FINES, PENALTIES AND INFRINGEMENT NOTICES ENFORCEMENT AMENDMENT BILL 2019 (WA)

EXPLANATORY MEMORANDUM

Overview of the Bill

The Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 (the Bill) amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) (FPINE Act) in a number of key areas:

- by introducing statutory principles to which a person performing a function under the FPINE Act must have regard;
- by prohibiting the Fines Enforcement Registrar (Registrar) from issuing a licence suspension order for an alleged offender or offender whose last known address is in a remote area;
- by making it easier for offenders to enter into time to pay arrangements with the Fines Enforcement Registry (Registry);
- by clarifying the interaction of various enforcement measures which can be in operation at the same time;
- by introducing a new scheme of "work and development permits" to allow offenders experiencing hardship affecting their ability to pay to access activities under the supervision of an approved sponsor as a means of working off their fine debt and as an alternative to other enforcement measures;
- by introducing new "fine expiation orders" which will allow offenders who are already in custody for other matters to expiate their fine debt;
- by removing the Registrar's ability to issue a warrant of commitment to imprison an offender and instead requiring application for such a warrant to be made to, and decided by, a magistrate in limited circumstances;
- by introducing new garnishee orders as a fifth limb of an enforcement warrant, which will allow the Sheriff of Western Australia (Sheriff) to compulsorily garnish funds from a debtor's bank account or earnings;
- by introducing new information sharing provisions to assist the Registrar and Sheriff in locating alleged offenders and offenders earlier in the process to encourage them to enter into time to pay arrangements;
- by providing that the Sheriff can no longer issue a notice under section 78 of the FPINE Act in respect of money that is, or may be, compensation payable under the *Criminal Injuries Compensation Act 2003* (WA) (the CIC Act); and
- by providing that all unserved warrants of commitment are cancelled on the day of commencement, and all offenders in prison for fine default alone are to be released on that day.

Part 1 – Preliminary

Clause 1 Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019*.

Clause 2 Commencement

Clause 2 provides for the commencement of the Act.

Part 1 comes into effect on the day the Act receives Royal Assent.

Part 2, other than Divisions 3 and 4 will come into operation the day after Royal Assent.

Part 2 Division 1 inserts a note at each of sections 53 and 55D of the FPINE Act to constrain the Registrar from issuing any warrants of commitment in the period between commencement of Part 2 Divisions 1 and 2 and the commencement of Part 2 Division 3, unless the offender is already serving a period of imprisonment. What this means in practice is that for the period between the day after Royal Assent and the commencement of Part 2 Division 3, the Registrar will only be able to issue warrants of commitment for people who are already in prison for reasons other than fine default. This will allow offenders in prison for other reasons to expiate their fine debt at the current prescribed rate of $250 per day, pending commencement of the new fine expiation order provisions which are inserted through clause 56 of the Bill.

Part 2 Division 2 provides that all warrants of commitment are cancelled on the day this Division comes into operation (being the day after Royal Assent), and any offenders in prison under a warrant of commitment alone are to be released within 24 hours. If an offender is in prison for reasons other than a warrant of commitment, their warrant of commitment will continue in force while that period of concurrent imprisonment runs, and be cancelled when it ends. All warrants of commitment issued between commencement of Part 2 Divisions 1 and 2 and commencement of Part 2 Division 3 will be cancelled on the commencement of Part 2 Division 3. At that point, offenders in custody for reasons other than fine default will be able to apply for a "fine expiation order" under new Part 4 Division 3D. Part 2 Division 2 also amends section 78 of the FPINE Act to provide that the Sheriff cannot issue a notice in respect of compensation payments under the *Criminal Injuries Compensation Act 2003* (WA) (CIC Act), and includes a transitional provision which states that any such notices issued before the first commencement day, for which no money has been deducted, are cancelled.

Part 2 Division 3 and Part 3 will come into operation on a day fixed by proclamation. This is to allow for amendment regulations to be drafted, to make changes to the Department of Justice's IT system to account for workflow changes and for the development of policies, procedures and educational material. Changes to legislation within the portfolio of the Department of Transport will also require minor IT changes

to reflect changes in terminology. It is estimated that this Division will commence within six months of Assent.

Finally, the rest of the Act – being Part 2 Division 4 – will come into operation on a day fixed by proclamation that is later than the commencement of Part 2 Division 3 and Part 3. Part 2 Division 4 provides for the new work and development permit (WDP) scheme. Project work to scope, develop and launch the WDP scheme is expected to take approximately one year to complete.

Part 2 – *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

Division 1 – Act amended

Part 2 Division 1 amends the FPINE Act.

Clause 3 – Act amended

Clause 3 provides that this Part amends the FPINE Act.

Division 2 – Amendments relating to warrants of commitment issued by Registrar and debt redirection notices

Part 2 Division 2 outlines transitional arrangements for warrants of commitment issued by the Registrar under sections 53 and 55D and notices issued by the Sheriff under section 78 of the FPINE Act.

Clause 4 – Section 53 amended

Clause 4 amends section 53 by inserting a Note after subsection (1). Section 53 deals with the Registrar's powers to issue a warrant of commitment to imprison an offender. The Note inserted by clause 4 provides that the Registrar can only issue a warrant of commitment after the commencement of Part 2 Division 2 if the offender is already serving a period of imprisonment. In practice this will mean the Registrar cannot issue a warrant of commitment for an offender unless the offender is already in prison. This will stop imprisonment for fine default alone for the period between commencement of Part 2 Division 2 and commencement of Part 2 Division 3 of this Bill.

Clause 5 – Section 55D amended

Clause 5 amends section 55D in the same terms as clause 4 amends section 53.

Clause 6 – Section 78 amended

Clause 6 amends ***section 78*** of the FPINE Act. Section 78 provides that the Sheriff can serve a notice on a person who appears to owe money to a debtor, requiring that person to pay monies owed directly to the Sheriff instead of to the debtor.

Clause 6 inserts a new ***subsection (4)*** which provides that the Sheriff must not serve a notice under subsection (1) in relation to money that is, or may become, compensation payable under the CIC Act, or money of a kind prescribed in regulations.

Clause 7 – Part 9 Division 1 heading inserted

Clause 7 inserts a heading to create a new ***Division 1*** of Part 9 of the FPINE Act. Part 9 of the FPINE Act deals with transitional and validation provisions from previous amending instruments. The new heading inserted by clause 7 will provide that the transitional provisions required for the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* (WA) will sit within a discrete Division of Part 9.

Clause 8 – Part 9 Division 2 inserted

Clause 8 inserts new ***Division 2*** into Part 9. New Division 2 deals expressly with transitional provisions for this Bill.

New ***section 115*** outlines the terms used for this Division. These include:

- first commencement day: being the day on which Part 2 Division 2 comes into operation;
- former Act: being the FPINE Act before Part 2 Division 3 comes into operation;
- period of concurrent imprisonment: being a term of imprisonment an offender is, or would be, serving concurrently with imprisonment under a warrant of commitment. This excludes a period of imprisonment under another warrant of commitment;
- second commencement day: being the day on which Part 2 Division 3 comes into operation; and
- transitional period: the time between the first and second commencement days.

New ***section 116*** provides that any warrants of commitment issued before commencement day for which an offender has not been arrested are cancelled. This will have the effect that, from the first commencement day, all unserved warrants of commitment will no longer exist, although the debt will remain. The Registrar can still take enforcement action in relation to those fines under Part 4 of the FPINE Act after the point of cancellation of the warrant of commitment.

New ***section 117*** deals with offenders who are in custody under a warrant of commitment before the first commencement day. There are effectively two classes of offender being contemplated by this section:

- offenders who are not serving a period of concurrent imprisonment – meaning offenders who are in prison for fine default alone; and
- offenders who are serving a period of concurrent imprisonment and are expiating their fines concurrently under a warrant of commitment.

The first class of offenders are to be released on the first commencement day. Their warrants of commitment will be cancelled and the outstanding balance of the fines owed under those warrants will be wholly discharged.

New ***section 118*** provides that warrants of commitment for the second class of offenders – those in prison for other reasons – will continue to run, subject to section 53 and subsections 118(2) and (3). This means that those offenders will continue to concurrently expiate their fines while in prison for other reasons; however, should their period of concurrent imprisonment end before the warrant of commitment is fully discharged, they are to be released. Their outstanding balance will be discharged to the extent that it was expiated under the warrant of commitment and the Registrar may take other enforcement action under Part 4 of the FPINE Act.

New ***section 119*** deals with section 78 notices issued by the Sheriff under an enforcement warrant before the first commencement day. The section applies if, before the first commencement day, the Sheriff had served a section 78 notice in relation to compensation that was or could become payable under the CIC Act, and no money has been paid in compliance with that notice: ***subsection 119(1)***. In these circumstances, the notice is cancelled: ***subsection 119(2).***

Subsection 119(3) provides that if a compensation award made under the CIC Act before the first commencement day included a direction that an amount of compensation be paid to the Sheriff in compliance with a section 78 notice, that amount is not to be paid to the Sheriff – despite that direction – and an assessor (within the meaning of section 3 of the CIC Act) must make another direction as to how the amount is to be paid or otherwise dealt with in accordance with the CIC Act.

Part 2 Division 3 – General amendments

Part 2 Division 3 of the Bill contains general amendments to the FPINE Act.

Clause 9 – Section 3 amended

Clause 9 amends section 3 of the FPINE Act through the insertion of the following new defined terms:

- approved form: a form approved in writing by the CEO (fines enforcement);
- CEO (fines enforcement): the CEO of the Department principally assisting the Minister in the administration of the FPINE Act (currently the Director General of the Department of Justice);
- Commissioner of Police: the person holding, or acting in, the office of Commissioner of Police under the *Police Act 1892* (WA) (the Police Act);
- electricity corporation: a corporation established under section 4(1) of the *Electricity Corporations Act 2005* (WA) (the EC Act) – the Electricity Generation Corporation, the Electricity Networks Corporation, and the Regional Power

Corporation. In practice, this means Horizon Power, Synergy and Western Power;
- hardship: has a meaning affected by new section 4A;
- remote area: an area designated as a "remote area" under regulations made for the purposes of new section 4B; and
- work and development order (WDO): an order made under section 48.

Clause 9 also deletes the following redundant defined terms:

- Department of Corrective Services: following machinery of government changes in 2017, the Department of Corrective Services is no longer a standalone agency;
- Electricity Generation and Retail Corporation: has been deleted due to the broader definition of "electricity corporation" which has been inserted; and
- the definition of "number plate" is deleted and replaced to only refer to the meaning it is given in the *Road Traffic (Vehicles) Act 2012* (WA) (the RTV Act).

The defined term "Registrar's website" is inserted into section 3, having been deleted from section 56A by clause 62, and amended to clarify that it refers to a part of a website maintained by or on behalf of the Registrar. This Bill includes a number of requirements for information to be published on the Registrar's website, which means the defined term has a broader application than only to Part 5A of the FPINE Act, which deals with the publication of names.

Clause 9(4) deletes ***subsection (2)*** of section 3 of the FPINE Act, as this Bill introduces the concept of a "vehicle of the debtor" in Part 7. This is explained at clause 65.

Clause 10 – Sections 4 to 4B inserted

Clause 10 inserts new sections 4, "General principles relating to enforcement of fines", 4A, "Hardship" and 4B, "Remote areas".

New ***section 4*** requires a person performing a function under the FPINE Act to have regard to the following principles:

- that imprisonment for failure to pay a fine is an enforcement measure of last resort; and
- that an offender who is experiencing hardship within the meaning of new section 4A affecting their ability to pay a fine or otherwise work off their debt through a WDO, should not be imprisoned by reason only of a failure to pay a fine.

The intention of these principles is to ensure as far as possible that offenders are not imprisoned for fine default alone unless that imprisonment is truly the enforcement measure of last resort and, particularly, that offenders experiencing hardship are not imprisoned for fine default alone.

New ***section 4A***, “Hardship”, provides that for the purposes of the FPINE Act a person is experiencing hardship if they:

- are experiencing financial hardship;
- have been, or might be subjected to, family violence as defined in section 3(1) of the *Restraining Orders Act 1997* (WA) (the RO Act);
- have a mental illness as defined in section 4 of the *Mental Health Act 2014* (WA) (the MH Act);
- have a disability as defined in section 3 of the *Disability Services Act 1993* (WA) (the DS Act);
- are homeless;
- are experiencing alcohol or other drug use problems.

The RO Act defines “family violence” as violence or a threat of violence by a person towards a family member of that person, or any other behaviour by the person that coerces or controls the family member or causes them to be fearful.

The MH Act defines “mental illness” as a condition characterised by a disturbance of thought, mood, volition, perception, orientation or memory that significantly impairs a person’s judgment or behaviour, whether temporarily or permanently.

The DS Act defines “disability” as a disability attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments, which is, or is likely to be, permanent and that may or may not be chronic or episodic in nature and that results in a substantially reduced capacity of the person for communication, social interaction, learning or mobility and a need for continuing support services.

The expression “alcohol or other drug use problems” is taken from the *Alcohol and Other Drugs Act 1979* (WA) and the *Public Health Act 2016* (WA).

The terms “financial hardship” and “homelessness” are not defined in this Bill.

The consideration of whether a person is experiencing hardship is relevant to assessing an offender’s eligibility to undertake a WDP as an alternative to other enforcement measures and, critically, as a key consideration for any person performing a function under the FPINE Act in the context of imprisonment as an enforcement measure.

New ***subsection 4A(2)*** provides that the list set out at (1) is not exhaustive, affording discretion to a person performing a function under the FPINE Act to consider other matters which could constitute hardship.

New ***section 4B***, “Remote areas”, provides that regulations may designate one or more areas of the State of WA as remote areas for the purposes of the FPINE Act. The ability to prescribe a “remote area” in regulations is limited through new subsection 4B(2), which provides that a “remote area” cannot include any part of the

metropolitan region. The term “metropolitan region” takes its meaning from subsection 4(1) of the *Planning and Development Act 2005* (WA), being the region described in Schedule 3 to that Act.

Whether an alleged offender or offender is living in, or has their last known address in in a remote area, is a relevant consideration in two circumstances contemplated by this Bill, being:

- whether a licence suspension order can be issued under Parts 3 and 4; and
- whether a Court may authorise substituted service of a summons under Part 4 Division 3E, which is inserted through clause 56.

Clause 11 – Section 5 amended

Clause 11 amends section 5 of the FPINE Act, which deals with service of documents. The following amendments are made:

- at ***subsection 5(3)*** the concept of a person’s “last known address” is expanded to be relevant for the purposes of the FPINE Act generally, rather than specific to the service of documents under Parts 4 and 7 and publication of details under Part 5A;
- at ***subsection 5(3)*** the scope of who may be advised of another address is expanded to include the Sheriff and the words “he or she” are replaced with the neutral “person”; and
- at ***subsection 5(4)***, a person’s last known address is taken to be their current address shown in the records of the Director General of the Department of Transport, an electricity corporation (as defined in section 4), or a government department or agency of the Commonwealth.

These amendments will expand the scope of the sources from which an alleged offender or offender’s “last known address” may be obtained and will assist the Registrar and Sheriff in making contact with alleged offenders and offenders to arrange payment of infringements and fines.

Clause 12 – Section 5A amended

Clause 12 amends ***subsection 5A(2)*** of the FPINE Act to include a summons or arrest warrant issued under new section 52Q (inserted through clause 56) and a garnishee order issued under new section 95O or 95V (inserted through clause 76, which inserts new Division 6B into Part 7). This will provide that a summons or arrest warrant cannot be served electronically and expressly allow electronic service of garnishee orders under Part 7.

Subsection 5A(2) at ***subparagraph (a)(i)*** is also amended to delete reference to current section 47A, which is deleted through this Bill.

