

FINES LEGISLATION AMENDMENT BILL 2006

Second Reading

Resumed from an earlier stage of the sitting.

MR M.P. MURRAY (Collie-Wellington - Parliamentary Secretary) [5.51 pm]: I will pick up from where the member for Ballajura finished, but on a slightly different tangent. Many people who come into my office are “clients”, I suppose, of the fines enforcement legislation. They have many and varied concerns about being locked up in jail for what some people would call a minor offence; namely, not paying a fine. Some of those people might owe \$200 or \$300 and they might have two or three children at home whose needs they have had to consider before paying their fine. That might have led to them breaching their obligations, and then they need to find a lump sum to clear the fine. That scenario causes all sorts of problems and is a reflection on people’s social position. If people are not able to negotiate time-to-pay arrangements to clear their fine and thereby regain their driver’s licence, they feel forced into committing another crime; namely, driving their car without a licence. They feel that the bill is too high; they are on social benefits and cannot save \$5 a week because there is always something more important to pay for such as school fees, school clothes, school excursions etc. Those sorts of expenses must be paid before anything can be saved towards a lump sum fine payment. Some people might have been charged with drink-driving and do not have the ability to pay a \$1 300 fine. They might be able to pay only \$300 or \$400 off the fine and not the remaining \$1 000. It is very likely that they will never lift themselves from that financial hole. They must be able to negotiate some kind of payment system so that they do not end up in jail.

Members might recall the terrible case that occurred in Sydney some years ago when a young man was jailed for a fines enforcement offence. He was bashed in jail and, as a result, he died. He had never before been in trouble of a criminal nature. He was perhaps a bit of a rev head and had been fined, but had not paid the fine. Consequently, he lost his life in the prison system. That is the type of disaster we want to avoid.

As the member for Ballajura said, the objectives of this bill can be achieved in many ways. I will move some amendments during the consideration in detail stage. The most important objective is to assist the people who are most affected by the present act. I heard some members opposite claim that those sorts of people should be locked up. I strongly reject that proposition. We are not talking about criminal activities per se.

A tragedy occurred in the past week that involved an absolute disaster for three families. A young person was locked up for eight years for a traffic infringement he committed when he should have known better. Look at the disaster that has come out of that accident. Not one family but three or probably five or six families have been absolutely devastated. Although the young person was rightly imprisoned, it still makes me feel uneasy that a young person’s life has been ruined, even though it is due to his own actions; there is no argument about that, but what more can we do? I imagine it would have been worse if he had not had a licence - I am sure he did have a licence - and had been fined and not paid his fines. He may then have said, “To hell with it, I’m never going to get above the \$500 or \$1 000 mark and I’m going to drive anyway.” I know that many people do that. In some cases it is because people wish to retain their jobs, especially in the country, where they may have to drive 50 or 60 kilometres to their workplaces. If they do not get there, their jobs are gone. It is easy to say that people should get a ride, but that is not always possible. It is probably a 40-minute drive from Collie to Darkan. Some Collie people go to Darkan to work, and if they do not have a driving licence, they will lose their jobs and ultimately the social problems associated with their unemployment will come back to the community. Jobs in the farming community are not very well paid. What happens when there is no money coming into a family? We know what happens. The crime rate goes up or people continue to drive without third party insurance, as was previously mentioned, and without giving due consideration to what will happen if they get caught. Their instinct is that they must provide for their families and must go to their jobs, albeit lowly paid jobs that they really must keep, so they take the risk and drive without a licence. I saw some statistics not so long ago about the number of people driving without a licence who were tested at a random breath testing roadblock; it was quite substantial. There is therefore something about our system that is wrong. Why are they driving? Is it because of money? I am not quite sure.

However, my speech is focused on the payment of fines. One particular case that has been brought to my attention was of someone who had paid \$250 over time towards a \$500 fine. He missed an instalment and was not allowed to continue to make time payments. He was on a Newstart pension, got to the halfway mark with the payments and then his housing payments were due. We know the pressures that are on people on Newstart. He drove, pulled up at my office, got out of the car and came in and told me the story. Shock, horror! I said, “But you’re out the front; you’re in a main street. You’re not going to work.” He said, “If I don’t come and put a complaint in, how do you know what the problem is?” I very quickly told him to get the car home and walk down next time. However, he said, “Well, I’m going to work tomorrow morning.” That is the problem we have.

In that sort of case I believe the registrar should have room to move; she should be able to consider each case in detail before making a blanket ruling that the person cannot pay off the fine.

Mr R.F. Johnson: What was the reason for the fine in the first place?

Mr M.P. MURRAY: I think it was a drink-driving charge.

Mr R.F. Johnson: A drink-driving charge?

Mr M.P. MURRAY: Yes, I suppose drink-driving or speeding. It does not really matter, does it?

Mr R.F. Johnson: We want those people off the road, quite frankly.

Mr M.P. MURRAY: We certainly do. I do not agree with him driving; the member for Hillarys should not think I do.

The point is that he was unable to find another couple of hundred dollars to pay the fine off in full, whereas if he had been given another chance to continue on the time-payment program, he would have got there; then he would have adjusted himself along the line, got his licence back and moved on. That is the case I am talking about, and I believe it is a strong case. We have talked about how much it costs to keep people in jail. Cost is not the only issue, but the social implications that are not measured in dollar terms are huge. As I said, people lose their job, commit another traffic infringement, get caught, acquire another speeding fine and on it goes. Then they go out and in some way try to justify things by stealing. The problem just moves along and creates social issues in a different arena. We have to make sure that does not happen. That is why I hope the amendments to the bill that I intend to move will go some way to giving relief in genuine cases. I agree with the member for Murray that there will always be people who will use the system. Should we penalise everyone because of those few? I do not believe so. It is the way of our world. We have seen people in certain parts of society using the system to justify their ends. Although we do not like it or accept it, it happens no matter where we are in the world. I do not believe that we should penalise everybody because of a few people who in some ways are very smart and get through the system by manipulating and stretching it out.

Sitting suspended from 6.00 to 7.00 pm

Mr M.P. MURRAY: I do not ask that the registrar use a rubber stamp and say that an offender will have extra time as a matter of course. An offender must comply with criteria in order to ask for what is, in real terms, a second chance. Most people appreciate being given a chance. Offenders should certainly be told in no uncertain terms that if they breach an order again, there will be no other chance; they must find the money or head off to the sin bin. However, jail should be the last resort, not the first.

