 7 division 6A into the act. It includes proposed section 95A, which authorises warning notices to be placed on vehicles whose licensed owner has outstanding fines or infringements. This simply warns the vehicle owner of the enforcement measures to which they may be subject for nonpayment of fines or infringements or both, as prescribed by proposed sections 95C, 95F, 95G and 95J. Under proposed new division 6A and in particular the operation, in new subdivision 2, of proposed new section 95C(1), vehicles licensed in the name of a debtor, which is a new term to refer to a person against whom an enforcement warrant has been issued, can be immobilised by the use of wheel clamps. Proposed section 95C(2) ensures that immobilisation must not contravene any existing law or cause inconvenience to others, and proposed subsections (4), (5) and (6) relate to fixing prominent notices to the immobilised vehicle to inform the licensed owner of the nature of the enforcement warrant and information as to how the owner can have the clamps removed—that is in proposed subsection (5)(d). Proposed section 95C(5)(e) warns the licence holder that other enforcement options such as numberplate removal or seizure and sale of goods may be pursued if no effort is made to pay the amount owed. Proposed section 95E makes it an offence punishable by a fine of up to \$2 000 to interfere with a clamp or remove a notice fixed to the vehicle by a sheriff's officer.

Secondly, proposed section 95F in new subdivision 3 introduces an entirely new enforcement action, not used in any other state of Australia at present: that of removal of vehicle licence plates. Proposed subsection (1) authorises the sheriff to remove the numberplates; proposed subsection (2) ensures this enforcement action cannot be used in conjunction with wheel clamping; while proposed subsections (3), (4) and (5) provide details of the warrant, what action the debtor can take to have the plates returned and warns the debtor about what further action could be taken under the warrant. To provide clarity about the status of a vehicle from which plates have been removed, proposed section 95G ensures that the vehicle licence is suspended while the plates are in the possession of the sheriff. Proposed section 95H covers processes for the return of the numberplates after they have been removed by the sheriff. Proposed section 95I makes it an offence to interfere with or remove a notice informing the owner that the numberplates have been removed by the sheriff. Proposed section 95J in new subdivision 4 is important from a policy point of view. It provides that the sheriff may make an order cancelling the vehicle licence should the owner make no effort to pay over a period of at least 28 days. In this situation the sheriff will return the numberplates to the Department of Transport. Proposed section 95J(2)(b) makes it clear that when a vehicle licence cancellation order is made, it disqualifies the debtor, generally the licensed owner, from re-registering that particular vehicle.

Thirdly, through the operation of clause 11, which amends section 18 of the act, and in particular proposed section 18(3)(c) and 3(d), the registrar will be able to issue an enforcement warrant against persons with outstanding infringements totalling more than \$2 000. This, in addition to the vehicle immobilisation measures described previously, will allow the sheriff to seize and sell goods to the value of the outstanding infringements. It also provides finality to the infringement enforcement process when compared with the current situation, in which a licence suspension order remains in force indefinitely. The other benefit of this measure is that should the sheriff's officer go to a house with the intent of removing the numberplates of a vehicle and the owner makes a case that he or she needs to use the vehicle, the officer may under the same warrant seize goods instead of removing the licence plates. As mentioned previously, these three enhanced enforcement measures take enforcement, of infringements in particular, to a new level. It therefore behoves the government to ensure that when either a vehicle is immobilised or property is seized by the actions of the sheriff on behalf of the state, that additional protections are afforded to the persons involved.

Clause 34 of the bill inserts a new section 101AA into the act to provide an opportunity for the debtor to seek the intervention of a Magistrates Court to cancel an enforcement warrant. Slightly different to the New Zealand enforcement model, in which under similar circumstances the debtor has seven days to challenge, the government has chosen to extend this to 14 days under proposed section 101AA(3). However, proposed subsection (6) ensures that if the sheriff has seized goods under warrant, then even if an application has been made under new section 101AA, the goods will remain in the custody of the sheriff until the application is determined. Proposed subsection (7) sets out the grounds upon which the applicant may satisfy the court. Particular attention has been paid in this process to testing, to the highest degree possible, that the applicant received or did not receive the numerous notices required to be sent or given to the person over an extended period of time.

Clause 16(2) provides for a replacement to current section 22(5) so that should the prosecuting authority withdraw the infringement after the sheriff has seized, retained for the required 14 days, and then sold the debtor's goods, the person whose goods have been sold can be compensated to the market value of the goods.

Clause 38 inserts a new section 108B into the act to ensure fees are applicable to the new notices and warrants, but more importantly clarifies concerns initially raised in 2007 by the Joint Standing Committee on Delegated Legislation. In particular, the committee identified that infringement enforcement fees charged by the Fines Enforcement Registry in accordance with schedule 2 of the Fines, Penalties and Infringement Notices Enforcement Regulations were greater than the cost of their administration and were therefore invalid. Subsequent legal advice recommended that amendment needed to be made to the principal act to permit over-recovery of fees as an inducement for people to pay their fines or infringements or enter time-to-pay arrangements as expeditiously as possible.

The final part of the bill makes consequential amendments to a number of other acts to implement the enhanced enforcement measures. Of note are amendments to the Equal Opportunity Act 1984 WA to ensure that the publication of a person's name on the registrar's website cannot be used as a ground for discrimination in a number of circumstances, including in relation to employment and accommodation.

The amendments in this bill represent a significant shift in approach to fines and infringement enforcement. The introduction of notices of enforcement and enforcement warrants signals a move to more active enforcement against a small group of people who continually ignore notices and requests to pay issued over a substantial period of time. These enhanced enforcement measures move the enforcement process, especially for infringements, from an essentially passive one of licence suspension to an active one in which sheriff's officers will target persons with considerable outstanding fines and infringements who have made no effort to enter into any form of time-to-pay arrangements. The authorities will use these considerable new powers with discretion and on only a small subset of all the persons with outstanding fines and infringements. They will use these powers in public places and in privately owned properties, day or night. Over time it is intended that sheriff's officers will work alongside police on random breath test road stops to actively reduce the number of people who continue to drive whilst their licence has been suspended for nonpayment of a fine or infringement. The number of fines and infringements registered with the Fines Enforcement Registry has grown by an average rate of nine per cent per annum since 2006–07—that is almost a 50 per cent increase in registrations. With improved technology available to the police, I suspect the number of registrations to the Fines Enforcement Registry will continue to increase unless we take determined steps to provide for a more efficient and effective enforcement process. This bill will go a long way to achieving that goal.

These new enforcement measures will be subject to a rigorous evaluation three years after commencing operation and, as was the case with the fines enforcement initiatives encompassed in the 1994 act, the government's hope and expectation is that some of these measures will be taken up by other states of our federation over time. I commend the bill to the house and I table the explanatory memorandum.

[See paper 4472.]

Debate adjourned, pursuant to standing orders.