Clause 13 – Section 5C inserted

Clause 13 inserts new ***section 5C***, "Act binds Crown". This provision has been inserted to support the new garnishee order provisions at Part 7 Division 6B inserted by clause 76 of the Bill, in circumstances where a debtor in respect of whom a garnishee order has been issued may be employed by the State or Commonwealth.

Clause 14 – Section 7A amended

Clause 14 amends ***section 7A***, which outlines the Registrar's powers of delegation. ***Subsection 7A(1)*** is amended through the deletion of current subparagraph (b) which refers to the Registrar's power to issue a warrant of commitment under subsection 53(1). The Registrar will no longer have the power to issue a warrant of commitment. A new ***paragraph (b)*** is inserted in its place to provide that the Registrar cannot delegate the power to issue a fine expiation order under new section 52F. As a fine expiation order allows a person to expiate their debt in custody without the requirement to repay the funds, it is appropriate that this decision rest with the Registrar.

Clause 15 – Sections 10 and 10A deleted

Clause 15 deletes section 10, "Registrar has access to records of Director General and Electricity Generation and Retail Corporation". This Bill, at clause 78, inserts new Part 7A "Information" into the FPINE Act. New section 100C at new Part 7A replaces the deleted section 10. In addition, new subsection 124(1), inserted through clause 88 of the Bill, is a transitional provision validating any administrative arrangements previously made between the Registrar and the Director General under section 10.

Clause 15 also deletes section 10A, "Registrar may disclose information to Commissioner of Police or officer of Department of Corrective Services". As noted above, new Part 7A "Information" is inserted into the FPINE Act through clause 78 of this Bill. A general authority to disclose is included at new section 100B to replace current section 10A and subsection 124(2) is a transitional provision validating any administrative arrangements previously made under section 10A.

Clause 16 – Section 11 amended

Section 11 is the first section under Part 3 of the FPINE Act, which deals with the enforcement of infringement notices. Clause 16 amends section 11, "Terms used", as follows:

- the now redundant defined term "aggregate unpaid infringement amount" is deleted, consequential to amendments to section 21A in clause 23; and
- the definition of "outstanding order to pay or elect" is deleted from section 11. This definition is now only used at Part 5A of the FPINE Act and has been inserted as new section 56AA by clause 63.

The following new terms are inserted:

- “enforcement warrant” and “licence suspension order” are defined by reference to sections 21A and 19, respectively; and
- “time to pay order” is defined by reference to new section 21C.

The following existing terms are amended:

- “enforcement fees” is expanded to refer to proceedings under the FPINE Act generally, to account for fees imposed for enforcement warrants which could be issued for an infringement notice under Part 3 and enforced under Part 7;
- the definition of “modified penalty” is amended to replace the reference to “offender” and “he or she” with “alleged offender”; and
- the definition of “unpaid infringement amount” is amended to refer to an amount set out in a registered infringement notice of the modified penalty and enforcement fees, specified in the order, that have not been paid.

Clause 17 – Section 16 amended

Clause 17 amends section 16, “Registration of infringement notice: enforcement certificate”. ***Subsection 16(1)*** is amended by deleting current ***paragraph (b)*** and instead providing that an infringement notice may be accompanied by information prescribed in regulations. This will allow regulations to be made to specify what information the Registrar requires, which will provide clarity to prosecuting authorities.

Clause 18 – Section 17 amended

Clause 18 amends section 17 at ***subsection 17(4)*** to delete the words “may, in some circumstances”. This is as a result of the amendments to subsection 21A(2) made by clause 23 of the Bill, which removes the restriction on issuing enforcement warrants until an alleged offender has an aggregate unpaid infringement amount of $2,000. The Registrar will have the ability to issue an enforcement warrant for an infringement notice of any amount.

Clause 19 – Section 18 amended

Clause 19 amends section 18, “Notice of intention to enforce” (NIE).

Firstly, ***paragraph 18(1)(b)*** is deleted and replaced with reference to the “unpaid infringement amount”.

Paragraph 18(3)(a) is also deleted and replaced to refer to this term, to account for situations where part-payment of the modified penalty has already been made.

Paragraph 18(3)(d) is amended to delete the words “in some circumstances”. This change is consequential to the amendments to section 21A by clause 23, the same as the amendment to subsection 17(4).

Finally, ***subsection 18(5)*** is amended to include new requirements for a NIE. The word "generally" is inserted into paragraph 18(5)(b) to indicate that there may be grounds for cancellation of a licence suspension order other than through payment of the modified penalty and enforcement fees.

A NIE must:

- state that a licence suspension order cannot be made for an alleged offender who is an individual whose last known address is in a remote area; and
- explain the effect of new paragraph 19(2A)(b) and advise the alleged offender who is an individual to give the Registrar any information about their personal circumstances that is relevant to the grounds for cancellation of a licence suspension order under subsection 20A(3).

Clause 20 – Section 19 amended

Clause 20 amends section 19, "Licence suspension order". ***Subsection 19(1)*** is amended at ***paragraph (a)*** to clarify that a NIE must relate to an infringement notice and at ***paragraph (b)*** to replace "modified penalty and enforcement fees" with "unpaid infringement amount".

New ***subsection 19(2A)*** is inserted, which will:

- prohibit the Registrar from issuing a licence suspension order for an alleged offender who is an individual whose last known address is in a remote area; and
- provide that, where an alleged offender has given the Registrar information about their personal circumstances that gives the Registrar reasonable grounds to believe that subsection 20A(3) would apply, the Registrar cannot make a licence suspension order.

Subsection 19(6) is amended to replace "he or she" with "Registrar".

Subsection 19(8) is deleted and replaced with a new (8), which sets out requirements for a notice confirming licence suspension. Such notice must:

- state that a licence suspension order has been made and explain its terms;
- state the date and time when that licence suspension order has effect; and
- explain that the alleged offender can request that the licence suspension order be cancelled under subsection 20A(1).

Clause 21 – Section 20 amended

Clause 21 amends section 20, "Cancelling licence suspension orders". New ***subsection (20)(2A)*** is inserted to provide that the Registrar must cancel a licence

suspension order if an alleged offender gives the Registrar a notice stating that their current address is in a remote area.

New ***subsection 20(2B)*** provides that a notice supplied under subsection 20(2A) must be in an approved form and be accompanied by any documentation or evidence required in that form.

This is to cater for situations where the Registrar has made a licence suspension order on the basis that an alleged offender's last known address was not in a remote area, but the alleged offender had changed addresses without informing the Registrar or another agency (as contemplated by section 5) and now lives in a remote area, where a licence suspension order could not have been made.

Clause 21(2) makes consequential amendments to section 20 to include references to new subsection 20(2A) and section 20A at subsections (3) and (5).

Clause 22 – Sections 20A and 20B inserted

Clause 22 inserts new ***section 20A***, "Alleged offender may request cancellation of licence suspension order". New section 20A provides that where an infringement notice has been registered, the alleged offender may request that the Registrar cancels a licence suspension order that has been made.

A request under section 20A must be made in accordance with the regulations: ***subsection 20A(1)***, but cannot be made if the alleged offender has made an election to have the matter heard in court under section 21 of the FPINE Act: ***subsection 20A(2)***.

The grounds for making a request under subsection 20A(1) are:

- that a licence suspension order deprives the alleged offender of:
    - the means of obtaining urgent medical treatment for illness, disease or disability suffered by the alleged offender or a member of their family (***paragraph 20A(3)(a)***); or
    - the alleged offender's principal means of obtaining income to pay the unpaid infringement amount (***paragraph 20A(3)(a)***); or
- that a licence suspension order seriously hinders the alleged offender in performing family or personal responsibilities (***paragraph 20A(3)(b)***).

In addition to these grounds, and in accordance with new ***subsection 20A(4)***, the Registrar may consider the effect of a licence suspension order on an alleged offender's ability to seek or obtain employment.

Under new ***subsection 20A(5)***, if the Registrar is satisfied that there are grounds for a request to cancel a licence suspension order under subsection 20A(1), the Registrar must agree to that request and cancel the licence suspension order. The Registrar cannot make another licence suspension order in relation to the alleged offender and

the infringement notice unless the Registrar is satisfied that the grounds relied upon under subsection 20A(3) no longer apply, or if the Registrar has, under new section 20B, requested the alleged offender to provide information or evidence stating that the subsection 20A(3) grounds continue to apply and the alleged offender has not provided information or evidence in compliance with that request.

Clause 22 also inserts new ***section 20B***, "Registrar may request further information". Section 20B applies in two circumstances:

- where the Registrar has not made a licence suspension order because either:
    - the alleged offender has given the Registrar information about their personal circumstances which gives the Registrar reasonable grounds to believe that subsection 20A(3) would apply to the alleged offender if a licence suspension order were made; or
    - the Registrar cancelled a licence suspension order following a request from an alleged offender under subsection 20A(1).

In these circumstances, under ***subsection 20B(2)***, the Registrar may request that an alleged offender provides information or evidence by a specified date in relation to whether the grounds set out at subsection 20A(3) would apply if a licence suspension order was made.

Subsection 20B(3) provides that the request must be in writing and served on the alleged offender, and ***subsection 20B(4)*** provides that the Registrar can only make a request under subsection 20B(2) once in a twelve month period, unless the Registrar is advised that the alleged offender's personal circumstances have changed.

Subsection 20B(5) provides that if the alleged offender does not comply with a request made under subsection 20B(2), the Registrar may presume that the subsection 20A(3) grounds would not apply to the alleged offender.

Clause 23 – Section 21A amended

Clause 23 amends section 21A, "Enforcement warrant". ***Paragraph 21A(1)(a***) is amended to clarify that an enforcement warrant relates to a particular infringement notice.

Paragraph 21A(1)(b) is amended to refer to the "unpaid infringement amount" rather than the "modified penalty" consistent with the amendments made to this term through clause 16 of the Bill.

Clause 23, at (1)(d), also deletes ***paragraph 21A(1)(d)***. This previously restricted the issue of an enforcement warrant until an alleged offender's aggregate unpaid infringement amount (being an amount across several infringement notices) reached $2,000 or a higher prescribed amount.

Clause 24 – Part 3 Division 2A inserted

Clause 24 inserts new ***Division 2A***, "Time to pay orders", into Part 3. This is to consolidate and standardise the time to pay (TTP) order provisions in Part 3 of the FPINE Act.

New ***section 21B*** "Application for time to pay order" provides that an alleged offender can apply to the Registrar for a TTP order in respect of a registered infringement notice. An application for a TTP order must be made in accordance with the regulations and include an offer to pay the unpaid infringement amount, either:

- in full before a specified date; or
- in regular instalments.

An application for a TTP order can be made at any time after an infringement notice has been registered, regardless of whether a licence suspension order is also in force. However, an application cannot be made if an enforcement warrant is in force or if the alleged offender has made an election to have the matter heard in court under section 21 of the FPINE Act.

New ***section 21C*** "Making time to pay order" outlines how a TTP order is made. Upon receiving an application, the Registrar may require the alleged offender to undergo a means test and may, under new subsection 21C(2), make a TTP order if they think fit.

New ***subsection 21C(3)*** provides for circumstances where the Registrar must make a TTP order. The circumstances are if the Registrar is satisfied:

- that the alleged offender does not have the means to pay the unpaid infringement amount within 28 days of making the application for a TTP order; and
- that the alleged offender's repayment offer is reasonable.

In addition, the alleged offender must not have contravened a previous TTP order made under the FPINE Act (regardless of whether that previous TTP order related to another infringement notice or was for a fine) or, if they have previously contravened a TTP order, they must have a reasonable excuse for having done so.

Under new ***subsection 21C(4)***, a TTP order may require the alleged offender to pay in full by a set date or in regular instalments, and new ***subsection 21C(5)*** requires that the TTP order be served on the alleged offender. Should the Registrar refuse to make a TTP order, notice of refusal must be served on the alleged offender.

New ***section 21D*** allows an alleged offender to apply in accordance with the regulations to have a TTP order amended. The Registrar may require an alleged offender who has applied for amendment of a TTP order to undergo a means test. The Registrar is not required to agree to an amendment application. If a TTP order is

amended, it must be served on the alleged offender. If the Registrar refuses to amend a TTP order, notice of refusal must be served on the alleged offender.

New ***section 21E*** provides that the Registrar may amend a TTP order at any time after undertaking a means test of an alleged offender. Any request for an alleged offender to undertake a means test must be served on the alleged offender in writing, and under new ***subsection 21E(5),*** the Registrar can only require a means test once every 12 months, unless the Registrar has been advised that the alleged offender's financial circumstances have changed.

New ***section 21F*** requires the Registrar to ensure that any payments to be made under a TTP order are within an alleged offender's means. This applies to both a TTP order made under section 21C and an amended TTP order under section 21E.

Under new ***section 21G***, the Registrar may cancel a TTP order. Cancellation may occur if the alleged offender contravenes the TTP order or does not comply with a request from the Registrar to undertake a means test under subsection 21E(1). If the Registrar cancels a TTP order, notice of cancellation must be served on the alleged offender.

New ***section 21H*** provides that all other enforcement action in respect of that infringement notice is suspended while a TTP order is in force. This means that the Registrar must, as soon as practicable after making a TTP order, cancel any licence suspension order that is in force in respect of the infringement notice. While that TTP order is in force, the Registrar cannot issue a NIE, make a licence suspension order, or issue an enforcement warrant in relation to that infringement notice.

Clause 25 – Section 21 amended

Clause 25 amends ***paragraph 21(1)(c)*** by deleting reference to subsection 27A(4), which is no longer applicable by virtue of clause 27 of the Bill, and replacing it with reference to new section 21C.

Clause 26 – Section 22 amended

Clause 26 amends section 22, "Prosecuting authority may withdraw proceedings".

Subparagraph 22(5)(c)(ii) is amended to reflect updated terminology: the existing "vehicle licence cancellation order" is renamed a "vehicle licence cancellation and disqualification order". A reference to section 95J, under which those orders are made, is inserted for clarity.

The phrase "registered in the name of the alleged offender" is replaced with the new term "vehicle of the alleged offender", which is consequential upon the deletion of existing subsection 3(2) through clause 9 and new subsection 63(3) which introduces the "vehicles of a debtor" term for an expanded concept of ownership, inserted in Part 7 of the FPINE Act through clause 65.

Finally, new ***paragraphs (d) and (e)*** are inserted into subsection 22(5). These new paragraphs provide that:

- if the Sheriff has recovered funds under a garnishee order issued under an enforcement warrant, those funds are to be refunded to the alleged offender; and
- if an administration fee has been charged by the alleged offender's bank under section 95Z, the Sheriff must pay the alleged offender an amount equal to that administration fee.

This is to ensure that, if a prosecuting authority has withdrawn proceedings against an alleged offender, the alleged offender is "made whole" if any monies have already been repaid or recovered before the proceedings are withdrawn.

Clause 27 – Sections 27A to 27D replaced

Clause 27 deletes sections 27A to 27D which are no longer required by virtue of the insertion of new Division 2A through clause 24, which consolidates the TTP order provisions.

Sections 27A to 27D are replaced by a new section 27A, "Certain decisions of Registrar are final".

New ***section 27A*** provides that a decision by the Registrar under section 20A (to cancel a licence suspension order) or Division 2A (to make, amend or cancel a TTP order) is final. This preserves the finality of the Registrar's decision previously provided for by section 27D.

Clause 28 – Section 28 amended

Part 4 of the FPINE Act, which deals with the enforcement of fines, has been generally restructured by this Bill to provide clarity as to the life cycle of a fine and outline the various enforcement options in a logical order.

Section 28 is the first section of Part 4 of the FPINE Act.

Clause 28 amends ***section 28***, "Terms used", to insert new, or amend current, defined terms for the purposes of Part 4.