Mr R.F. Johnson: It never is the first.

Mr M.P. MURRAY: That is probably true. I was told of another case that started off with a \$100 fine. A woman was stopped for driving while her licence was under suspension. The fine eventually blew out to \$1 500 and the woman ended up serving three months in jail. There was not much opportunity to ask if the situation could be looked at to see whether a deduction could be made from dole money or whatever to make sure that the fine was paid. A few people will always rort the system, but that happens in all walks of life. I believe these amendments will keep people on track, so that they will not fall down and then resort to another sort of crime. When we get to consideration in detail, I will move my amendments.

MR J.A. McGINTY (Fremantle - Attorney General) [7.04 pm]: I thank the members who have contributed to this debate. I will certainly take on board the various points raised by members. I will seek some advice on the case referred to by the member for Roe. The member for Ballajura also raised matters relating to his experience and the need to look at procedures within the Fines Enforcement Registry. Again, the issues that were raised will benefit from close scrutiny. The amendments suggested by the member for Collie-Wellington are eminently sensible. I thank everyone who contributed to this debate and I look forward to the expeditious passage of the bill.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 4 put and passed.

Clause 5: Section 5A inserted and consequential amendments -

Mr J.B. D'ORAZIO: This clause provides for documents to be served by electronic means. Can the Attorney General please explain what this clause means? It says that subject to the consent of that person, the document or notice may be given or served by electronic means. Does "person" mean the fines enforcement people giving that notice or the person receiving them? If the Attorney General is suggesting that the registrar can send a

notice by electronic mail, I have a problem. It introduces another method of sending notices to a person using electronic means. It says that it is subject to the consent of that person giving or sending the document on notice. Does that mean that the registrar has the ability to send it by e-mail or does it mean that the person receiving it has to give consent by electronic means? I have an e-mail address but I would not know how to get access.

Mr R.F. Johnson: It means that you have to give consent.

Mr J.B. D'ORAZIO: No, it does not. It refers to the person giving notice. That is why I am asking the question. It says that it is subject to the consent of that person giving or sending the document. That is the registrar, not me.

Mr J.A. McGINTY: The answer is that it can be done electronically only with the consent of the person receiving it. Notices will not be sent as a matter of course by electronic means - I refer to e-mails and facsimiles - unless an agreement is in place. Does that answer the member's question?

Mr J.B. D'Orazio: It states "subject to the consent of the person giving or sending the document or notice". The person giving or sending the document is the registrar. The person receiving it is the person against whom the notice has been served.

Mr J.A. McGINTY: I cannot find those words in the bill.

Mr J.B. D'Orazio: They are in the explanatory memorandum.

Mr J.A. McGINTY: I thought the member was referring to a different provision. The precise wording of proposed section 5A(1) reads -

If under this Act information or a document or notice must or may be given to or served on a person, it may, with the consent of that person be given or served -

- (a) by sending it by fax to the person using a fax number given by the person; or
- (b) by sending it by email to the person at an email address given by the person,

A document or notice will be faxed or e-mailed only if the person concerned provides consent, otherwise the usual means of serving or giving notice would apply. It enables modern means of communication to be utilised by agreement.

Mr J.B. D'Orazio: I accept that. I want it on the public record, because the explanatory memorandum states the exact opposite. It reads -

Proposed section 5A expands the ability of an offender to receive and the Fines Enforcement Registrar ("FER") to send a document or notice by electronic means, subject to the consent of the person giving or sending the document or notice.

Mr J.A. McGINTY: That is what I just said.

Mr J.B. D'Orazio: Just for the record, can you confirm that it cannot be done that way without the agreement of the person receiving the notice?

Mr J.A. McGINTY: That is right.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Section 27A amended -

Mr M.P. MURRAY: I move -

Page 6, after line 6 - To insert -

- (2) Section 27A(2) is amended as follows -
 - (a) by inserting after paragraph (a) -
"or";
 - (b) by deleting " ; or" after paragraph (b) and inserting instead a full stop;
 - (c) by deleting paragraph (c).
- (3) After section 27A(4)(a) the following paragraph is inserted -
"

- (aa) the alleged offender has a reasonable excuse for any contravention of a time to pay order made previously under this section in respect of the infringement notice; and

”.

Mr R.F. JOHNSON: Does the member for Collie-Wellington want to delete the amendment to section 27A(1) in clause 7(b), which states -

or on the grounds that the licence suspension order would or does seriously hinder the alleged offender in performing family or personal responsibilities.

Is the member saying that that should be deleted and his amendment substituted?

The SPEAKER: I think the amendment will insert a new paragraph.

Mr J.A. McGinty: There are no words to be deleted. The member for Collie-Wellington wants to insert those words.

Mr R.F. JOHNSON: I was not happy with the paragraph prior to the member for Collie-Wellington moving his amendment. Clause 7(b) seeks to insert at the end of the subsection the words “or on the grounds that the licence suspension order would or does seriously hinder the alleged offender in performing family or personal responsibilities”. That is an open-ended ticket. The offender could say that he has to have his licence because it is his son’s birthday or he has to do this or that - those sorts of family or personal responsibilities. We all have those responsibilities. Everyone has personal and family responsibilities. The member for Collie-Wellington does, I do, and the Attorney General does. Almost everybody has those responsibilities. That provision is a get-out-of-jail-free card in the making. I say that very loosely, but this proposal is a nonsense in my view because anybody can say to the registrar that he or she has family or personal responsibilities and needs the licence to carry out those responsibilities. I could certainly put a case that I need my licence to do that, but I would not expect the registrar to say that I could have my licence back as a result. The clause gives no other option; it just says that a person can have his or her licence back.

The government is watering down the justice system in this state and the member for Collie-Wellington’s amendment does nothing to enhance it. We already have an absolutely weak and wishy-washy clause in this bill. I have already written the word “no” against it because I feel strongly about it. That is bad enough, but the member for Collie-Wellington wants to insert a paragraph that says that if an alleged offender has a reasonable excuse for any contravention of a time-to-pay order made previously under this section in respect of the infringement notice, the licence suspension order can be cancelled. Then the proposed amendment goes on to deal with something else. I honestly find that abhorrent. Why bother to have any legislation in the first place? Why bother to take people’s licences from them if they continue to commit serious road traffic offences?