The following new terms are inserted:

- amount owed: the amount of the fine and any enforcement fees that are not paid or recovered under an enforcement warrant, and the liability to pay where liability has not been discharged under various sections of the FPINE Act;
- audio link: defined by reference to the term as used in the *Criminal Procedure Act 2004* (WA) (the CP Act);
- authorised police officer: defined by reference to the term as used in the *Bail Act 1982* (WA) (the Bail Act);

- court custody centre: defined by reference to the term as used in the *Court Security and Custodial Services Act 1999* (WA) (the CSCS Act);
- detainee: a person who is detained in a detention centre;
- detention centre: defined by reference to the term as used in the *Inspector of Custodial Services Act 2003* (WA) (the ICS Act);
- enforcement instrument: a licence suspension order, enforcement warrant, order to attend for work and development or a fine expiation order;
- enforceable registered fine: a fine imposed on the offender if it is registered and not paid in full or recovered or wholly discharged;
- enforcement warrant: a warrant issued under section 45;
- fine enforcement (WDO) order: an order made under subsection 57A(3) of the *Sentencing Act 1995* (WA) (the Sentencing Act);
- fine expiation order: an order issued under section 52F;
- licence suspension order: an order made under section 43;
- ongoing fine expiation order: defined by reference to section 52I;
- order to attend for work and development: an order issued under subsection 47(1);
- person in court custody: defined by reference to the term as used in the CSCS Act;
- police facility: means a police station or other premises managed or controlled by the Commissioner of Police at which a person may be detained in police custody;
- prison: defined by reference to the term as used in the ICS Act;
- prisoner: defined by reference to the term as used in the *Prisons Act 1981* (WA);
- responsible officer: has the meaning given in subsection 52ZC(2);
- video link: defined by reference to the term as used in the CP Act;
- warrant of commitment: a warrant of commitment issued under section 52S;
- warrant of commitment inquiry: has the meaning given in subsection 52M(1); and
- warrant of commitment inquiry process: has the meaning given in subsection 52M(2).

The areas of Part 4 where these terms are used are:

- the terms “amount owed”, “enforcement instrument” and “enforceable registered fine” have general application throughout Part 4;
- the terms “audio link”, “authorised police officer”, “responsible officer”, “video link”, “warrant of commitment”, “warrant of commitment inquiry” and “warrant of commitment inquiry process” are all used in Part 4 Division 3E, which deals with warrants of commitment and other court-ordered enforcement actions;
- the terms “fine enforcement (WDO) order” and “order to attend for work and development” are used in Part 4 Division 3C, which deals with work and development orders;

- the terms “court custody centre”, “detainee”, “detention centre”, “fine expiation order”, “ongoing fine expiation order”, “person in court custody”, “police facility”, “prison” and “prisoner” are all used in Part 4 Division 3D, which deals with fine expiation orders that can be made by the Registrar and will allow offenders in custody to expiate fines at a prescribed daily rate;
- “enforcement warrant” is used in Part 4 Division 3B;
- “licence suspension order” is used in Part 4 Division 3A, and
- “time to pay order” is used in Part 4 Division 2 Subdivision 3.

Existing definitions in section 28 are also amended as follows:

- to clarify that a “court officer” is approved by the CEO (fines enforcement) in order to differentiate that position from the CEO (corrections);
- to clarify that “enforcement fees” can encompass fees imposed under the FPINE Act generally, not only under Part 4 (noting that enforcement warrants are issued under Parts 3, 4 and 6 but executed under Part 7);
- the defined term “registered” is amended to refer to “section 32(2)(a) or section 32B” as a result of the restructure of Part 4 Division ; and
- “time to pay order” is replaced to refer only to section 33.

The definition of “work and development order” has been removed from section 28 as it is now defined at section 3.

Finally, ***subsection 28(2)*** is deleted. Subsection 28(2) was a list of abbreviations and contemporary drafting practice no longer includes lists of this type.

Clause 29 – Part 4 Division 2 heading amended

Clause 29 amends the heading of ***Division 2*** to expressly reference payment “and registration” of fines, to clarify the intent of the Division.

Clause 30 – Part 4 Division 2 Subdivision 1 heading replaced

Clause 30 replaces the heading of ***Subdivision 1*** to refer to fines which are taken to have been registered when they were imposed. This is as a consequence of the restructure of Division 2 generally.

Clause 31 – Section 32 amended

Clause 31 amends ***section 32***, which provides for the actions that must be taken by an offender following the imposition of a fine. The obligation on the offender to pay the fine or to apply for a TTP order in respect of the fine is not altered by this Bill.

Firstly, ***paragraph 32(2)(b)*** is amended to delete reference to sections 42 (licence suspension) and 47A (order to attend for work and development) and instead provide that the Registrar cannot take any action under Part 4 to enforce the fine.

Subsection 32(3) is amended through the replacement of existing paragraph 32(3)(b) and deletion of paragraph 32(3)(c). ***Paragraph 32(3)(b)*** is replaced with a broader reference to enforcement methods available under Part 4 in relation to another fine imposed on the offender.

Paragraph 32(3)(c) is deleted as it refers to action being taken under subsection 55D(1), which is deleted through clause 61.

Finally, ***subsection 32(4)*** is replaced. This section has been redrafted to remove reference to subsection 53(2) of the FPINE Act, which is deleted through clause 58. The effect of subsection 32(4) is that a fine imposed under section 58 or 59 of the Sentencing Act is administered entirely through that Act, is not "registered" under the FPINE Act and is not an "enforceable registered fine".

Clause 32 – Section 33 replaced

Clause 32 replaces section 33 with new ***Subdivisions 2 and 3*** containing new ***sections 32A to 33***.

New ***section 32A***, under Subdivision 2 "Fines registered at request of prosecuting authority", relates specifically to fines which are not taken to have been registered at the time they were imposed, being fines which are only registered at the request of a prosecuting authority. In practice, these are fines imposed by the Commonwealth or fines for which recovered funds are credited to specific accounts as set out in Schedule 1 to the Sentencing Act (as provided for by subsection 60(2) of that Act).

New ***section 32B*** outlines the process for a prosecuting authority to request a court officer to register a fine. This is achieved by the prosecuting authority giving the court officer a written notice requesting that the fine be registered.

New ***Subdivision 3*** deals with TTP orders, and the relevant provisions are restructured in mirror terms to Division 2A of Part 3, which are outlined above and deal with TTP orders for infringement notices. The circumstances in which an application for a TTP order may be made by an offender are different for fines than for infringement notices due to the wider range of enforcement options available for fines.

New ***subsections 32C(1) and (2)*** provide that an offender may apply to the Registrar for a TTP order for a registered fine. Any application for a TTP order must be made in accordance with the regulations and include an offer to pay the amount owed, either before a specified date or in regular instalments.

New ***subsection 32C(3)*** provides that an application for a TTP order can be made at any time following registration of a fine, regardless of whether a licence suspension order, order to attend for WDO or WDO are in force, or a warrant of commitment inquiry process is occurring. An application cannot be made if an enforcement warrant, ongoing fine expiation order or warrant of commitment are in force.

An application for a TTP order cannot be made when an enforcement warrant is in force because enforcement warrants are executed by the Sheriff under Part 7 of the FPINE Act. Section 68A allows the Sheriff to stay the execution of an enforcement warrant and enter into an oral or written arrangement with a debtor to pay the amount owing, analogous to a TTP order under Part 4.

An application for a TTP order cannot be made when an ongoing fine expiation order is in force. The basis of this is that the Registrar, when considering whether to make such an order, would already have considered the offender's ability to pay the fine or whether there is appropriate property to seize and sell to satisfy the debt.

New ***section 33*** deals with how a TTP order is made. When the Registrar receives an application for a TTP order under section 32C the Registrar may require the offender to undergo a means test and may, if they think fit, make a TTP order. There are certain circumstances where the Registrar must make a TTP order. These are detailed at new subsection 33(3), where:

- the Registrar is satisfied that:
    - the offender does not have the means to pay within 28 days after having made the application; and
    - the offender's payment offer is reasonable; and
    - either:
        - the offender has not previously contravened a TTP order – including for a different fine or an infringement notice; or
        - that if they have previously contravened a TTP order, there is a reasonable excuse for having done so; and
- a warrant of commitment inquiry process is not occurring.

If the Registrar is satisfied of all of the above, the Registrar must make a TTP order.

In accordance with new ***subsection 33(4)***, a TTP order may require either a full payment in one sum or payments at specified intervals.

New ***subsection 33(5)*** requires service of the TTP order on the offender.

If the Registrar refuses to make a TTP order, notice of refusal must be served on the offender as required by new ***subsection 33(6)***.

Clause 33 – Section 34 amended

Clause 33 amends section 34 of the Bill. At ***subsection 34(1)***, the words "in accordance with the regulations" are inserted to clarify how an offender can apply to have a TTP order amended. This is in mirror terms to an application to amend a TTP order for an infringement under section 21D.

At ***subsection 34(4)***, the terms "he or she" are deleted and replaced with "Registrar".

Clause 34 – Section 35 amended

Clause 34 amends ***section 35***, "Registrar may amend time to pay order".

Subsection 35(2) is amended to reference the "amount owed" and ***subsection 35(4)*** is amended to replace "he or she" with "Registrar".

Clause 35 – Sections 36 to 39 and Part 4 Division 2 Subdivision 2 heading replaced

Clause 35 deletes sections 36 to 38A, the heading to Part 4 Division 2 Subdivision 2, and sections 38 and 39.

New ***subsection 36(1)*** clarifies the circumstances in which the Registrar can cancel a TTP order. These are if an offender contravenes the TTP order or if an offender does not comply with a request to undergo a means test under subsection 35(1).

Subsection 36(2) requires notice of cancellation of a TTP order to be served on an offender.

Clause 35 also inserts new ***section 37***, "Enforcement action suspended while time to pay order is in force". This is to provide clarity and ensure that, while an offender has an active TTP order in respect of a fine, all other enforcement action for that fine must stop. In practical terms, this means that on making a TTP order, the Registrar must:

- cancel any licence suspension order or order to attend for WDO that is in force in relation to the fine (***subsection 37(1)***);
- advise the CEO (corrections) so that a WDO can be cancelled by the CEO (corrections) (***subsection 37(2)***); and
- if a warrant of commitment inquiry process is occurring, withdraw the application for the warrant of commitment inquiry under new section 52ZI (***subsection 37(4)***).

In addition, the Registrar must not issue a NIE under section 42, make or issue an enforcement instrument, or make an application for a warrant of commitment inquiry under section 52N: ***subsection 37(3)***.

Former section 37, which is deleted, provided that the Registrar's decision regarding TTP orders was final. This has been replaced by new section 55A, inserted through clause 61 of this Bill.

Clause 36 also deletes the heading to Part 4 Division 2 Subdivision 2, together with the following sections:

- section 38A, which was a transitional provision related to the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* (WA) (the CTEPF Act). The operation of that provision is spent; and

- the heading to former Part 2 Division 2 Subdivision 2, which is deleted due to the general restructure of Part 4; and
- section 38, which sets out the application of former Subdivision 2 and has been replaced with section 32A, inserted by clause 31; and
- section 39, which has been replaced with section 32B, inserted by clause 31.

Clause 36 – Part 4 Division 3 heading deleted

Clause 36 deletes the heading "Enforcement of fines". This is due to the general restructure of Part 4.

Clause 37 – Section 40 deleted

Clause 37 deletes section 40, "Term used: amount owed". The term "amount owed" has been inserted into section 28 as a defined term through clause 27 of the Bill.

Clause 38 – Part 4 Division 2 Subdivision 4 heading inserted

Clause 38 creates a new ***Subdivision 4*** and inserts a new heading before section 41, "Cancellation of registration". This Subdivision deals with how the registration of a fine can be cancelled.

Clause 39 – Section 41 amended

Clause 39 amends section 41, which previously dealt with the registration and cancellation of registration of fines. Division 4 has been restructured by this Bill.

As a result, the heading of section 41 has been replaced with "Cancellation of registration" and ***subsection 41(1)***, which dealt purely with registration, is deleted (having been inserted in section 32B through clause 32).

Section 41 is further amended as follows:

- ***subsection 41(3)*** is replaced to provide that a court officer may order the Registrar, in writing, to cancel a registration at any time after a fine is registered when there is good reason to do so, unless:
    - an enforcement warrant or warrant of commitment is in force; or
    - a warrant of commitment inquiry process is occurring; and
- ***subsection 41(4)*** is amended to replace reference to subsection 39(2) (which has been deleted through clause 35 of this Bill) with a reference to subsection 32B(2) and the now redundant reference to "Division 2" is deleted;
- ***subsection 41(5)*** is amended to:
    - replace the reference to subsection 55A(4) in paragraph (a) with a reference to section 33 (as subsection 55A(4) has been deleted by clause 61 of this Bill);
    - delete paragraphs (b) and (c) and replace both with new paragraph (b), which refers to all enforcement instruments and a WDO; and

- clarify at paragraph (d) the types of orders for which cancellation requires the Registrar to give notice to an offender.

Clause 40 – Part 4 Division 3 heading inserted

Clause 40 inserts new heading, “Division 3 – Notice of intention to enforce”.

Clause 41 – Section 42 amended

Clause 41 amends section 42, “Notice of intention to enforce”.

Subsection 42(1) is amended to clarify that the Registrar may issue a NIE in relation to a registered fine.

Subsection 42(3) is amended to delete paragraph (d), as the Registrar no longer has the power to issue a warrant of commitment.

The word “generally” is inserted into ***paragraph (b) of subsection 42(5)*** to indicate that there may be grounds for cancellation of a licence suspension order other than through payment of the modified penalty and enforcement fees.

Subsection 42(5) is further amended to include additional requirements for a NIE, being:

- a requirement that a NIE state that a licence suspension order cannot be made for an offender who is an individual whose last known address is in a remote area (as set out in section 4B);
- a requirement to explain the effect of new paragraph 43(2A)(b) and advise an offender who is an individual to give the Registrar any information about their personal circumstances that is relevant to the grounds for cancellation of a licence suspension order under subsection 44A(2);
- a requirement to explain the circumstances in which a fine expiation order can be issued and how an application for a fine expiation order can be made;
- a requirement to explain that, where other enforcement actions are unsuccessful, the Registrar may apply to the Magistrates Court for a warrant of commitment inquiry; and
- a requirement to explain the statutory principles set out in section 4.

This is to ensure that a NIE provides an offender with all the information of the consequences of failure to pay or otherwise discharge the liability of a fine.

Clause 42 – Part 4 Division 3A heading inserted

Clause 42 inserts new heading, “Division 3A – Licence suspension orders”.

Clause 43 – Section 43 amended

Clause 43 amends section 43, “Licence suspension orders”. The amendments are in mirror terms to the amendments made to section 19 of Part 3, which deals with licence

suspension orders for infringements, subject to necessary modifications due to the different registration processes and enforcement options available for fines.

Firstly, ***subsection 43(1)*** is replaced to provide that a licence suspension order can be made if a NIE has been issued and the due date in that NIE has passed.

New ***subsection 43(2A)*** is inserted, which will:

- prohibit the Registrar from issuing a licence suspension order for an offender who is an individual whose last known address is in a remote area; and
- provide that, where an offender has given the Registrar information about their personal circumstances that gives the Registrar reasonable grounds to believe that subsection 44A(2) would apply, the Registrar cannot make a licence suspension order.

Subsection 43(6) is amended to replace “he or she” with “Registrar”.

Subsection 43(8) is deleted and replaced with a new subsection 43(8), which sets out requirements for a notice confirming licence suspension. Such notice must:

- state that a licence suspension order has been made and explain its terms;
- state the date and time when that licence suspension order has effect; and
- explain that the offender can request that it be cancelled under subsection 44A(1).

Clause 44 – Section 44 amended

Clause 44 amends section 44, “Cancelling licence suspension order”.

New ***subsection 44(2A)*** is inserted to provide that the Registrar must cancel a licence suspension order if an offender gives the Registrar a notice stating that their current address is in a remote area.

New ***subsection 44(2B)*** provides that a notice supplied under subsection 44(2A) must be in an approved form, and be accompanied by any documentation or evidence required by that approved form.

This is to cater for situations where the Registrar has made a licence suspension order on the basis that an offender’s last known address was not in a remote area, but the offender had changed addresses without informing the Registrar or another agency and now lives in a remote area, where a licence suspension order could not have been made.

Clauses 43(2) and (3) make consequential amendments to section 44 to refer to all sections under which a licence suspension order can be cancelled.

Clause 45 – Sections 44A and 44B inserted

Clause 45 inserts new section 44A, “Offender may request cancellation of licence suspension order”.

New ***section 44A*** provides that an offender who is an individual may request that the Registrar cancel a licence suspension order in respect of an enforceable registered fine. A request must be made in accordance with the regulations.

The grounds for making a request under subsection 44A(1) are:

- that a licence suspension order deprives the offender of:
    - the means of obtaining urgent medical treatment for illness, disease or disability suffered by the offender or a member of their family (***subparagraph 44A(2)(a)(i)***); or
    - the offender’s principal means of obtaining income to pay the amount owed in respect of the fine (***subparagraph 44A(2)(a)(ii)***); or
- that a licence suspension order seriously hinders the offender in performing family or personal responsibilities (***subparagraph 44A(2)(b)***).

The Registrar may consider the effect of a licence suspension order on an offender’s ability to seek or obtain employment: ***subsection 44A(3)***.

If the Registrar is satisfied that there are grounds for a request to cancel a licence suspension order under subsection 44A(1), the Registrar must agree to that request and cancel the licence suspension order. The Registrar cannot make another licence suspension order in relation to the offender and the fine unless the Registrar is satisfied that the grounds relied upon under subsection 44A(2) no longer apply, or if the Registrar has requested the offender to provide information or evidence stating that the subsection 44A(2) grounds continue to apply and the offender has not provided that information or evidence in compliance with the request: ***subsection 44A(4)***.

Clause 44 also inserts new ***section 44B***, “Registrar may request further information”. Section 44B applies in two circumstances:

- where the Registrar has not made a licence suspension order because either:
    - the offender has given the Registrar information about their personal circumstances which gives the Registrar reasonable grounds to believe that subsection 44A(2) would apply to the offender if a licence suspension order were made; or
    - the Registrar cancelled a licence suspension order following a request from an offender under subsection 44A(1).

In these circumstances, under ***subsection 44B(2)***, the Registrar may request that an offender provides information or evidence by a specified date in relation to whether the grounds set out at subsection 44A(2) would apply if a licence suspension order were made.

Subsection 44B(3) provides that the request must be in writing and served on the offender.

Subsection 44B(4) provides that the Registrar can only make a request under subsection 44B(2) once in a twelve month period, unless the Registrar is advised that the offender's personal circumstances have changed.

Subsection 44B(5) provides that if the offender does not comply with a request made under subsection 44B(2), the Registrar may presume that the subsection 44A(3) grounds would not apply to the offender. The practical effect of this is that the Registrar can proceed to make a licence suspension order in relation to the offender and the fine.

Clause 46 – Part 4 Division 3B heading inserted

Clause 46 inserts new heading, "Division 3B – Enforcement warrants".

Clause 47 – Section 45 amended

Clause 47 amends section 45, "Enforcement warrant". ***Subsection 45(1)*** is replaced to clarify that an enforcement warrant can be issued if a NIE has been issued and the due date specified in the NIE has passed.

Clause 48 – Part 4 Division 3C heading inserted

Clause 48 inserts new heading, "Division 3C – Work and development".

Clause 49 – Sections 46 to 47A replaced

Clause 49 deletes sections 46 to 47A.

Section 46 is replaced to clarify that the Division does not apply to an offender that is a body corporate. It previously referred to sections 47 to 53 only.

Clause 49 also deletes sections 47 and 47A and replaces them with a single provision. New ***section 47*** provides that the Registrar may issue an order to attend for WDO provided that a NIE has been issued and the due date specified in it has passed: ***subsection 47(1)***.

An order to attend for WDO must not be served unless the Registrar is satisfied that the offender does not have the means to pay the amount owed, or any personal property that could be seized under an enforcement warrant to satisfy the amount owed (whether in whole or in part), and will be unlikely to have the means to pay or

personal property to seize within a reasonable time after the order to attend has been issued: ***subsection 47(2)***.

Under new ***subsection 47(3)***, the Registrar may require the offender to undertake a means test.

Pursuant to new ***subsection 47(4)***, an order to attend for work and development must be personally served on the offender.

Clause 50 – Section 47B amended

Clause 50 amends section 47B to provide that an offender served with an order to attend for work and development must either pay the amount owed or attend a community corrections centre to be assessed for a WDO within 7 days after service or such longer period specified in the order. This is to cater for situations where an offender may be some distance from a community corrections centre and the 7 day timeframe is insufficient.

Reference to section 47A is also removed, consequential to the deletion of that section by clause 49.

Clause 51 – Section 48A replaced

Clause 51 replaces section 48A with new section 47C, "Cancellation and duration of order to attend for work and development". This section gives the Registrar the ability to cancel an order to attend for work and development if it is not reasonably practicable to serve the order on the offender either personally or electronically under subsection 5A(1): ***subsection 47C(1)***. This section also deals with the "life" of an order to attend for work and development, providing that such an order:

- comes into force when it is served and remains in force until:
    - it is cancelled; or
    - the amount owed is paid; or
    - a WDO is made; or
    - the time within which the offender must either pay or report to a community corrections centre expires,

  whichever occurs first: ***subsection 47C(2)***.

Clause 52 – Section 48 amended

Clause 52 amends section 48 and replaces the section heading to read "Making work and development order".

Subsections 48(4) and (5) are deleted and subsection 48(4) is replaced. Those subsections provided that a WDO could not be made if a WDO had previously been made and cancelled in respect of the fine, and could not be made if a warrant of

commitment had been issued. These matters are now addressed at new Division 3F, inserted by clause 59 of the Bill, which outlines how enforcement instruments interact.

New subsection 48(4) is inserted to outline the process to be followed if the CEO (corrections) elects not to make a WDO in respect of an offender. If this occurs, the CEO (corrections) must give the Registrar written notice of that decision and the reasons for it. Where the refusal was on the grounds that the offender was mentally or physical incapable of performing the requirements of the WDO, the CEO (corrections) must indicate whether it is likely the offender would become mentally or physically capable within a reasonable time.

Clause 53 – Section 50 amended

Clause 53 amends section 50, "WDO: primary requirements". The section heading is replaced with "Primary requirements of work and development order".

Paragraph 50(1)(b) is amended to remove the requirement for the number of hours to be completed to be prescribed in regulations and instead give flexibility for the required hours to be set out in the WDO itself.

In line with this, new ***subsection 50(2A)*** has been inserted to allow a community corrections officer (CCO) to permit a lower number of hours to be undertaken per week than specified in paragraph (1)(b). Currently the FPINE Regulations, at regulation 6A, prescribe 6 hours per week for amounts up to $300, 12 hours per week for amounts owed between $300 and $600, and so on in increasing units of up to $300. Regulation 6A goes on to provide that 12 hours are to be performed each week unless there is a lesser amount of hours remaining.

By allowing the required hours to be specified in the WDO instead of prescribing them, WDOs will be more flexibly tailored to an offender's individual circumstances.

Clause 54 – Section 51 amended

Clause 54 amends section 51, "WDO: completion". The section heading is replaced to read "Discharge of liability under work and development order".

Subsection 51(1) is amended to clarify that an offender's liability to pay an amount owed is discharged through a WDO when the WDO is completed, the amount is paid, or a mixture of both occurs (part-payment, part-WDO activities).

New ***subsection 51(4)*** is inserted to provide that a WDO is completed when the offender's liability to pay the amount owed is wholly discharged under section 51.

Clause 55 – Section 52 amended

Clause 55 amends section 52, "WDO: cancellation". Consistent with other section headings in this Subdivision, the heading is replaced with "Cancellation and duration of work and development order".

New ***subsection 52(3)*** is inserted to explain that a WDO comes into force when it is issued and remains in force until it is either completed or cancelled, whichever occurs first.

Clause 56 – Section 53A replaced

Clause 56 deletes section 53A, "WDO: effect of cancellation". This deletion is consequential to the insertion of new Division 3F by clause 59 of the Bill, which outlines the interaction rules of enforcement instruments under Part 4.

Clause 56 also inserts new ***Division 3D***, "Fine expiation orders" (FEOs). Division 3D comprises new sections 52A to 52J.

New ***section 52A*** provides that Division 3D does not apply to an offender that is a body corporate.

New ***section 52B*** defines the term "daily expiation amount", which is an amount to be prescribed in regulations.

New ***section 52C*** outlines when a person is "in custody" for the purposes of a FEO. A person is "in custody" and eligible for a FEO if they are:

- under arrest;
- a prisoner in a prison or a detainee in a detention centre;
- in court custody in a court custody centre;
- detained at a police facility; or
- detained under a *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) (CLMIA Act) custody order.

Each of the terms listed at new subsection 52C(1) are defined at section 28 except for "custody order", which is defined in section 3 of the CLMIA Act and is an order that an accused person under the CLMIA Act be kept in custody in accordance with Part 5 of that Act.

Pursuant to new ***subsection 52C(2)***, custody under this section applies equally to a sentence of imprisonment, remand, custody under an arrest warrant or warrant of commitment issued under new Division 3E, or being in custody for any other reason.

A "period of custody" is defined at new ***subsection 52C(3)***, and is a period of continuous custody, whether the same or different kinds (for example, being placed under arrest and then being detained in a police facility), for the same or different offence or charge. The period begins on the day the person is taken into custody and ends on the day they cease to be in custody. New ***subsection 52C(4)*** provides that a "part-day" is to be counted as a full day.

New ***section 52D*** outlines what a FEO is. A FEO is an order enabling an offender who is currently in custody, or has been in custody, to discharge their liability to pay a fine.

It will operate similarly to a warrant of commitment in that an offender will expiate their fine by a prescribed daily rate while in custody; however, a FEO does not authorise a person to be held in custody. This means that a person cannot be kept in custody under a FEO.

New ***section 52E*** deals with applying for a FEO. Application must be made in accordance with the regulations, as set out at ***subsection 52E(1)***.

Subsection 52E(2) provides that an application for a FEO may be made by an offender who is currently in custody in relation to that period of custody, or by an offender who has been in custody in relation to a period of custody that has since ended.

Subsection 52E(3) allows applications for FEOs to be made on an offender's behalf. This may be by a person authorised in writing to make the application or by a person or body authorised under subsection 52E(4) with the offender's consent.

Subsection 52E(4) provides that the Registrar may authorise a person or body to make application under subsection 52E(1) on behalf of offenders and ***subsection 52E(5)*** provides that an authorisation may relate to all offenders or offenders of a specified class.

Issuance of a FEO is dealt with under new ***section 52F***.

Subsection 52F(1) provides that on an application, the Registrar may issue a FEO if satisfied that the offender does not have and will be unlikely to have:

- the means to pay (***paragraph 52F(1)(a)***); or
- personal property to seize (***paragraph 52F(1)(b)***),

within a reasonable period of time after:

- the custody period has ended (***subparagraph 52F(1)(c)(i)***); or
- the application has been made (***subparagraph 52F(1)(c)(ii)***).

Subsection 52F(2) provides that the Registrar may require the offender to undergo a means test to make this determination as to their ability to pay.

Under ***subsection 52F(3)***, a FEO must be served on the offender. If the Registrar refuses to issue a FEO, notice of refusal must also be served: ***subsection 52F(4)***.

While only one FEO can be issued per fine, ***subsection 52F(5)*** provides that more than one FEO can be issued in relation to the same period of custody. FEOs are intended to run concurrently, similar to warrants of commitment – meaning that if an offender has four FEOs running for four fines, and the offender's period of custody has expiated the largest fine, then that same period in custody will have expiated the fines for which the other FEOs were issued.

New ***section 52G*** outlines what form a FEO must take. A FEO must be in the approved form, state the amount owed, and state the expiation commencement day (ECD).

New ***paragraph 52G(1)(c)*** provides that the ECD can be earlier than the issue date of the FEO but cannot be earlier than the first day of the period of custody, the day the fine was registered, or the day on which Part 2 Division 3 comes into operation. A FEO issued under paragraph 52E(2)(b) (being a FEO for a period of custody that has already ended) must state both the ECD and the end date.

The practical effect of this section is that an offender can apply for a FEO in respect of a period of custody that has ended; however, the fine must have already been registered and the period of custody cannot have ended before this Bill comes into operation. For example, if an offender is in custody from Friday to Tuesday, and the relevant provisions come into operation on Monday, the offender could only access a FEO commencing from Monday, as the ECD cannot be earlier than the day on which the provisions come into effect. This means that the offender's time in custody from Friday to Sunday cannot be counted.

New ***section 52H*** outlines how liability is discharged under a FEO issued in relation to a period of custody that commenced before the application was made.

The offender's liability is reduced by multiplying the daily expiation amount by the number of days in the custody period: ***subsection 52H(2)***.

The custody period begins on the ECD and ends on the last day in custody. The liability may be wholly or partly discharged, depending on the length of the custody period. An example follows:

> *Offender A goes into custody on Monday and remains in custody until Thursday. On Friday, now out of custody, Offender A applies for a FEO under paragraph 52E(2)(b) in respect of a fine of $3,000. The FEO is issued and the expiation period is Monday to Thursday inclusive. If the daily expiation rate is prescribed at $250 per day, Offender A has reduced their liability to pay that fine by $1,000 = 4 days x $250 per day. Offender A's liability for that fine is now $2,000. The Registrar can take other enforcement action under Part 4 of the FPINE Act to recover the remaining outstanding amount.*

New ***section 52I*** sets out a different process for ongoing FEOs. An ongoing FEO is a FEO for which the period of custody has not ended and liability has not been wholly discharged.

In this case, the offender's liability to pay is reduced on a daily basis for each day the offender is in custody. An example follows:

> *Offender B applies for a FEO from custody, having already been in custody for three days, and serving a sentence of one year. Offender B's ongoing FEO will commence from the day Offender B went into custody (i.e., three days ago),*

and will run until the earlier of the following occurs: Offender B is released from custody; the ongoing FEO is cancelled; or Offender B's liability to pay the amount owing is wholly reduced.

Cancellation and duration of FEOs and ongoing FEOs are dealt with under new ***section 52J***. A FEO has effect when it is issued, unless it is an ongoing FEO: ***subsection 52J(1)***.

Subsection 52J(2) provides that an ongoing FEO comes into force on the day it is issued and remains in force until either the offender's liability to pay is wholly discharged, the period of custody ends, or the FEO is cancelled – whichever is earliest: ***paragraph 52J(2)(b)***. The Registrar can cancel an ongoing FEO at any time for good reason under ***subsection 52J(3)***. Notice of cancellation must be served on the offender: ***subsection 52J(4)***.

Clause 56 also inserts new ***Division 3E***, "Warrants of commitment and other court-ordered enforcement action". Division 3E comprises sections 52K to 53.

New ***section 52K*** provides that Division 3E does not apply to body corporate offenders. This is consistent with provisions about work and development at Division 3C and FEOs at Division 3D.

New ***section 52L*** states that for the purposes of a warrant of commitment inquiry (a WOC Inquiry), the Magistrates Court is to be constituted by a magistrate, and the conduct of a WOC Inquiry cannot be delegated to a registrar. This is to address the alternative recommendation of Coroner Fogliani in the Inquiry into the death of Ms Dhu, that warrants of commitment only be available to a Court before a magistrate. For the avoidance of doubt, ***subsection 52L(3)*** expressly excludes the Fines Enforcement Registry from references to the Magistrates Court in Division 3E.

Subdivision 2 of Division 3E sets out how an application for a WOC Inquiry may be made and how a WOC Inquiry is to be conducted.