Before the dinner suspension, the member for Collie-Wellington pleaded the case for one of his constituents who had paid \$250 out of a \$500 fine - correct me if I am wrong - and then for some reason found that he could not pay the next instalment. I think he was paying in \$5 instalments. The reason he lost his licence is that he was found guilty of drink-driving. I want those people off Western Australian roads. They are a danger to not only themselves, but also every other innocent person driving a vehicle, riding a bike or walking the streets. If somebody is convicted of a drink-driving offence, he or she should lose his or her licence. If someone can be given back his licence because although he was given time to pay at \$5 a week and although he paid half of the fine, he had a bit of trouble paying the remainder, I am led to ask: where did he get the money to get drunk in the first place? Does that person smoke as well? I suspect he probably does. Unfortunately, people find themselves with this problem. I accept it is a problem and they need a way out of it. They need some education in my view. Simply letting them off and giving them back their licences so they can start driving around again, for the spurious reasons that we see in this bill, is not on, and I am totally opposed to it. I will be interested to hear the Attorney General try to justify this weak and wishy-washy clause. I do not have a problem with most of the bill, but I have written “no” against this clause because I feel very strongly that it should not be included. The Attorney General is sending out the wrong message to those people who commit crimes and contravene the Road Traffic Act.

Mr J.B. D’ORAZIO: I will defend this clause. The registrar already has the ability under the act to cancel or modify this process. The question is whether the registrar can do it retrospectively. That may be where the issue arises. If there are circumstances, as the bill suggests, in which the suspension will seriously affect an alleged offender’s ability to perform family responsibilities, the registrar should have the ability to vary that suspension. I believe she already has that power under the Fines, Penalties and Infringement Notices Enforcement Act; this expands the power further to make it clear cut. More importantly, it is something that the member for Hillarys and I would support if the circumstances arose in which a licence suspension as a result of fines enforcement would affect, for example, a taxidriver. The registrar should have the ability to cancel the suspension and make

other arrangements. She already has the power under the act, so why will the member for Hillarys not support this proposal?

Mr R.F. Johnson: He should not be on the road driving a vehicle. Will the Attorney General defend that?

Mr J.A. McGINTY: Absolutely. This clause enables time-to-pay arrangements to be entered into. Currently, two bases upon which time-to-pay arrangements can be entered into are listed in section 27A(1)(c) and (d) of the Fines, Penalties and Infringement Notices Enforcement Act. To put it very simply, if an arrangement relates to a medical appointment or a person's employment, the registrar can cancel a licence suspension for the purpose of the time-to-pay arrangement. What is proposed is a very family-friendly arrangement; that is, to add the grounds of a medical appointment or employment to the circumstances of family arrangements. A simple example is a mother who needs to take a child to school or school-related activities and cannot do so. Under the current legislation, she cannot apply on the basis of family reasons for the licence suspension order to be cancelled to enable a time-to-pay arrangement to be entered into.

As the member for Ballajura said, the amendment is building upon the existing arrangements under which the registrar can enter into a time-to-pay arrangement for medical appointments and jobs, but not for family commitments. I thought it would be in the interests of all members to do what we can to keep families together by enabling parents to participate with their kids in things of that nature. This amendment simply gives the offender time to pay on the basis of family commitments. It is put on a par with a medical appointment or a job. That is the purpose behind this amendment. This act is worded in a way that is not immediately apparent to me. It may be to the member for Ballajura who has had a close look at it recently; however, it is not immediately apparent that that is the purpose of this provision. That is what it is all about.

Mr R.F. JOHNSON: This clause provides for the registrar to give a licence back to a person.

The SPEAKER: We are actually talking to the amendment before the house.

Mr R.F. JOHNSON: Yes, I am coming to that, Mr Speaker, and an amendment to that clause has been moved by the member for Collie-Wellington. They are both interchangeable. The member for Collie-Wellington's amendment is an addition to clause 7 of this bill. The amendment is very similar in nature to the existing clause. The amendment almost mirrors what is in the bill. It seeks to insert a paragraph that states -

the alleged offender has a reasonable excuse for any contravention of a time to pay order made previously under this section in respect of the infringement notice;

To me it sounds as though this amendment will give a person a second chance because he or she has fallen down on an arrangement to pay a fine. The amendment assumes that a person has had a time-to-pay order and has not paid it. It is open-ended because it says that "the alleged offender has a reasonable excuse for any contravention of a time to pay order". That could mean that he or she does not want to pay it. It does not say that the reason is hardship or whatever. I know the family reasons have been covered in the previous clause. I do not think it is a very good amendment, because it gives an open chequebook, if one likes, to an offender for any contravention.

Mr J.B. D'Orazio: It is at the discretion of the registrar.

Mr R.F. JOHNSON: No, it does not -

Mr J.B. D'Orazio: Yes, it does.

Mr R.F. JOHNSON: This amendment goes on from the main clauses in the bill to say -

the alleged offender has a reasonable excuse for any contravention of a time to pay order made previously under this section . . .

The Attorney General's substantive clause in the bill already states that if somebody says that the offender would be seriously hindered in performing family or personal responsibilities, that person's licence will be given back to him. However, the amendment will apply to a person who has already stopped paying the amount he is supposed to pay, so it will just go on and on, staving off the time when the person must be responsible for his actions. I do not support the amendment and I do not support the clause. We will not divide on it, but I am just telling members so that it is recorded. I do not support the amendment because it will do nothing to enhance justice in this state. It might help the people who want to get away with not paying their fines and who want to get their suspended licences back, but it does nothing for justice per se, and nor does the substantive clause in the legislation. It does nothing. It is just a weak-kneed, willy-nilly effort to try to appease those people who have committed wrongful acts by giving them their licences back. Somebody may be sentenced to seven months' imprisonment. That will affect that person's personal and family situation; of course it will. Will the Attorney General start abolishing that and give someone the authority to cancel that sentence, as he is giving the registrar the authority to cancel the suspension of a person's licence? Where does it stop? If the Attorney General is

serious about justice, he needs to demonstrate that, because he is not very serious with this bill, not with the main clause and not with the amendment, I am afraid.