New ***section 52M*** provides that a WOC Inquiry is an inquiry conducted before the Magistrates Court to determine whether an offender:

- has the means to pay (either wholly or in instalments) the amount owed in respect of one or more fines, having regard to the offender's income, assets, liabilities and personal circumstances (***paragraph 52M(1)(a)***);
- is suitable for a WDO and is likely to comply with a WDO should one be made (***paragraph 52M(1)(b)***); or
- has contravened an order made in a previous WOC Inquiry under subsection 52S(1) (***paragraph 52M(1)(c)***).

Alternatively, a WOC Inquiry may determine how an offender should otherwise be dealt with under the FPINE Act to enforce their fines: ***paragraph 52M(1)(d)***.

New ***subsection 52M(2)*** provides that a WOC Inquiry process is occurring in respect of a fine if:

- the Registrar has applied under section 52N for a WOC Inquiry to be held, and
- the application has not been withdrawn, and
- either:
    - a decision has not yet been made; or
    - a decision has been made to hold one, but it has not yet been held.

New ***section 52N*** sets out the application requirements for a WOC Inquiry. The Registrar may apply to the Magistrates Court for a WOC Inquiry to be held in relation to one or more fines imposed on an offender in the following limited circumstances:

- the offender has been served with an order to attend for work and development, or a fine enforcement (WDO) order (FEWDO), in respect of one or more of the fines (***paragraph 52N(2)(a)***); and
- any of the following occurred in relation to any order to attend for work and development or fine enforcement (WDO) order: the offender did not report; a WDO was not made or could not be served; or a WDO was made but the WDO was subsequently cancelled for non-compliance (***paragraph 52N(2)(b)***); and
- the Registrar is satisfied that all enforcement action that could be taken has been taken in relation to one or more of the relevant fines, and any further enforcement action is either not applicable or unlikely to result in recovery of the amount owed (***paragraph 52N(2)(c)***).

An example of an enforcement action that is not applicable is a licence suspension order for an offender whose last known address is in a remote area.

New ***subsection 52N(3)*** provides that the Registrar can also apply for a WOC Inquiry if a previous WOC Inquiry has been held and the offender has contravened an order made at a previous WOC Inquiry.

New ***subsection 52N(4)*** confirms that an application for a WOC Inquiry can be made whether or not a WOC Inquiry has previously been held in relation to the offender and any or all of the relevant fines or any other fine.

New ***section 52O*** outlines what must be included in an application for a WOC Inquiry. The following information is required:

- the offender's name and last known address (***paragraph 52O(1)(a)***);
- the amount owed and a summary of the enforcement action taken to date in respect of each of the fines being applied for (***paragraph 52O(1)(b)***);
- the name and address of any other person the Registrar thinks should be summoned to give evidence at the WOC Inquiry (***paragraph 52O(1)(c)***);
- whether a summons or warrant is requested to bring the offender before the Court (***paragraph 52O(1)(d)***); and

- the orders the Registrar requests be made at the WOC Inquiry and the reasons for that request, expressed in general terms (***paragraph 52O(1)(e)***).

New ***subsection 52O(2)*** requires an application for a WOC Inquiry to be supported by documentation regarding the amount(s) owed and enforcement action taken to date. If the Registrar requests that a warrant be issued instead of a summons, the application must include evidence on oath that there are grounds for issue of a warrant. Those grounds are set out in new subsection 52Q(3).

New ***section 52P*** outlines the decisions available to the Court following receipt of an application for a WOC Inquiry. If the Court decides to hold a WOC Inquiry, it must issue either a summons or an arrest warrant for the offender.

New ***section 52Q*** deals with the issue of a summons or arrest warrant to bring an offender before the Court for a WOC Inquiry. The default position is always a summons, with the Court being able to issue an arrest warrant under limited circumstances set out at subsection 52Q(3). A summons would require the offender to appear before the Magistrates Court at a WOC Inquiry and give oral evidence or produce records that may be relevant.

Under ***subsection 52Q(2)***, if the application for the WOC Inquiry named additional people who should be summoned (under paragraph 52O(1)(c)), the Court may also issue summonses to those people.

Subsection 52Q(3) restricts the circumstances under which an arrest warrant may be issued. The Court cannot issue an arrest warrant unless:

- a summons has previously been served on the offender and they have failed to attend in response to that summons;
- a summons was served on the offender in relation to a previous WOC Inquiry and the offender failed to attend;
- the offender has at least twice contravened an order made under new subsection 52S(1) at a previous WOC Inquiry; or
- the offender has failed to comply with a conditional release undertaking entered into following their arrest under an arrest warrant issued under paragraph 52Q(1)(b) for the purposes of the WOC Inquiry or a previous WOC Inquiry.

If the Court issues a summons, the Court must set a date for the WOC Inquiry and notify the Registrar: ***new subsection 52Q(4)***.

New ***section 52R*** outlines how a WOC Inquiry is to be conducted. The purpose of the WOC Inquiry is to determine the matters set out at ***subsection 52M(1)***.

At a WOC Inquiry the offender must produce all records in their possession or control that are relevant to the subsection 52M(1) considerations (***subsection 52R(2)***) and the Court may directly examine the offender on those matters (***subsection 52R(3)***).

New ***section 52S*** outlines the orders available to the Court at a WOC Inquiry. Those are:

- making an order that the Registrar makes a TTP order under section 33 (***paragraph 52S(1)(a)***);
- ordering that an order to attend should be issued (***paragraph 52S(1)(b)***);
- writing off all or part of the fine or fines (***paragraph 52S(1)(c)***);
- amending an order made at a previous WOC Inquiry, including extending any time periods made in a previous order (***paragraph 52S(1)(d)***);
- ordering that a warrant of commitment be issued (***paragraph 52S(1)(e)***); or
- any other order that the Court considers appropriate (***paragraph 52S(1)(f)***).

New ***section 52S(2)*** requires that, when making an order under subsection 52S(1), the Court must have regard to the matters under subsection 52M(1), the principles in section 4 and any other relevant matters.

Subsection 52S(3) requires the Court to make separate orders for each fine if the WOC Inquiry relates to more than one fine.

Under ***subsection 52S(4)***, if the Court makes an order that a warrant of commitment is to be issued, the Court must then issue the warrant of commitment in the prescribed form in relation to the fine.

New ***section 52T*** details the practical effect of an order made under paragraphs 52S(1)(a)-(c). If the Court has ordered that a TTP order be made, the Registrar must make a TTP order despite the offender not having applied for one: ***subsection 52T(1)***. If the Court makes an order that an order to attend for work and development should be issued, it is taken to have been issued and served under section 47 and the offender must either pay the amount owed or report to a community corrections centre within the time specified by the Court or within seven days: ***subsection 52T(2)***.

If the Court makes an order writing off the fine, the offender's liability to pay that fine is taken to have been discharged to the extent specified in the Court's write-off order: ***subsection 52T(3)***.

Subdivision 3 of Division 3E deals with summonses to attend WOC inquiries.

New ***section 52U*** outlines the form the summons should take. A summons must be in the prescribed form, outline when and where the WOC Inquiry will be held, require the person summonsed to attend at that time and place, be signed by the magistrate who has issued it, and include any other information prescribed in regulations.

Service of a summons to attend a WOC Inquiry is dealt with at new ***section 52V***. A summons must be served personally, unless the Court has authorised oral or substituted service under this section: ***subsection 52V(1)***.

Oral service may be authorised if the Court is satisfied that reasonable efforts at personal service are unlikely to be successful and substituted service may be ordered if the Court is satisfied that both personal and oral service are impracticable: ***subsection 52V(2)***.

Subsection 52V(3) outlines reasons that personal or oral service may be impracticable. These include, but are not limited to:

- the person not having a fixed place of residence or business;
- the person residing in, or doing business in, a remote area; or
- the person being likely to avoid personal service.

The Court must consider making an order for oral or substituted service in every case: ***subsection 52V(4)***.

New ***section 52W*** outlines how oral or substituted service of a summons to attend a WOC Inquiry may be given. Oral service is taken to have been effected if the person has been informed that the summons has been issued, that they are required to appear at a WOC Inquiry and the time/date of such attendance, and told where they can obtain a written copy of the summons: ***subsection 52W(1)***.

Oral service can be effected in person or by telephone, video conference or another similar method and does not require the person serving the summons to be in possession of a copy of it at the time of service: ***subsection 52W(2)***.

Subsection 52W(3) requires that, where the person to be served does not readily understand English, or the server of the summons is not satisfied that the person understood the information given, the server must, as far as practicable, arrange for someone else who is 18 years of age or older to give the information to the person in a way they are likely to understand.

If a person serving the summons has taken the steps directed by the Court or the steps (if any) prescribed by the regulations then the summons is taken to have been served by way of substituted service: ***subsection 52W(4)***.

New ***section 52X*** outlines when a summons ceases to have effect. This will occur if the application for the WOC Inquiry is withdrawn by the Registrar under section 52ZI.

Subdivision 4 of Division 3E outlines how arrest warrants may be issued and the effect of an issued warrant.

New ***section 52Y*** outlines that an arrest warrant must be in a form prescribed in regulations (***subsection 52Y(b)***) and must be directed to all members of the Police Force (***subsection 52Y(a)***). The arrest warrant must require the arrester to bring the offender before the Magistrates Court in accordance with paragraph 52Z(2)(a).

As with a summons issued under section 52U, additional information may be prescribed in regulations (***subsection 52Y(d)***) and an arrest warrant must be signed

by the magistrate who has issued it (***subsection 52Y(e)***). This includes an electronic signature by virtue of section 10 of the CTEPF Act. It is intended that regulations will be made to expressly authorise electronic signatures on arrest warrants issued under paragraph 52Q(1)(b).

The effect of an arrest warrant is outlined under new ***section 52Z***. An arrest warrant issued under this Subdivision is in itself sufficient authority for any person to whom it is directed (meaning a member of the Police Force) to act in accordance with it.

If an offender is arrested under an arrest warrant, they must be brought before the Magistrates Court for the WOC Inquiry immediately after the arrest if practicable or, in any case, subject to section 52ZB as soon as practicable after the arrest: ***subparagraphs 52Z(2)(a)(i) and (ii)***. The offender may be brought before the Court at any place it is sitting.

A police officer must obey any warrant issued under paragraph 52Q(1)(b) or other order or direction of the Magistrates Court: ***subsection 52Z(3)***. An officer who contravenes this requirement is to be dealt with under section 23 of the Police Act, which outlines how disciplinary offences are dealt with: ***subsection 52Z(4)***.

For clarity, an arrest warrant issued under paragraph 52Q(1)(b) is taken to be an arrest warrant for the purposes of subsection 3(1) of the *Criminal Investigation Act 2006* (WA) (the CI Act): ***subsection 52Z(5)***. This will ensure that section 177 of the CP Act applies to an arrest warrant issued under this Act and authorises the arrest and detention in custody of an offender.

New ***section 52ZA*** outlines the duration of an arrest warrant. An arrest warrant comes into force when it is issued and remains in force until the earliest of the following occurs:

- the offender is brought before the Magistrates Court for the WOC Inquiry (***subparagraph 52ZA(b)(i)***); or
- the offender appears in Court for the WOC Inquiry voluntarily (***subparagraph 52ZA(b)(ii)***); or
- the offender is conditionally released under paragraph 52ZB(1)(b) or subsection 52ZB(3) (***subparagraph 52ZA(b)(iii)***); or
- the Registrar withdraws the application for the WOC Inquiry under section 52ZI (***subparagraph 52ZA(b)(iv)***).

New ***section 52ZB*** outlines the procedure to be followed when an offender is arrested under an arrest warrant.

If it is not practicable to bring the offender before the Court for the WOC Inquiry immediately after the arrest, the responsible officer (as that term is defined in section 28) must consider whether the offender should be released and may then release them: ***subsection 52ZB(1)***. Release occurs subject to subsection 52ZD(1).

The discretion to release an offender under subparagraph 52ZB(1)(b) is to be exercised having regard to the matters listed in subsection 52ZB(2), namely: whether the offender would fail to appear in Court in accordance with an undertaking given to secure conditional release and any other relevant matters: ***subsection 52ZB(2)***.

However, the responsible officer must grant conditional release if the offender has been in custody for 24 hours or, at any time while the offender is in custody, it becomes apparent that the offender cannot be brought before the Court within 24 hours after the arrest: ***subsection 52ZB(3)***. This requirement to release applies regardless of whether the responsible officer has previously decided not to release the offender; meaning, where 24 hours has elapsed or it is clear 24 hours will elapse before the offender can be brought before the Court, the offender must be released: ***subsection 52ZB(4)***.

The responsible officer must consider whether to grant conditional release, regardless of whether the offender has applied for conditional release: ***subsection 52ZB(5)***, and the Bail Act does not apply, except to the extent outlined in subsection 52ZH(2): ***subsection 52ZB(6)***.

New ***section 52ZC*** details the responsibilities of an arresting officer.

Subsection 52ZC(1) provides that if the arresting officer is not an authorised officer within the meaning of section 3(1) of the Bail Act (a police officer at the rank of sergeant or above, a police officer in charge of a police station or an officer in charge of a lock-up), the arresting officer may request that an authorised police officer performs the duties relating to conditional release under section 52ZB. If it is not practicable for the arresting officer to perform any or all of those duties, the arresting officer must request that an authorised police officer do it.

Subsection 52ZC(2) provides that the "responsible officer" for the purposes of section 52ZB is either the arresting officer or the authorised police officer, depending on whether a request was made to perform the duties.

A responsible officer who wilfully and without reasonable excuse fails to perform a duty under section 52ZB commits an offence attracting a penalty of $1,000 or imprisonment for 12 months: ***subsection 52ZB(3)***.

New ***section 52ZD*** outlines the "conditional release undertaking" framework built into this Bill. In order to be released under paragraph 52ZB(1)(b) or subsection 52ZB(3), an offender must enter into a conditional release undertaking for their appearance at a WOC Inquiry.

A conditional release undertaking is a written undertaking by the offender that they will appear in the Magistrates Court for the WOC Inquiry at the time and place specified or a different time and place, and that if they fail to appear at that time and place, they will appear in the Court at that place when the Court is sitting as soon as practicable: ***subsection 52ZD(2)***.

Subsection 52ZD(3) provides that a conditional release undertaking can be entered into before any of the people listed in section 29 of the Bail Act – a judicial officer, registrar other than a deputy registrar of the Magistrates or Children's Court, an authorised police officer, a judge's associate, the person in charge of a lock-up or prison while the offender is detained there, or the person in charge of a court custody centre.

Subsection 52ZD(4) provides that regulations will prescribe the form for a conditional release undertaking, which will include an explanation of an offender's obligations and consequences of failure to comply.

New ***section 52ZE*** outlines the duties of a person before whom a conditional release undertaking is entered. They must either read it to the offender (***paragraph 52ZE(1)(a)***), have it translated or provide a written translation of it (***paragraph 52ZE(1)(c)***), or be informed by the offender themselves that they have read it (***paragraph 52ZE(1)(b)***). A copy of the completed undertaking must also be provided to the offender: ***subsection 52ZE(2)***.

New ***section 52ZF*** sets out some limitations on the right to release an offender where the responsible officer has decided to release them under section 52ZB(1)(b) or (3) and where the offender has entered into a conditional release undertaking under section 52ZD. These are:

- any requirement that the offender be in custody for some other reason (for example, another offence or charge): ***subsection 52ZF(a)***;
- limitations under section 12 of the Bail Act, (any requirement that the person remain in custody under Part 12 of the CI Act or Parts 6 and 7 of the *Criminal Investigation (Identifying People) Act 2002* (WA)): ***subsection 52ZF(b)***; and
- that the person before whom the undertaking was signed has signed a certificate indicating that the person has the right to be released: ***subsection 52ZF(c)***.

New ***section 52ZG*** deals with offences relating to conditional release undertakings.

Firstly, failure to comply with a requirement of a conditional release undertaking under paragraph 52ZD(2)(a) – appearing before the Court for a WOC Inquiry at the time and place specified in the undertaking or a substituted time and place – without a reasonable excuse is an offence under ***subsection 52ZG(1)***, attracting a penalty of $2,000.

Secondly, failure to comply with a requirement of a conditional release undertaking under paragraph 52ZD(2)(b) – appearing before the Court at the place where it is sitting as soon as practicable following a failure to appear on the undertaking – is an offence under ***subsection 52ZG(2)***, attracting a penalty of $2,000.

Subsection 52ZG(3) provides that a person cannot be convicted of an offence under section 52ZG in their absence.

General provisions about conditional release are detailed at new ***section 52ZH***. ***Subsection 52ZH(1)*** sets out when a conditional release undertaking remains in force, being until:

- the offender appears in the Magistrates Court; or
- the application for the WOC Inquiry is withdrawn,

whichever is the earliest.

New ***subsection 52ZH(2)*** confirms the modified application of certain provisions of the Bail Act to Subdivision 4. Sections 59B, 60 and 62 of the Bail Act apply to Subdivision 4. Section 59B of the Bail Act deals with the issue of an arrest warrant for an accused who has failed to comply with a bail undertaking. Section 60 of the Bail Act is a requirement for an accused who has been released on a bail undertaking to notify the Court of any change of address, with a failure to do so attracting a penalty of $1,000. Section 62 of the Bail Act provides that it is an offence to give false information for the purpose of securing bail, attracting a penalty of $1,000 or imprisonment for 12 months or both.

This means that, for the purposes of this Bill, a reference to an “accused” under those sections is taken to be a reference to an “offender” under this Subdivision, a reference to a “bail undertaking” is taken to be a reference to a “conditional release undertaking”, a reference to paragraph 28(2)(a) or (b) of the Bail Act is taken to be a reference to paragraph 52ZD(2)(a) or (b) of this Act, and a reference to release on bail or a grant of bail is taken to be a reference to “conditional release” under paragraph 52ZB(1)(b) or (3). The penalty specified for an offence under section 62 of the Bail Act, $1,000 or imprisonment for 12 months or both, is modified to provide that only the $1,000 penalty applies, consistent with the policy of this Bill.

Subdivision 5 outlines other miscellaneous and procedural matters relevant to a WOC Inquiry.

New ***section 52ZI*** provides that the Registrar may withdraw an application for a WOC Inquiry at any time before the inquiry is held (***subsection 52ZI(1)***), and that notice of withdrawal must be served on the offender and the Court, and any other people named in the application (***subsection 52ZI(3)***). If an arrest warrant has been issued or a conditional release undertaking entered into at the time the application is withdrawn, notice must also be served on the Commissioner of Police: ***paragraph 52ZI(3)(d)***.

The Registrar must withdraw the application if the offender’s liability to pay the amount owed is wholly discharged under section 52H or 52I (under a FEO or ongoing FEO) or if the amount owed is paid: ***subsection 52ZI(2)***.

An offender may appear at a WOC Inquiry by video or audio link, as set out in new ***section 52ZJ***. This section puts an obligation on the person in charge of the offender to ensure that the offender is brought before the Court, either in person or by video or audio link: ***subsection 52ZJ(2)***. The Court may make an order that the offender appear by video or audio link at any time, on its own initiative or on application by the Registrar or offender, if satisfied it is in the interests of justice: ***subsection 52ZJ(3)***.

Subsection 52ZJ(4) makes it clear that a video link is the first option and audio link is not to be used unless video is not available and cannot reasonably be made available. ***Subsection 52ZJ(5)*** allows the Court to deal with an offender appearing before it by audio or video link as though they were personally present.

New ***section 52K*** limits appeals against orders made at a WOC Inquiry under section 52S; however, an offender can appeal against an order to issue a warrant of commitment under paragraph 52S(1)(e): ***subsection 52K(2)***. An appeal is to be commenced under section 40 of the *Magistrates Court (Civil Proceedings) Act 2004* (WA).

New ***section 52ZL*** provides that for the purpose of proving that an offender did not appear in Court, a certificate to that effect signed by an officer of the Court may be tendered.

Clause 57 – Part 4 Division 3E Subdivision 6 heading inserted

Clause 57 inserts a new heading, “Imprisonment under warrant of commitment”. This creates a new ***Subdivision 6*** of Division 3E of Part 4, consistent with the general restructuring of Part 4.

Clause 58 – Section 53 amended

Clause 58 amends section 53, which outlines how an offender can be imprisoned under a warrant of commitment.

The heading to section 53 is replaced with “Effect of warrant of commitment” and the section is restructured to reflect that warrants of commitment can no longer be issued by the Registrar. Subsections 53(1), the Note inserted by clause 4 of the Bill for transitional purposes, (2) and (8c) are deleted for this purpose, while subsections 53(4), (8a) and (8b) have been deleted because they are spent transitional provisions.

Clause 59 – Part 4 Division 3F inserted

Clause 59 inserts new ***Division 3F***, “Interaction of enforcement action under this Part”. This new Division has been inserted as a result of the general restructure of Part 4 to provide clarity as to how the various enforcement instruments interact.

New ***section 53A***, “Effect of enforcement instrument or WDO on other enforcement powers”, sets out how an enforcement instrument affects the Registrar’s ability to utilise other enforcement measures.

Under ***subsection 53A(1)***, if an enforcement instrument other than a licence suspension order or enforcement warrant, or a WDO, is in force, the Registrar must not make or issue another enforcement instrument or apply for a WOC Inquiry in respect of that fine.

Under ***subsection 53A(2)***, if a licence suspension order is in force, the Registrar's powers to make other enforcement instruments under Part 4 are not affected, but if the Registrar:

- issues an enforcement instrument other than an enforcement warrant or order to attend for work and development; or
- serves an order to attend for work and development; or
- applies for a WOC Inquiry,

the Registrar must cancel the licence suspension order as soon as practicable.

Pursuant to ***subsection 53A(3)***, if an enforcement warrant is in force, the Registrar's powers to make other enforcement instruments under Part 4 are not affected, but if the Registrar:

- issues an enforcement instrument other than a licence suspension order or an order to attend for work and development; or
- serves an order to attend for work and development; or
- applies for a WOC inquiry,

the Registrar must cancel the enforcement warrant as soon as practicable.

Section 53A(4) provides that a power under this Part to make or issue an enforcement instrument or WDO in relation to a fine is not affected by a previous enforcement instrument or WDO having been made or issued in relation to the fine and subsequently cancelled.

New ***section 53B*** sets out the effect of a WOC Inquiry process or warrant of commitment on the Registrar's enforcement powers. Those are:

- that the Registrar must not make or issue an enforcement instrument other than a FEO if a WOC Inquiry process is occurring (***subsection 53B(1)***); and
- that the Registrar must not make or issue an enforcement instrument if a warrant of commitment is in force (***subsection 53B(2)***).

Subsection 53B(3) provides that the Registrar's powers under Part 4 to make or issue an enforcement instrument or WDO in relation to an offender and a fine is not affected by a WOC Inquiry process having previously occurred.

Clause 60 – Section 54 replaced

Clause 60 replaces section 54, "Warrant of apprehension for people interstate". This change is required as a result of changes to the *Service and Execution of Process Act 1992* (Cth) (SEPA) which deleted "warrants of apprehension" from that Act.

To provide clarity and for the avoidance of doubt, replacement ***subsection 54(1)*** expressly empowers the Registrar to exercise functions conferred on the Registrar as a fine enforcement officer under Part 7 of SEPA. ***Subsection 54(2)*** has been included for consistency with section 62 of the FPINE Act and section 123 of the *Cross-border Justice Act 2008* (WA) (the CBJ Act) which require the Registrar to apply funds recovered from other jurisdictions as though they were received from the offender.

Finally, section 54 is retitled to read "Functions of Registrar in relation to *Service and Execution of Process Act 1992* (Commonwealth) Part 7".

Clause 61 – Sections 55A to 55E replaced

Clause 61 deletes sections 55A to 55E inclusive and inserts new ***section 55A***, "Certain decisions of Registrar are final". This is a mirror provision to new section 27A in Part 3 (Infringements), inserted by clause 27 of the Bill, and provides that a decision of the Registrar under Division 2 Subdivision 3 (TTP orders), section 44A (cancelling a licence suspension order) or Division 3D (FEOs) is final.

Clause 62 – Section 56A amended

Section 56A is the first section of Part 5A of the FPINE Act, which deals with the publication of alleged offenders' and offenders' details on the Registrar's website. Clause 62 amends ***section 56A***, "Terms used". The definition of "amount owed" is updated to reflect that "fine" is now defined at subsection 28(1) and the definition of "outstanding order to pay or elect" is replaced with a reference to new section 56AA, inserted by clause 63 of the Bill.

In addition, the definition of "enforcement fees" is broadened to reflect fees imposed under the FPINE Act to encompass fees under an enforcement warrant executed under Part 7. This is for consistency with similar changes to the definition of "enforcement fees" at section 11 (through clause 16) and section 28 (through clause 28).

Clause 63 – Section 56AA inserted

Clause 63 inserts new ***section 56AA***, "Outstanding orders to pay or elect". This defined term is inserted as a new section for consistency with section 56B, "outstanding registered fine", following its deletion from section 11 by clause 16 of the Bill. An outstanding order to pay or elect, in relation to a person, means an order to pay or elect issued under section 17 of the FPINE Act where the modified penalty and enforcement fees have not been paid or recovered in full, an election has not been

made, no TTP order is in force, no arrangement to stay the execution of an enforcement warrant is in force, and the prosecuting authority has not withdrawn the proceedings.

Clause 64 – Section 56B amended

Clause 64 amends section 56B, "Outstanding registered fines". References to sections which have been deleted or restructured through this Bill are updated and the section includes the term "enforceable registered fine", which was introduced through the amendments to section 28 made through clause 28 of this Bill.

Clause 65 – Section 63 amended

Clause 65 amends section 63, "Terms used". This is the first section in Part 7 of the FPINE Act, which deals with enforcement warrants which are executed by the Sheriff.

The following new terms are inserted:

- bank: an authorised deposit-taking institution under the *Banking Act 1959* (Cth) or a bank constituted by a law of a State or Territory or the Commonwealth;
- bank account garnishee order: has the meaning given in paragraph 95M(2)(b);
- earnings: has the meaning given in section 3 of the *Civil Judgments Enforcement Act 2004* (WA) (CJE Act), not including amounts prescribed by regulations;
- garnishee order: has the meaning given in subsection 95M(2);
- garnishee order on earnings: has the meaning given in paragraph 95M(2)(a);
- multiple payments garnishee order: has the meaning given in paragraph 95V(2)(b);
- owner: in relation to a vehicle, means a person entitled to its immediate possession;
- protected bank account amount: an amount prescribed by or determined under regulations made for the purpose of section 95ZB;
- protected earnings amount: in relation to a pay period, means an amount determined under regulations made for the purpose of subsection 95U(1);
- relevant payer: in relation to a garnishee order on earnings, has the meaning given in subsection 95O(1); and
- single payment garnishee order: has the meaning given in paragraph 95V(2)(a).

The definition of "earnings" in the CJE Act, which is adopted here, is "money that is or will be payable to the person for or in relation to services provided by the person by way of:

(a) wages, salary, commissions, fees, bonuses, overtime pay, leave loadings, payments in lieu of leave, or otherwise;

(b) an annuity or pension for or in relation to past services, whether or not the services were provided to the person paying the annuity;

(c) periodical payments of compensation for –

(i) the loss, abolition or relinquishment of, or any reduction in the remuneration of, any office or employment; or

(ii) the loss of the money referred to in paragraph (a) because of illness or injury, whether at work or not,

but does not include the following –

(d) money payable to the person under a child maintenance order made under the *Family Court Act 1997*;

(e) money payable to the person under a child maintenance order made under the *Family Law Act 1975* of the Commonwealth;

(f) money payable to the person under the *Child Support (Registration and Collection) Act 1988* of the Commonwealth;

(g) money payable to the person under the *Child Support Assessment Act 1988* of the Commonwealth;

(h) a pension, benefit or allowance payable to the person under –

(i) the *Social Security Act 1991* of the Commonwealth; or

(iI) the *Veterans' Entitlements Act 1986* of the Commonwealth;

(i) money payable to the person that is prescribed* not to be earnings for the purposes of this Act."

*It is noted that no other moneys payable are currently prescribed for the purposes of the CJE Act definition of "earnings".

The definition of "earnings" used in this Bill also includes a power to make regulations which would add to the list of excluded sources of earnings and thus ensure they could not be deducted under a garnishee order.

The definition "vehicle licensing law" is deleted. This is because the previous definition contemplated a period before the RTV Act came into operation and referenced both the RTV Act and the *Road Traffic Act 1974* (WA) (the RT Act). As the RTV Act has long since commenced the definition is no longer required.

New ***subsection 63(3)*** is inserted to address the concept of "vehicles of a debtor". This provides that a reference to a "vehicle of a debtor" means a vehicle that is licenced in the debtor's name under the RTV Act (whether the licence is suspended or not), or an unlicensed vehicle the debtor owns.

Clause 66 – Section 65 amended

Clause 66 amends section 65, "Warrant has indefinite life". ***Paragraph (c)*** of section 65 is deleted as a result of new Part 4 Division 3F, which outlines the interaction rules for enforcement instruments.

Clause 67 – Section 68A amended

Clause 67 amends ***section 68A***, which provides that the Sheriff can stay the execution of an enforcement warrant where the debtor agrees to enter into an oral or written arrangement to pay the amount owed in either a lump sum or regular instalments.

New ***subsection 68A(3A)*** is inserted to outline the effect of a stay of execution on a garnishee order while an enforcement warrant is still in force. If the Sheriff has already served a garnishee order on a relevant payer or bank when an arrangement has been entered into, the Sheriff must serve a subsequent notice indicating that no action can be taken under the garnishee order until further notice: ***paragraph 68A(3A)(a)***. This will have the effect of the garnishee order not being in force for the period between service of a notice under paragraph 68A(3A)(a) and service of a second notice under subsection 68A(4A): ***paragraph 68A(3A)(b)***.

Subsection 68A(4) is amended to delete the words "or exercising the power under section 55D" as section 55D has been deleted through clause 61 of this Bill. Section 55D never conferred any powers on the Sheriff and was an error.

New ***subsection 68A(4A)*** is inserted to provide that the Sheriff must notify the relevant payer or bank if a stay arrangement is cancelled. This will have the effect of reactivating the garnishee order and providing that it can be actioned.

Subsections 68A(5A) and (5B) are deleted as new Division 3F in Part 4 outlines the interaction rules of enforcement instruments.

Subsection 68A(6) is amended to delete reference to section 55D. As noted above, section 55D has been deleted through clause 61 of this Bill.

Clause 68 – Section 68B amended

Clause 68 amends section 68B of the FPINE Act. New ***paragraph (aa)*** is inserted into subsection 68B(1) to refer to a notice under section 78 and new ***paragraph (e)*** is inserted to reference a garnishee order served under section 95O or 95V.

Subsection 68B(3) is amended through the insertion of new ***paragraph (e)*** which outlines how the Sheriff is to give notice of a debtor's right to apply to have an enforcement warrant set aside by the Magistrates Court under section 101AA, if the first enforcement action the Sheriff takes under the warrant is a garnishee order.

Clause 69 – Section 95C amended

Clause 69 amends section 95C, "Immobilisation of vehicles". ***Subsection 95C(1)*** is amended to refer to the term "vehicles of the debtor" introduced at subsection 63(3) through clause 65. ***Paragraph 95C(5)(a)*** is amended to clarify that a notice affixed to a vehicle must include information that a warrant has been issued in respect of the person in whose name the vehicle is licensed or the owner of the vehicle.

Clause 70 – Section 95F amended

Clause 70 amends section 95F, “Removal of number plates”.

Subsection 95F(1) is amended to refer to the term “vehicles of the debtor” introduced at subsection 63(3).