Mr J.A. McGINTY: In my last contribution I spoke about the reasons that underpin the amendment contained in the bill. I will now go to the amendment that has been moved by the member for Collie-Wellington. Very simply, this amendment will give somebody who has been given the benefit of a time-to-pay arrangement, when circumstances arise in which he is unable to meet that commitment - it might be a death in the family, the cancellation of Centrelink payments or any one of a thousand human circumstances that arise - the opportunity to go back to the registrar. I am sure that in our electorate offices we have all dealt with people in these circumstances who say that they want to be able to continue the time-to-pay arrangement. That is all the amendment does. At the moment, there is a statutory prohibition on a person being given a second chance.

Mr M.P. Murray: That is my understanding.

Mr J.A. McGINTY: That is right. The amendment moved by the member for Collie-Wellington deletes the provision that states that a person can only ever have one time-to-pay arrangement, and if that does not work out, he is gone for all time, and inserts the provision that has just been read out to the house, which would enable a second time-to-pay order to be made, depending upon the circumstances of the person who comes forward.

I will give the house six benefits that would flow from adopting the member for Collie-Wellington's amendment. Firstly, it will assist the person in maintaining and honouring the agreement with a view to being accountable and financially responsible for his or her own affairs. Secondly, it will provide increased flexibility to allow the disadvantaged to get their lives on track. Thirdly, it will provide an increase in the number of people who can gain or retain employment by holding a driver's licence. Fourthly, it will reduce the number of people who will risk driving under fine suspension and thereby get into a cycle of re-offending, which may ultimately lead to imprisonment. Fifthly, it will provide an opportunity to remedy an administrative mistake, such as a direct debit malfunction or something of that nature, which currently counts somebody out from continuing his time-to-pay arrangement.

Mr R.F. Johnson: I don't have a problem with that part of it.

Mr J.A. McGINTY: I did not think the member would. However, at the moment that cannot be done. Finally, in my view, this would lead to increased revenue to the state by having more people make the payments.

Mr R.F. Johnson: However, in other parts of the bill, you cover any malfunction in relation to direct debit payments or credit card payments or cheques. Therefore, what you are saying now is superfluous to the clause and the amendment that are before us.

Mr J.A. McGINTY: Is the member saying that he is so lacking in compassion that if a family member of an offender dies, and in the heat of that circumstance the person misses his obligation to make a payment, the member would not allow that person to pick up his time-to-pay arrangements once he has returned from the funeral?

Mr R.F. Johnson: The amendment does not say that it will be on a temporary basis, or anything else. This is a very positive amendment. However, it leaves it open-ended. The amendment does not say "to attend to a serious family matter", such as if a family member has died or is seriously ill. I could understand it if a family member was in hospital seriously ill and it was just for two or three days. I am compassionate enough to agree with that. However, this amendment goes further than that. It is like an open cheque.

Mr J.A. McGINTY: It provides a discretion for the registrar, if a person has a reasonable excuse for having defaulted on his time-to-pay arrangements, to allow the person to go back onto those arrangements. It is as simple as that. It is very difficult to prescribe every circumstance. I understand the point the member is making. However, the member for Collie-Wellington took the view that a broadly based discretion was the best way to go.

Mr R.F. Johnson: The member for Collie-Wellington is a very compassionate person. I accept that. However, I do not agree with the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 8 -

Mr M.P. MURRAY: I move -

Page 6, after line 6 - To insert the following new clause -

8. Section 27D inserted

After section 27C the following section is inserted -

“

27D. Registrar's decision on time to pay is final

A decision of the Registrar under section 27A, 27B or 27C is final.

”.

Mr R.F. JOHNSON: It is all very well for the member for Collie-Wellington to move this amendment. However, he has not explained the rationale behind the amendment and how it will improve the legislation.

Mr M.P. MURRAY: It is similar to what the Attorney General has just explained. If a person has a problem and cannot pay, he cannot come back again and again, after the registrar has given him his final chance, and say that he wants to have another go. That is it. It is final. He will give the person one chance, and that is it.

Mr R.F. Johnson: She will give the person one chance, not he.

Mr M.P. MURRAY: You are being sexist!

Mr R.F. Johnson: I am just trying to help.

Mr J.B. D'ORAZIO: Under this amendment, a person cannot challenge a decision of the registrar and have it reviewed by another court such as the Magistrates Court. I have a problem with that. For all intents and purposes, the registrar is a court. The registrar may make a decision that is not acceptable. If that decision is final and cannot be reviewed by another court, it will not help people who have a problem with that decision. I understand that, by including it, we will stop people using it as a way of attacking the process. The courts will soon take care of that by saying that it is a nonsense. Not having the registrar's decision as final allows a decision to be subject to challenge in another court. With no disrespect to the registrar, she or a different registrar may have a reason for not using the discretion she has. I would like someone else to review the decision by other than having to go to the Supreme Court and have it overturned through a different process. That is the only other choice people have. I have a problem with the final decision being with the registrar because, to get it overturned, the only choice a person has is to take action in the Supreme Court, which I have in my circumstances.

Mr R.F. JOHNSON: The Attorney General said that I would support this clause. Taking him at his word, I thought that I probably would. However, the member for Ballajura has raised a very good point.

Mr J.A. McGinty: Do you want criminals to occupy the time of the courts with unending appeals against the registrar?

Mr R.F. JOHNSON: Absolutely not.

Mr J.A. McGinty: Support it then.