Subsection 95F(4) is amended to:

- clarify that a notice affixed to a vehicle must include information that a warrant has been issued in respect of the person in whose name the vehicle is licensed or the owner of the vehicle – at ***paragraph (a)***;
- insert a new ***paragraph (ba)*** to cater for a circumstance where a vehicle is licensed when its number plates are removed;
- remove reference to the vehicle’s licence being suspended at ***paragraph (c)***; and
- insert the words “and disqualification” at ***paragraph (d)*** to more clearly describe the type of order being made and its effect.

Clause 71 – Section 95G amended

Clause 71 amends ***section 95G***, “Vehicle licence suspension order made when number plates are removed”. The section heading is amended to include the words “and disqualification”.

Subsection 95G(1) is amended to refer to a “vehicle licence suspension and disqualification order” and clarify that it can relate to a vehicle and a debtor.

Subsection 95G(2) is deleted and replaced with ***new subsections (1A) and (2)*** which provide that it does not matter if a vehicle licence is in force when the order is made, and that a vehicle licence suspension and disqualification order has the effect of disqualifying a debtor from holding or obtaining a vehicle licence for a particular vehicle.

A Note is inserted after subsection 95G(2) to clarify the relationship between the operation of this Division and the RTV Act.

Subsection 95G(4) is amended to refer directly to the RTV Act and insert the words “and disqualification” into the order. Finally, ***subsections 95G(5) and (6)*** are amended as a consequence to refer to the amended name for these orders:

- at paragraph 95G(5)(a);
- at subparagraph 95G(b)(iii); and
- at subsection 95G(6).

Clause 72 – Section 95H amended

Clause 72 amends section 95H, “Return of number plates”. Firstly, the words “licensed in the name” are removed from ***subsection 95H(1) and paragraph (2)(a)*** following the introduction of the term “vehicle of a debtor”.

Secondly, ***paragraph 95H(2)(c)*** is amended to refer to a “vehicle licence cancellation and disqualification order”. Finally, ***paragraph 95H(2)(d)*** is replaced to clarify that the section contemplates a debtor holding a vehicle licence for a vehicle, whether or not that licence is suspended, when an enforcement warrant ceases to be in force.

Clause 73 – Section 95I amended

Clause 73 amends ***section 95I***, “Offence of interfering with or removing notice”. This relates to removing a notice which has been affixed to a vehicle following the removal of its number plates under an enforcement warrant. Firstly, ***paragraph 95I(2)(a)*** is amended to clarify that the number plates are returned to the debtor. Secondly, ***paragraph 95I(2)(b)*** is amended to refer to a “vehicle licence cancellation and disqualification order”.

Clause 74 – Part 7 Division 6A Subdivision 4 heading amended

Clause 74 amends the heading to Part 7 Division 6A Subdivision 4, “Vehicle licence cancellation and disqualification orders”. The Subdivision heading is amended to insert the words “and disqualification”.

Clause 75 – Section 95J amended

Clause 75 amends section 95J, “Vehicle licence cancellation order”. Firstly, the section heading is amended to include the words “and disqualification” and reflect the effect of an order. Those words are also added at subsections 95J(1), (3)-(6) and (8).

Secondly, ***paragraph 95J(2)(a)*** is deleted and replaced with a reference to circumstances where the vehicle is licensed under the RTV Act, noting it might not always be a licensed vehicle. ***Subsection 95J(5)*** is amended to refer to the RTV Act in place of a “vehicle licensing law”. New ***subsection 95J(6A)*** is inserted to provide that the Sheriff may cancel a vehicle licence cancellation and disqualification order to the extent that the order disqualifies a debtor from holding or obtaining a vehicle licence for that vehicle. The Sheriff may do so at any time if satisfied that it is appropriate to do so.

Subsection 95J(7) is replaced to include reference to new subsection 95J(6A) and require the Sheriff to notify the debtor when a vehicle licence cancellation and disqualification order is cancelled under either subsection 95J(6) (cancellation on the basis that the enforcement warrant is no longer in force) or subsection 95J(6A) (cancellation by the Sheriff). The Registrar must notify the Director General of the cancellation.

Clause 76 – Part 7 Division 6B inserted

Clause 76 inserts new ***Division 6B***, "Garnishment". This new Division allows garnishee orders to be issued under an enforcement warrant.

Subdivision 1 of Division 6B deals with preliminary matters: the application of the garnishment division (section 95L: to an enforcement warrant issued under Part 3 [infringements] or Part 4 [fines]), what a garnishee order is (section 95M), how it can be amended or cancelled, and when it is in force (section 95N).

New ***section 95M*** provides that the Sheriff can issue a garnishee order under a warrant issued in respect of a debtor. There are two distinct types of garnishee orders:

- a garnishee order on earnings (being an order issued to a person who pays the debtor "earnings" within the meaning of the term as defined at section 63: ***paragraph 95M(2)(a)***), and
- a bank account garnishee order (being an order issued to a bank with whom the debtor has one or more accounts: ***paragraph 95M(2)(b)***).

A garnishee order has the effect of requiring the payer or bank to whom it is issued to pay an amount or amounts to the Sheriff.

As with other enforcement action, only one garnishee order can be in operation under an enforcement warrant at a time: ***subsection 95M(4)***.

New ***section 95N*** deals with duration, amendment and cancellation of garnishee orders. Garnishee orders come into force seven days after they are served, whether that be on a relevant payer (for a garnishee order on earnings) or a bank (for a bank account garnishee order): ***subsection 95N(1)***. A garnishee order remains in force until the earliest of the following occurs:

- it is cancelled: either due to the cessation of the enforcement warrant it was issued under [see subsection 95N(2)], or by the Sheriff [see subsection 95N(4)]: ***subparagraph 95N(1)(b)(i)***; or
- for a garnishee order on earnings: after the relevant payer gives notice to the Sheriff under subsection 95Q(4) that the debtor is no longer paid by the relevant payer: ***subparagraph 95N (1)(b)(ii)***; or
- for a single payment garnishee order: after the bank gives the Sheriff notice under paragraph 95W(1)(c) that the amount has been deducted: ***subparagraph 95N(1)(b)(iii)***; or
- for a bank account garnishee order: after the bank gives notice to the Sheriff under subsection 95X(2) that the debtor has closed all of their accounts with the bank: ***subparagraph 95N(1)(b)(iv)***.

As noted above, subsections 95N(2) and (4) contemplate two scenarios where a garnishee order is cancelled, the first being when the enforcement warrant it was issued under ceases to have effect, and the second being when the Sheriff has

cancelled the garnishee order. A Sheriff's cancellation can occur on the Sheriff's initiative or on the application of the debtor under ***subsection 95N(3)***, which provides that a debtor can apply to the Sheriff, in an approved form, for the garnishee order to be amended or cancelled.

The Sheriff must give notice of the amendment or cancellation of a garnishee order to the debtor and the relevant payer or bank: ***subsection 95N(5)***.

Subdivision 2 of Division 6B deals specifically with garnishee orders on earnings. If the Sheriff is satisfied that a relevant payer pays, or is likely to pay, earnings to a debtor, the Sheriff may issue a garnishee order on earnings to that relevant payer: ***subsection 95O(1)***.

Subsection 95O(2) provides that the order must be in the approved form, state the amount owed, the amount to be deducted and paid to the Sheriff each week, and when those deductions and payments must be made. It must also outline how those payments, and any necessary returns, are to be given, and explain to the relevant payer how the deduction amount is to be calculated under section 95P.

A garnishee order on earnings must not include any information about the alleged offence or offence for which the infringement notice was issued or fine was imposed, and it must be served on both the relevant payer and the debtor: ***subsection 95O(3)***.

Compliance requirements for garnishee orders on earnings are dealt with at new ***section 95P***. If a garnishee order on earnings is in force and earnings are payable during the pay period, the relevant payer must deduct the required amount, pay it to the Sheriff, and give the Sheriff a return under ***subsection 95P(2)***. Failure to comply is an offence attracting a penalty of $2,000.

Subsection 95P(3) outlines how the required amount to be deducted is determined. The amount to be deducted is the lesser of:

- the weekly amount specified in the order multiplied by the number of weeks in the pay period (***paragraph 95P(3)(a)***); or
- the amount that would reduce the debtor's earnings to the protected earnings amount as defined in subsection 63(1): an amount to be prescribed (***paragraph 95P(3)(b)***); or
- the amount that would result in the total amount deducted for all pay periods being equal to the amount owed (***paragraph 95P(3)(c)***).

Subsection 95P(4) provides that if the debtor's earnings for the pay period are equal to, or less than, the protected earnings amount, then the relevant payer must not deduct any amount. If the pay period is not a number of whole weeks (for example, one and a half weeks), the number of weeks in the pay period is to be determined by dividing the number of days (for example, eight days) by seven, rounded to two decimal places: ***subsection 95P(5)***.

For clarity, ***subsection 95P(6)*** provides that "earnings" for a pay period means the amount remaining after the deduction of any amounts required to be deducted under the *Taxation Administration Act 1953* (Cth) (the TAA), such as PAYG withholding amounts; or a written law other than Part 4 Division 4 of the CJE Act (being funds required to be deducted under an earnings appropriation order issued under the CJE Act). The purpose of the CJE Act exclusion is to ensure that where a payer has orders to deduct under both the FPINE Act and the CJE Act, the deduction under the FPINE Act is to have priority.

New ***section 95Q*** outlines the necessary returns and notices that must be given by a relevant payer. No later than seven days after a debtor is paid earnings by a relevant payer, the relevant payer must notify the debtor of the amount deducted under the garnishee order, or advise that no deduction was made: ***subsection 95Q(2)***. Failure to notify is an offence attracting a penalty of $2,000. If the relevant payer does not deduct any amount in a given month, the relevant payer must give the Sheriff a return within seven days after the end of that month: ***subsection 95Q(3)***.

If the person stops receiving earnings from the relevant payer, the relevant payer must notify the Sheriff within seven days of the end of the month: ***subsection 95Q(4)***.

New ***section 95R*** provides that where a relevant payer has deducted an amount in accordance with section 95P, their liability to pay that amount to the debtor (or anyone other than the Sheriff) is discharged.

New ***section 95S*** outlines recordkeeping requirements for relevant payers.

Subsection 95S(1) requires relevant payers to keep records of the earnings payable to the debtor while the garnishee order is in force, the amounts deducted under that order, and any returns and notices given to the Sheriff. Records are to be kept for two years after the garnishee order's cessation: ***subsection 95S(2)***. ***Subsection 95S(3)*** provides that failure to keep records and failure to keep them for the required two year period are each offences attracting a penalty of $2,000.

New ***section 95T*** builds in protections for employees subject to garnishee orders on earnings and provides that an employer must not treat the employee debtor less favourably than another employee due to the garnishee order. A penalty of $5,000 applies under ***subsection 95T(1)***.

Under ***subsections 95T(2) and (3)*** the onus of proof is on the employer to prove that the garnishee order was not the reason for the unfavourable treatment where:

- the employer is charged with the offence which is alleged to have occurred within six months of the service of the garnishee order; and
- all elements of the offence except the grounds for the employer's treatment of the employee debtor are proved.

New ***section 95U*** provides a power to make regulations to prescribe a method for determining the protected earnings amount for a pay period for a garnishee order on earnings: ***subsection 95U(1)***. Different methods may be prescribed for different classes of debtors, and regulations may also include provision for determining a period where earnings have been paid to a debtor (a pay period): ***subsections 95U(2) and (3)***.

Subdivision 3 deals with bank account garnishee orders. If satisfied that a debtor has an account with a particular bank, the Sheriff may issue that bank with a garnishee order under new ***section 95V***. There are two types of bank account garnishee order:

- a single payment garnishee order for a lump sum payment (***paragraph 95V(2)(a)***); or
- a multiple payments garnishee order for recurrent deductions (***paragraph 95V(2)(b)***).

Subsection 95V(3) requires a bank account garnishee order to be in the approved form, state the amount owed, the amount to be deducted and paid under the order, and when those deductions and payments must be made. It must also outline how those payments, and any necessary returns, are to be given and explain to the bank how the deduction amount is to be calculated under section 95W.

A bank account garnishee order must not include any information about the alleged offence or offence for which the infringement notice was issued or fine was imposed, and it must be served on both the bank and the debtor: ***subsections 95V(4) and (5)***.

Compliance requirements for bank account garnishee orders are dealt with at new ***section 95W***. In the case of a single payment garnishee order, the bank must deduct the required amount as soon as practicable after the order has come into force, pay that amount to the Sheriff and give the Sheriff a return: ***subsection 95W(1)***. Failure to comply is an offence with a penalty of $2,000.

Subsection 95W(2) provides that in the case of a multiple payments garnishee order, the bank must deduct the required amount whenever required under the order, pay that amount to the Sheriff and give a return. Failure to comply is an offence with a penalty of $2,000.

Subsection 95W(3) outlines how the amount to be deducted under a bank account garnishee order is to be calculated. It is the lesser of the following:

- the amount specified in the order (***paragraph 95W(3)(a)***); or
- the amount that would reduce the total amount in the debtor's bank account to the protected amount (***paragraph 95W(3)(b)***); or
- the amount that would result in the total amount deducted under the order, including any previous deductions under that order, being equal to the amount owed (***paragraph 95W(3)(c)***).

If a deduction would result in less than the protected bank account amount remaining in the debtor's account, the bank must not make that deduction but is still required to give the Sheriff a return: ***subsection 95W(4)***.

Where a debtor has more than one account with the bank, the bank may decide which account to deduct from, but cannot make any deductions that would result in any of the accounts becoming overdrawn: ***subsections 95W(5) and (6)***.

As with subsection 95P(6), ***subsection 95W(7)*** provides that deductions under a bank account garnishee order are to be made after any deductions required under the TAA or another Commonwealth law or a written law other than Part 4 Division 5 of the CJE Act (which deals with debt appropriation orders). As with section 95P, the purpose of the CJE Act exclusion is to ensure that where a payer has orders to deduct under both the FPINE Act and the CJE Act, the deduction under the FPINE Act is to have priority.

New ***section 95X*** outlines the notices banks are required to give. Notice must be given to the debtor within seven days of the deduction of money under a bank account garnishee order: ***subsection 95X(1)***. Similarly, the Sheriff must be given notice of the closure of a debtor's accounts while a bank account garnishee order is in force, within seven days after the end of the month that the account/s were closed: ***subsection 95X(2)***. These are offence provisions, each attracting a penalty of $2,000.

New ***section 95Y*** deals with recordkeeping requirements for bank account garnishee orders. Banks are required to keep records of amounts deducted and any returns and notices given to the Sheriff (***subsection 95Y(1)***), with the records to be kept for two years: ***subsection 95Y(2)***. Failure to keep records, and failure to keep them for the required retention period, are each offences with penalties of $10,000.

Banks may seek to charge an administration fee to deduct funds under a bank account garnishee order. New ***section 95Z*** provides that if a bank does charge an administration fee, it cannot be more than an amount prescribed in regulations. Charging a fee higher than that prescribed is an offence attracting a penalty of $10,000.

New ***section 95ZA*** outlines a debtor's responsibilities while a bank account garnishee order is issued, and introduces the offence of intentionally defeating an order: ***subsection 95ZA(2)***. This means a debtor must not withdraw money from, prevent money from being paid into, or close, a bank account with the intention of preventing the garnishee order from being executed. This is an offence attracting a penalty of $2,000.

Additionally, under ***subsection 95ZA(3)***, a debtor is required to notify the Sheriff if the debtor closes their bank accounts or if a regular depositor (of earnings or other amounts) stops depositing. Failure to notify the Sheriff is an offence with a penalty of $2,000.

Regulations specific to the protected bank account amount can be made under new ***section 95ZB***.

Subdivision 4 of Division 6B deals with general provisions relating to garnishee orders of both types. This includes new ***section 95ZC*** which gives the Sheriff the discretion to refund money deducted under a garnishee order on application from a debtor. Application for a refund of money must be made in accordance with the regulations: ***subsection 95ZC(1)***.