Mr R.F. JOHNSON: Let me finish. In that instance I would support it wholeheartedly. Where I can see a problem arising is that, very often, the fine that is imposed on somebody is the result of that person having assaulted a police officer. Charges may have been brought by the police to the Magistrates Court. A person may be fined \$500 for assaulting a police officer. Of course, the person will not pay the fine then or he will enter into a time-to-pay arrangement with the registrar. He may pay a bit of it and then decide to not pay any more because he thinks he will not be sent to prison under the Attorney General's legislation; he thinks that it is a free-for-all and he can do what he likes. The police may want to challenge the registrar's decision. The Attorney General is assuming that the registrar will always make the right decision, which is that a person has had his chance and must pay. I do not have a problem with that. If the registrar is convinced that a case is a heartbreaking one, the decision may be to let it go. The registrar's decision is final. The police service - or the police officer - who brought the case in the first place might think, "Hang on a minute, one of our officers has been viciously assaulted and all the court gave was a \$500 fine and now the person does not even have to pay the fine!" If a person does not pay a fine, his licence may be suspended, but he can go to the registrar and open his heart and say that he needs his licence because of his family and this, that and the other - he may put a real sob story to the registrar. The registrar may agree to another time-to-pay arrangement. The registrar may decide to cancel the licence suspension notice, and the person will get his licence back. To all intents and purposes, he does not have to pay any more money. From what we have heard tonight, the registrar's decision will be final. It may not be a bad idea for an aggrieved party, such as the police or the department representing any other public officer who may have been assaulted, to challenge the registrar's decision. The registrar would be acting like a judge. I do not think that is the registrar's job, quite frankly.

Mr J.B. D'Orazio interjected.

Mr R.F. JOHNSON: It does to some extent, but the registrar's main job is to keep the registry; to ensure that the legislation is adhered to, and that people pay their fines or that their licences are suspended. That happens under the current legislation. The registrar will be given enormous authority, equivalent to that of a magistrate or judge - a Supreme Court judge I would suggest - to say that his or her decision is final and that a person will be given back his licence and that he does not have to pay any more money because this decision is in the best interests of the person. That decision may be made because the person has a hard luck story. It is an enormous responsibility and power for the registrar. What the member for Ballajura said has given me some concern. I know what the Attorney General said. I am happy that, if the registrar makes the right decision, that decision should be final. However, if the registrar makes the wrong decision, and the decision waters down the justice that should be served in this state, I have a very serious problem. I would love to hear from the Attorney General about how he will get out of that dilemma.

Mr J.A. McGINTY: I support the new clause moved by the member for Collie-Wellington. Currently, there is no provision for appeal against an administrative decision on a time-to-pay arrangement by the registrar.

Mr R.F. Johnson: Not to the Supreme Court?

Mr J.A. McGINTY: There is no provision for appeal. It would be interesting to look at whether there would be power to seek judicial review in the Supreme Court.

Mr R.F. Johnson: I think there would be.

Mr J.B. D'Orazio: Only under the correct process.

Mr J.A. McGINTY: Yes, but not as a matter of merit.

Mr J.B. D'Orazio interjected.

Mr J.A. McGINTY: I will defer to the superior and more experienced views of the member for Ballajura on this matter! That sounds intuitively right.

Mr R.F. Johnson: He has a higher law degree than the Attorney General!

Mr J.A. McGINTY: I will concede that he is an expert on fines enforcement matters, and I am not!

The member for Hillarys has asked whether there is an ability to appeal on the merit of the decision of the registrar. My advisers are trying to find the section at the moment, but I am told that at the moment there is no right of appeal against that decision. The additional right that the member for Collie-Wellington has moved to insert in the bill will simply carry that forward; that is, to have more than one chance for a time-to-pay arrangement. If the registrar grants the additional time-to-pay arrangement, that decision cannot be appealed against. Frankly, administrative matters of this nature are not the sorts of matters that the courts should be tied up with.

Mr R.F. Johnson: But don't you accept that it will give the registrar enormous power?

Mr J.A. McGINTY: In a practical sense, that power is exercised by the registrar on a daily basis at the moment.

Mr R.F. Johnson: I am told that the registrar writes off a lot of fines.

Mr J.A. McGINTY: Yes, but in practical terms, the decision of the registrar is final anyway. Generally speaking, we are talking about people who certainly would not have the resources to launch a legal challenge. In a practical sense, when someone asks for time to pay, the decision of the registrar is final. We will now expand the grounds on which that can be done. The new clause moved by the member for Collie-Wellington will enable it to happen a second time. However, we do not want appeal processes on a question of merit clogging up the courts. In any event, I am told that currently there is no appeal provision, but we cannot find the particular section in question.

Mr R.F. Johnson: If I ask you a question on notice about the number of times the registrar will have used the power under this clause to allow people not to pay and to give them a second or third chance, will you be able to give an accurate and honest answer?

Mr J.A. McGINTY: They will still have to pay, but they will be given time to pay.

Mr R.F. Johnson: The provision is still a bit loose. The registrar can already write off fines. Will you be able to give an accurate and honest answer about the number of times that the registrar will have written off fines over the previous 12 months?

Mr J.A. McGINTY: The member for Hillarys will always get an accurate and honest answer from me, no matter what the question, as he knows.

Mr R.F. Johnson: You are one of the best ministers at doing that, but I want to make sure that the registrar of the Fines Enforcement Registry will be able to provide that information, because I will want to know how many times this authority will have been used over a period.

Mr J.A. McGINTY: The registrar is on notice to expect the member's question.

New clause put and passed.

Clause 8 put and passed.

Clause 9: Section 39 amended -

Mr R.F. JOHNSON: What benefits will this clause provide?

Mr J.A. McGINTY: It will ensure that, if someone has existing fines, we do not have to wait 28 days before the matter is referred to the Fines Enforcement Registry. The note I have indicates that the amendment eliminates the need to wait for 28 days to elapse after an offender has been fined before a matter can be referred to the Fines Enforcement Registry if the offender has other unpaid portions of those fines or infringement notices at the registry. This amendment relates specifically to prosecuting authorities as described by section 39(2) of the act, including matters imposed under the law of the commonwealth. This section requires the prosecuting authority to give the court officer written notice requesting that the fine be registered with the FER. In other words, if an existing fine is in the hands of the registry, it will enable the new fine to be referred directly to the registry. It is administratively a quicker process for dealing with the new fine.

The SPEAKER: Does that override a court order for time to pay?

Mr J.A. McGinty: No.

Mr R.F. JOHNSON: During the second reading debate I highlighted numerous cases in which offenders went before a magistrate and their fines were not recognised or even brought to the notice of the court. The offenders were before the court for committing different crimes from those that had already attracted fines. The majority of those people had outstanding fines of up to \$20 000. One example is of a person being fined \$500 for about six counts in the Magistrates Court. I think they totalled another \$3 000 or \$4 000. Those new fines will be immediately notified to the registrar because the offender has outstanding fines. Those fines will be added to the existing fines that have not been paid anyway. It will increase that offender's outstanding fines from, say, \$20 000 to \$23 000 or \$24 000. Under the present system and even under the provisions of this bill, that person will not have a hope in hell of paying the fines. If that person receives a fine rather than some other substantive sentence, he will see it as a green light to ignore fines totalling \$20 000 or \$23 000. The magistrate knows if the person has outstanding fines - some magistrates bother to find out whether people have outstanding fines, and this one did - and those fines are added on to the outstanding fines. What will happen? Take this case, for instance. The registrar knew that this bloke had incurred \$20 000 in fines in the previous three years; he knew he had not paid off any of that money; he knew he had been before the court time and again in that three-year period; he knew he had continually been fined and given community-based orders; and he knew he had not performed any of the community-based orders and had not paid any of the fines. Even then the person still did not go to prison. In one case the magistrate had had enough and felt that the actions and crimes of this particular perpetrator were sufficient to warrant a seven-month prison sentence. The magistrate knew he could not order much less than that because the Attorney General had abolished sentences of less than six months. He could have ordered a sentence of six months and one day, but I was told that he felt that would have been regarded as a bit churlish. The magistrate felt that the public had had enough of this particular person and he sentenced him to seven months in jail. The Aboriginal Legal Service then immediately appealed the case in the Supreme Court. The Supreme Court overturned the magistrate's decision, fined the bloke some more money, gave him another CBO and then let him out. That is an absolute joke, Attorney General. How does this legislation serve justice on people like that? All that will happen ultimately is that the magistrate will decide that the person does not have a hope in hell of paying any of these fines. He keeps coming before the courts for committing crimes, the magistrates keep fining him and giving him CBOs, but ultimately justice is not being served. Some people now are beyond the law. Their biggest discomfort is to appear before a court, knowing full well that, no matter what the court says, they will not pay any fine or be sent to prison, because the ALS will come in and do its bit and, as occurred in this instance, the weak judiciary will uphold the ALS appeal. There is therefore a different tier of justice for those people. I can understand the heartfelt feelings for the person in Collie. However, people are consistently getting away with committing these sorts of actions.

The SPEAKER: Was that in relation to the clause?

Mr R.F. Johnson: Absolutely!

Mr J.A. McGINTY: Just briefly by way of answer, it is an interesting point but in fact this clause does the exact opposite of what the member for Hillarys has described. This clause relates to the reality of what occurs; that is, a fine that is imposed on a person who already has a fine will be fast-tracked into the registry. In other

words, it will be dealt with far more quickly than in the statutory 28 days. It is an interesting story from the member for Hillarys but not relevant to the clause.

Clause put and passed.

Clause 10: Section 41 amended -

Mr R.F. JOHNSON: Once again I want the Attorney General to explain how this clause will benefit the people of Western Australia, and how it will benefit our system of justice.

Mr J.A. McGINTY: This clause relates to an error made by the court; currently it cannot pull back the matter and correct the error. This amendment in the first paragraph of the clause is simply an administrative arrangement. It reads -

If, at any time after a fine is registered and before a warrant of execution or a warrant of commitment is issued . . .

When a fine is registered, that is the end of it. The court cannot say, "Sorry, I have made a mistake; send it back." This simply enables the court to do that so that the court can correct any error it has made.

Mr R.F. Johnson: Could you give me an example?

Mr J.A. McGINTY: The court might impose a fine and then find it is more than the maximum that could be imposed or the fine might not be an option for the court in some circumstances.

Mr R.F. Johnson: Does that happen in our courts?

Mr J.A. McGINTY: Yes.

Mr R.F. Johnson: Who have you got running our courts?

Mr J.A. McGINTY: I am told that another frequent occurrence is that a clerk of court might send a fine for enforcement. I am sure that in a previous life you would never have made that error, Mr Speaker. This simply enables the court to correct an error rather than leaving it and requiring the offender to correct the court's error.

Clause put and passed.

Clause 11: Section 53 amended -

Mr R.F. JOHNSON: I have a question mark against the last two words of the clause on page 9. The ultimate paragraph reads -

(8a) The Registrar may at any time cancel a warrant of commitment for good reason.

Will the Attorney General give a scenario illustrating what he considers to be a good reason? Once again, this provision gives the registrar enormous power to cancel a warrant of commitment.

Mr J.B. D'Orazio: This is the standard terminology used in this and in other bills. Once you use it, you report it to the executive director.

Mr R.F. JOHNSON: The member for Ballajura is answering quicker than the Attorney General. He has been hiding his talent under a bush.

Mr J.A. McGINTY: I think the member for Hillarys will agree with this.

Mr R.F. Johnson: You said that last time.

Mr J.A. McGINTY: He seems to be particularly argumentative.

Mr R.F. Johnson: I just want to make sure I understand it properly and that the Attorney General explains it properly so that it is recorded in *Hansard*.

Mr J.A. McGINTY: There was a recent case of a person by the name of Brown. A warrant of commitment was made; in other words, a warrant to take that person to jail for non-payment of a fine. It was the wrong Brown. This provision gives the registrar the opportunity to correct an error made by the registrar, rather than saying that there is nothing the registrar can do about it and the person is now in jail.

Mr R.F. Johnson: I think I support you on that one!

Clause put and passed.

Clause 12: Section 55A amended -

Mr M.P. MURRAY: I move -

Page 9, after line 19 - To insert -

- (2) Section 55A(2) is amended as follows:
- (a) by inserting after paragraph (a) -
“or”;
 - (b) by deleting “; or” after paragraph (b) and inserting instead a full stop;
 - (c) by deleting paragraph (c).
- (3) After section 55A(4)(a) the following paragraph is inserted -
“
- (aa) the offender has a reasonable excuse for any contravention of a time to pay order made previously under this section in respect of the fine; and
- ”.

Mr R.F. JOHNSON: I must be consistent and say that I do not agree with the amendment for the same reason I do not agree with the final paragraph of clause 12. Every person in this chamber must perform family or personal responsibilities. We can all say that we need to perform family or personal responsibilities. I need to perform family or personal responsibilities. I am a husband, a father, a grandfather and a jolly nice bloke. I really need to help people out. I really need to be able to carry out those duties. Everybody does. We have a blanket clause before us. The Attorney General has put in that get-out-of-jail-free card again. All the member for Collie-Wellington has done with his amendment is open up the provision.

I do not agree with the amendment. I do not agree with the clause. I have a big cross against it because I think the Attorney General is going soft on crime again. He is pandering to the criminals. We all have personal and family responsibilities. We also have responsibilities to other citizens in this state, not just our families. I have said before that people must take responsibility for their actions. If one acts in an irresponsible way, one has to pay for it. We are cushioning these people who commit offences under the Road Traffic Act - the people who put other people's lives in danger. The government is pandering to these people. Why would these people want to change their ways if they know that all they have to do is go to the registrar and say that because they have serious personal and family responsibilities, they must have a licence. The registrar will say, “Okay, Billy, you can have it.” That is not the way to go. It is a softening and a weakening and a watering down of justice in this state.

Mr M.P. MURRAY: I certainly do not see this issue as simply as the member for Hillarys has put it. He has a very cynical approach. I think this clause is in the bill for a very strong purpose; that is, to keep people out of jail. We have said that that is what we want to do from the start of this debate. For many people who are fined, jail is not the way to go. In a previous speech I referred to a young lad who was taken to jail in Sydney on a fines enforcement matter. He came out in a coma and died the following week. That is not the way to go. If there is a chance that these people can redeem themselves, let us give them that chance.

Amendment put and passed.

Clause, as amended, agreed to.

New clause 13 -

Mr M.P. MURRAY: I move -

Page 9, after line 19 - To insert the following new clause -

13. Section 55E replaced

Section 55E is repealed and the following section is inserted instead -

“

55E. Registrar's decision on time to pay etc. is final

A decision of the Registrar under section 55A, 55B, 55C or 55D is final.

”.

Mr R.F. JOHNSON: The member for Collie-Wellington has a lot of amendments tonight. He has obviously had a lot of time to think about the amendment that is before the house.

Ms A.J.G. MacTiernan: That's right.

Mr R.F. JOHNSON: I did not see his lips move then! I thought the member for Collie-Wellington had changed his voice for a minute, and the way he approached things. The member is usually placid and understanding. Suddenly he had become aggressive and had a higher-pitched voice. I did not know where it came from.

I reiterate the concerns I have. They are very similar to those I had for the earlier amendment of the member for Collie-Wellington. This amendment is similar to the previous amendment and says that the registrar's decision on the time-to-pay arrangement is final.

Mr M.P. Murray interjected.

Mr R.F. JOHNSON: What is up?

Mr M.P. Murray: There was thunder.

Mr J.A. McGinty: God is indicating that he wants the member to get a move on.

Mr R.F. JOHNSON: God just left the chair!

The ACTING SPEAKER (Mrs J. Hughes): I am sure that he will be pleased with that remark.

Mr R.F. JOHNSON: The Acting Speaker knows that I always suck up to the Speaker!

Just so it is recorded in *Hansard*, I reiterate that I have the same concerns with the proposed new clause of the bill as I had with the previous amendment regarding the registrar's decision on the time to pay being final. I will not say any more than that because I said it all in my comments on the previous amendment.

Mr J.A. McGINTY: The member for Collie-Wellington will qualify as a Queen's Counsel after having substantially rewritten this legislation. If this amendment is passed, he will have succeeded in doing exactly that.

New clause put and passed.

Clause 13 put and passed.

Clause 14: Section 109 and Schedule 1 repealed -

Mr R.F. JOHNSON: It is important that the house notes that the Attorney General is repealing section 109 of the Fines, Penalties and Infringement Notices Enforcement Act 1994. He is repealing the whole of schedule 1, which covers 10 pages of that act. I have heard of swift moves by the Attorney General, but this is a wholesale repeal. The Attorney General is repealing all those pages. I want him to explain why. I have put an asterisk against one of the clauses the Attorney General wants to repeal. It is on page 85 of the act. I refer to clause 4(4) under schedule 1. Does the Attorney General have it?

Mr J.A. McGinty: It is not in my copy of the act. I have clause 4, but there are only subclauses (1) and (2).

Mr R.F. JOHNSON: I am not saying it does not. The Attorney General is repealing all the subclauses in that act wholesale. It is a special bargain price. Buy high and sell cheap is the Attorney General's motto. Clause 4 of schedule 1 is headed "Certain fines and orders imposed by Supreme or District Court before commencement". Subclause (1) states -

If before commencement the Supreme Court or the District Court imposed a fine (as defined in Part 4) on an offender and ordered that in default of payment the offender be imprisoned, then on and after commencement the order continues to have effect and the provisions of the *Justices Act 1902* relevant to that order continue in operation in respect of that order.

That is another swift move to keep people out of prison! I want the Attorney General to explain and justify why section 109 and schedule 1 will be repealed. Obviously they were deemed necessary when the act came into force. The government wants to remove an important part of the act. I have marked the important parts; much of the schedule refers to the Children's Court and various other things. I am sure it would take the Attorney General an hour to explain schedule 1. Will the Attorney General justify the repeal of section 109 and schedule 1 from the Fines, Penalties and Infringement Notices Enforcement Act?

Mr J.A. McGINTY: There is a very simple explanation for the repeal of the schedule; namely, it related to events that happened 12 years ago and all those events have now finished. When Hon Cheryl Edwardes, as Attorney General at the time, introduced the Fines Enforcement Registry legislation, she had to make provision in the legislation for transitional provisions that would apply in 1994. The schedule has had no effect post-1994.

Mr R.F. Johnson: You don't want to send them to prison; under this schedule they would go to prison if they were in default.

Mr J.A. McGINTY: That law applied in 1994. Anybody who was dealt with in 1994 or the following year would have been caught by the provisions. They were always intended to be transitional. They related to people

against whom a fine had been imposed by the Supreme Court or District Court before the coming into operation of the 1994 act. In other words, if somebody received a fine and was in default of that payment, the court ordered that the offender be imprisoned. This provision has no relevance post-1994.

Mr R.F. Johnson: None at all?

Mr J.A. McGINTY: No. That is the reason that parliamentary counsel recommended that it be deleted. It dealt with transitional arrangements when the fine enforcement system that the member for Hillarys' party introduced in 1994 came into effect. Arrangements were needed to ensure that the old arrangements would still have effect with the passage of the new legislation -

Mr R.F. Johnson: The 1994 legislation.

Mr J.A. McGINTY: Yes. The schedule does not apply to events that occurred after 1994. It provided a mechanism to deal with anyone who had a fine and order of the court pre-1994. I am told that every one of those has now worked its way through the system. Therefore, the schedule is no longer relevant. It will be deleted because it is redundant.

Mr R.F. Johnson: I knew there would be a good reason!

Clause put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Section 67 amended -

Mr R.F. JOHNSON: This clause will amend the Sentencing Act 1995. Is the Sentence Administration Act a different act? I was trying to find this provision in the Sentence Administration Act 2003, which I thought was an amendment to the Sentencing Act 1995. Is that a different act?

Mr J.A. McGinty: It is an amendment to the Sentencing Act, not the Sentence Administration Act.

Mr R.F. JOHNSON: The Sentence Administration Act came after the Sentencing Act. Clause 17 seeks to amend section 67(3) by deleting "40" and inserting "10".

Mr J.A. McGinty: Currently the court cannot impose a community based order unless it is for a minimum of 40 hours. This allows the court in minor cases to reduce the minimum number of hours to 10 hours.

Mr R.F. JOHNSON: I understand that. I spoke against this part of the bill in my second reading contribution, and to be consistent I should be speaking against this clause because I think once again it is a watering down of the justice system in Western Australia. There are many other less severe options for sentencing that can be used prior to someone being given a community-based order. There is a suspended sentence, probation, a caution, a fine and all sorts of things before we get to an order for 40 hours of community-based work. I am not in favour of that. As I said previously, it is a willy-nilly watering-down effect that we have seen so often -

Mr J.A. McGinty: Soft on crime!

Mr R.F. JOHNSON: Yes. The Attorney hit it on the nose. He said it himself; it is soft on crime. I am glad that has been recorded in *Hansard*. The Attorney General has said this is soft on crime and he has confirmed what I have been saying for many years now. This Attorney General and this Labor government are soft on crime, just as they were soft on drugs and soft on almost everything. If it were not getting near Christmas, I would be a lot more -

Mr J.J.M. Bowler: Soft on Christmas?

Mr R.F. JOHNSON: No, they are not. The minister is probably one of the politically correct ones - we should not sing carols and we should not celebrate Christmas in Christian terms. I know what members opposite are like, the weak, lily-livered people, the leftie pinko commos that are abundant on the other side of the chamber who want to do away with the Christ in Christmas. That is what they want to do. I have had enough. I am not going to tolerate any of this leftie pinko commo stuff any more!

Mr J.J.M. Bowler interjected.

Mr R.F. JOHNSON: What did the minister say? He should not dare say anything.

Mr J.J.M. Bowler: Okay, I will take it back!

Mr R.F. JOHNSON: So he should.

Mr J.B. D'Orazio: Wouldn't you like to be able to sit at home on Christmas Day and think "I've been part of saving some people being in jail, I can enjoy my Christmas"? Wouldn't you like that feeling?

Mr Mick Murray; Mr Jim McGinty; Mr John D'Orazio; Mr Rob Johnson; Speaker; Acting Speaker

Mr R.F. JOHNSON: I would feel better, my friend, if on Christmas Day I was eating a bit of turkey with my family and enjoying family time while knowing that the nasty criminals were behind bars, not let out by the Attorney General and the mob opposite -the leftie pinko commo whatsits. That is the trouble.

Ms J.A. Radisich: That is old Labor!

Mr R.F. JOHNSON: Members opposite are old and new Labor. Even Tony Blair has seen the light! He has seen what cannabis has done to the people in England, particularly the young people. Members opposite should bear in mind when enjoying their Christmas the people who have been seriously affected by cannabis. The government has allowed that to happen to them. The member for Yokine should hold his head in shame because he is the one who brought that weak, pinko leftie commo legislation into this house. For goodness sake! I have to sit down now because my time has expired.

Mr J.B. D'ORAZIO: I would like to hear more from the member for Hillarys.

Mr R.F. JOHNSON: I am almost finished.

Mr R.C. Kucera: Were you in cabinet when Mr Flynn was released?

Mr R.F. JOHNSON: Who? The only Finn I know is Shirley Finn.

Mr J.J.M. Bowler: Did you frequent her establishment?

Mr R.F. JOHNSON: No, I did not! I am a good family man. I think the member for Yokine knows more about that.

The ACTING SPEAKER (Mrs J. Hughes): Members, we have clause 17 before us.

Mr R.F. JOHNSON: Absolutely. Will members please control themselves? For goodness sake, this is the Legislative Assembly chamber and all we are hearing is the rabble on the other side of the chamber. Madam Acting Speaker, I am very tempted to take up the member for Ballajura's offer, but I have said enough tonight. I want certain members opposite to hold their heads in shame and to reflect on what they are imposing on the people of Western Australia.

Clause put and passed.

Clauses 18 and 19 put and passed.

Title put and passed.

Third Reading

MR J.A. McGINTY (Fremantle - Attorney General) [8.21 pm]: I move -

That the bill be now read a third time.

MR R.F. JOHNSON (Hillarys) [8.22 pm]: Let me assure you, Madam Acting Speaker, and members of this house that I will not speak at length in this third reading debate.

Several members interjected.

Mr R.F. JOHNSON: I promise members that I will not. I am actually trying to help the Attorney General and the government. By going through this third reading now we can finalise this bill. It will go to the other place next week, when it will be sitting, and it can deal with it. There is no point in delaying the third reading of this bill until tomorrow.

The opposition has the same view of this bill at its third reading stage as it had at the second reading stage and consideration in detail. The opposition is not happy with some of the clauses in this bill. I would like to think that I explained fairly fully, when were not indulging in a bit of humour, which is not a bad thing, why we do not support this bill. As I said previously, we do not oppose this bill because we know the government will get it through. Maybe in the other place some members who have some commonsense may see the light. It may be that, for a change, the Greens (WA) may not think that the government is doing the right thing and vote with it willy-nilly. I am the only speaker on this side of the house for the third reading stage of this bill. I will conclude my remarks to let us move onwards and upwards.

Question put and passed.

Bill read a third time and transmitted to the Council.