New ***section 95ZD*** provides express powers for the Sheriff to obtain information relevant to garnishee orders. Section 95ZD provides that:

- the Sheriff can put a request in writing to any person the Sheriff suspects pays or may pay earnings to a debtor, or any bank with whom the Sheriff suspects a debtor has an account: ***subsections 95ZD(2)*** and ***subsection 95ZD(3)***, respectively;
- the request can seek information about:
    - whether the person is a relevant payer (***paragraph 95ZD(2)(a)***);
    - the debtor's earnings (***paragraph 95ZD(2)(b)***);
    - the debtor's accounts (if any) with the bank (***paragraph 95ZD(3)(a)***);
    - the balance of those accounts and any payments made into them (***paragraph 95ZD(3)(b)***); and
    - any other information the Sheriff considers is or may be relevant: ***paragraph 95ZD(2)(c) and paragraph 95ZD(3)(c)***; and
- contravening a request from the Sheriff under this section, or providing false or misleading information in response to a request, is an offence attracting a penalty of $2,000: ***subsections 95ZD(4) and (5)***.

New ***section 95ZE*** restricts the disclosure of information by a relevant payer or bank. Information about a debtor that has been obtained because a garnishee order has been issued must not be disclosed except in very limited circumstances, being:

- when necessary to perform duties under Division 6B (***paragraph 95ZE(2)(a)***); or
- when necessary in carrying on the business affairs of the relevant payer or bank (***paragraph 95ZE(2)(b)***).

Improper disclosure is an offence with a penalty of $10,000.

Clause 77 – Section 96 amended

Clause 77 amends section 96, "How amounts recovered to be applied". This section outlines how the Sheriff must apply money recovered under an enforcement warrant. Firstly, ***subsection 96(1)*** is amended to refer more broadly to money "recovered under a warrant" to reflect that money can now be recovered through either the sale of property or a garnishee order.

Secondly, ***subsection 96(2)*** is amended to clarify that funds recovered only from the sale of property are to first be applied to any incidental costs arising from the sale of that property.

Thirdly, ***paragraph 96(3)(a)*** is amended to delete reference to "section 82" and replace with a reference to "section 70D". This corrects a cross-referencing error, as section 82 was deleted and reinserted as section 70D through the *Courts Legislation Amendment and Repeal Act 2004* (WA).

Finally, new ***subsection 96(4A)*** is inserted to provide that amounts recovered under an enforcement warrant in respect of one fine can be applied against another enforceable registered fine of the debtor and ***subsection 96(5)*** is amended to insert the word "Fifthly" to indicate the priority given to payment of surplus proceeds to a debtor.

Clause 78 – Part 7A inserted

Clause 78 inserts new Part 7A – Information. This new Part outlines information sharing arrangements for the Registrar and Sheriff under the FPINE Act and replaces sections 10 and 10A which were deleted by clause 15 of this Bill.

New ***section 100*** sets out the terms used. Terms used in this Part are:

- alleged offender: has the meaning given in section 11;
- contractor: has the meaning of the CSCS Act;
- offender: has the meaning given in subsection 28(1);
- public authority: means a department of the Public Service, a State agency or instrumentality, a court or tribunal to the extent that it is an agency for the purposes of the *Freedom of Information Act 1992* (WA), or a body or holder of an office, post or position established or continued for a public purpose under a written law;
- relevant information means:
    - in relation to the Registrar, information relevant to the performance of the Registrar's functions;
    - in relation to the Sheriff, information relevant to the performance of the Sheriff's functions; and
- research: means research to promote the development of criminology or corrective services.

New ***section 100A*** deals with disclosure of information to the Registrar or Sheriff and provides that either may request the disclosure of relevant information: ***subsection 100A(1)***. A request under section 100A must be complied with and a person (other than a public authority) who fails to comply is guilty of a contempt of the Magistrates Court by virtue of ***subsection 100A(4)***.

New ***section 100B*** deals with disclosure by the Registrar or Sheriff. Similar to section 97C of the SA Act, the Minister may approve the disclosure of information in certain circumstances to another government department or agency of this or another State, Territory, Commonwealth or overseas (***subsection 100B(1)***). The kind of disclosure contemplated by this provision includes disclosure to a public body or other body for use in research: ***paragraph 100B(3)(a)*** or disclosure in accordance with circumstances prescribed by the regulations: ***paragraph 100B(3)(b)***. Written procedures for the disclosure of information by the Registrar and Sheriff must be established and published on the Registrar's website under ***subsection 100B(4)***.

New ***section 100C*** entitles the Registrar and Sheriff to have access to records kept by the Director General of the Department of Transport under a road law (which means the *Road Traffic (Administration) Act 2008* (WA) (the RTA Act), RT Act, RTV Act and *Road Traffic (Authorisation to Drive) Act 2008* (WA)). This section replaces section 10, which was deleted through clause 15 of this Bill.

New ***section 100D*** is a regulation-making power for this Part, allowing regulations to deal with the following relevant matters:

- conditions of disclosure of or providing access to information (***subsection 100D(a)***);
- how information is to be received, stored and used (***subsection 100D(b)***);
- any requirements to restrict access to information (***subsection 100D(c)***); and
- retention and destruction periods (***subsections 100D(d) and (e)***).

New ***section 100E***, at ***subsection 100E(1)***, provides that information may be disclosed under Part 7A despite any written law relating to confidentiality or secrecy. If information is disclosed or accessed, in good faith under Part 7A, then various protections from criminal, civil and professional liability are conferred: ***subsection 100E(2)***.

New ***subsection 100F(1)*** imposes a statutory duty of confidentiality with respect to the collection, use or disclosure of certain information. Contravention of the duty is an offence with a penalty of $10,000.

Subsection 100F(2) provides that collection, use or disclosure of information is authorised if the information is collected, used or disclosed in good faith for the purpose of or in connection with performing a function under the FPINE Act or another written law (***paragraph (a)***); as required or allowed under the FPINE Act or another written law (***paragraph (b)***); for the purpose of legal proceedings arising under the FPINE Act or another written law (***paragraph (c)***); under an order of a court or other person or body acting judicially (***paragraph (d)***); with the written consent of the person to whom the information relates (***paragraph (e)***); for the purposes for which it was disclosed under section 100B (***paragraph (f)***); or in circumstances prescribed in regulations (***paragraph (g)***).

A safeguard to permit the collection, use or disclosure of statistical information that could not reasonably lead to the identification of an individual is built in at ***subsection 100F(3)***.

Clause 79 – Section 101B amended

Clause 79 amends section 101B, “Enforcement suspended on appeal etc.”.

Subsection 101B(3) is amended to include information about the new enforcement options available as a result of this Bill (being garnishee orders under an enforcement warrant and FEOs) and include reference to a section 78 notice.

Where a fine has been appealed and no money has been deducted under a garnishee order or paid in compliance with a section 78 notice, the enforcement warrant is taken to have been cancelled: ***paragraph 101B(3)(e)***. However, an ongoing FEO continues, subject to section 52J: ***paragraph 101B(3)(f)***. This is because the offender is already in custody and continued expiation of the fine they are appealing has no effect on their liberty, as a FEO is not an authority to hold a person in custody.

Subsection 101B(4) deals with scenarios where money has been deducted under a garnishee order or paid in compliance with a section 78 notice. In that scenario, no further action can be taken under the garnishee order or notice.

Subsection 101B(5B) is amended to refer to a “vehicle licence cancellation and disqualification order” at ***paragraph (d)***, and to replace existing ***paragraph (e)*** with a reference to a person holding a vehicle licence, regardless of whether the licence is suspended.

Subsection 101B(5C) is also amended to refer to a “vehicle licence cancellation and disqualification order”.

Clause 80 – Section 101C amended

Clause 80 amends section 101C, “Proving licence suspension orders and service of documents”. The changes to this section are all to reflect the new “vehicle licence suspension and disqualification order” and “vehicle licence cancellation and disqualification order” terms.

Clause 81 – Section 101D amended

Clause 81 amends section 101D, “Validity of certain orders not affected by non-receipt of documents”. ***Subsections 101D(1A) and (1***) are amended to insert the words “and disqualification” into the descriptions where necessary.

Clause 82 – Section 103 amended

Clause 82 amends section 103, "Exclusion of rules of natural justice", to include a reference to the "CEO (fines enforcement)". This is for clarity, given the separation of decision making between the "CEO (fines enforcement)" and "CEO (corrections)".

Clause 83 – Section 105 amended

Clause 83 amends section 105, "Facsimile warrants", to delete reference to a "warrant of commitment" being faxed. As warrants of commitment will now be immediately issued by the Court with the offender before it, instead of issued remotely by the Registrar, this reference is no longer required.

Clause 84 – Section 105A inserted

Clause 84 inserts new ***section 105A***, "Delegation by CEO (fines enforcement)". This is included to allow an express power to delegate tasks to be performed by the CEO (fines enforcement). ***Subsection 105A(2)*** provides that a delegation must be in writing, and ***subsection 105A(3)*** provides that a delegate cannot further delegate a power or duty. A person performing a delegated duty or exercising a delegated power is taken to be doing so within the terms of the delegation under ***subsection 105A(4)***. ***Subsection 105A(5)*** provides that nothing in section 105A limits the CEO (fines enforcement) from performing a function through an officer or agent.

Clause 85 – Section 108A amended

Clause 85 amends section 108A, "Credit for punishment served in error". Reference to a warrant of commitment is changed to refer to being issued under "this Act" rather than under "section 53", and reference to a registered fine is updated to refer to "Part 4" rather than "section 41(1)" to account for the restructuring of Part 4 through this Bill.

Clause 86 – Section 108 amended

Clause 86 amends section 108, "Regulations", to:

- include a reference to section 101AA in ***subparagraph (a)(i)*** of subsection (2) to correct an oversight;
- reflect that means testing of alleged offenders and offenders now applies more broadly across the FPINE Act than solely in relation to applications for TTP orders (***paragraph (b)*** of subsection (2));
- refer to the verification of information supplied for the purpose of the FPINE Act rather than only in the context of means tests (***paragraph (c)*** of subsection (2)), to allow for the possibility of prescribing verification requirements by statutory declarations or other means where necessary;
- include a power to make regulations for offences and penalties (new ***paragraph (d)*** of subsection (2)); and

- prescribe fees for issuing a summons to attend a WOC Inquiry under Part 4 Division 3E (new ***paragraph (ba)*** of subsection (4)).

In addition, the word "alleged" is inserted before "offender" at ***paragraph (d)*** of subsection (3) to reflect that it relates to an "alleged offender" for the purposes of Part 3 of the FPINE Act rather than to an "offender" for the purposes of Part 4.

Clause 87 – Section 109A inserted

Clause 87 inserts new section 109A, which is a statutory review provision for the following provisions:

- Part 2 Division 2;
- Part 2 Division 3;
- Part 3 Division 7; and
- the amendments made to the Sentencing Act by clauses 129 and 130 of this Bill.

A review of the operation and effectiveness of the above listed provisions must be undertaken as soon as practicable after the third anniversary of the day in which the Bill commences, with a review report to be tabled no later than 12 months after that review.

Clause 88 – Sections 120 to 124 inserted

Clause 88 inserts new sections into Part 9, which deals with transitional arrangements.

New ***section 120*** makes provision for the application of the amendments made by Part 2 Division 3 of this Bill to infringement notices and fines, whether they were registered before, on or after the second commencement day.

New ***section 121*** preserves existing TTP orders entered into under former sections 27A and 55A before the second commencement day. These TTP orders are taken to have been made under the new sections 21C and 33 (as the case may be) and requests made before the second commencement day which have not yet been determined by the Registrar are taken to have been made under the equivalent sections: ***subsection 121(4)***.

New ***section 122*** provides that an enforcement warrant issued before the second commencement day is taken to authorise a garnishee order, even though Part 7 Division 6B was not in force when the enforcement warrant was issued and the warrant itself did not list garnishment as an option. However, ***subsection 122(3)*** provides that, at least 28 days before issuing a garnishee order under such an enforcement warrant, the Sheriff must serve a notice on the debtor in the approved form advising that a garnishee order can now be issued under that warrant.

An offence provision is included at ***subsection 122(4)*** which provides that a debtor who is served with a notice under subsection 122(3) must not take specified steps to prevent the execution of a garnishee order that may be issued. This is a mirror offence to section 95ZA, inserted through clause 76 of the Bill.

New ***section 123*** preserves enforcement instruments issued under previous provisions of the FPINE Act, dealing with licence suspension orders, enforcement warrants issued under section 55D, orders to attend for WDO, and vehicle licence suspension and vehicle licence cancellation orders. The Table outlines the corresponding former and new sections.

New ***section 124*** preserves information sharing arrangements previously entered into under sections 10 and 10A of the FPINE Act, which were deleted through clause 15 of the Bill. Information sharing arrangements previously entered into under section 10 are taken to have been made under section 100C and arrangements under section 10A are taken to have been made under section 100B.

Clause 89 – Various references to vehicles licensed in name of debtor amended

Clause 89 amends various provisions in ***Part 7 Divisions 2 and 6A*** to delete the words “licensed in the name” as a result of the introduction of the term “vehicles of a debtor” introduced at subsection 63(3) through clause 65 of the Bill.

Clause 89 also replaces the heading of section 49. It is changed from “WDO: nature of” to “Effect of work and development order” for consistency with the other headings in Part 4 Division 3C.

Division 4 – Amendments relating to work and development permits

Part 2 Division 4 of the Bill deals with all amendments relating to the new “work and development permit” (WDP) scheme. As these amendments will be proclaimed separately, at a later stage than Part 2 Divisions 1 to 3 and Part 3, they are inserted through a new Division of the Bill.

Clause 90 – Section 3 amended

Clause 90 amends section 3 to insert new defined term “work and development permit (WDP)”. WDP has the meaning given in new section 46A which is inserted through clause 95 of the Bill.

Clause 91 – Section 28 amended

Clause 91 amends section 28, “Terms used”.

The term “approved sponsor” is inserted to refer to a person who is approved under new section 46J as a sponsor to oversee offenders completing WDPs.

The term “work and development instrument” is inserted as a means of referring collectively to a WDO and a WDP.

The definitions of “amount owed”, “enforceable registered fine”, “enforcement instrument” and “warrant of commitment inquiry process” are amended to include references to the WDP provisions.

Clause 92 – Section 32C amended

Clause 92 amends section 32C, which deals with applications for TTP orders and was inserted through clause 32 of the Bill. References to a WDP are inserted at ***subsection 32C(3)(a)*** at ***paragraph (i) and subsection (3)(b)*** to provide that an application for a TTP order cannot be made if a WDP is in force. This is because WDPs are intended for offenders experiencing hardship affecting their ability to pay their outstanding fines.

Clause 93 – Section 42 amended

Clause 93 amends section 42, “Notice of intention to enforce”, to provide that a NIE must explain the circumstances in which a WDP can be issued and how to apply for one, through the insertion of new ***paragraph (daa)*** into subsection 42(5).

Clause 94 – Part 4 Division 3C Subdivision 1 heading inserted

Clause 94 inserts new heading “Subdivision 1 – Preliminary” before section 46.

Clause 95 – Part 4 Division 3C Subdivision 2 inserted

Clause 95 inserts new ***Subdivision 2*** into Part 4 Division 3C. This new Subdivision creates a legislative framework for WDPs to be issued to offenders experiencing hardship which affects their ability to pay or otherwise work off their fine debts.

New ***section 46A*** “Work and development permits” outlines what a WDP is. A WDP is a permit which enables an offender to discharge their liability to pay a fine by undertaking any of the following activity:

- unpaid work (***paragraph (a)***);
- medical or mental health treatment provided under a treatment plan (***paragraph (b)***);
- an education, vocational or personal development course (***paragraph (c)***);
- treatment for alcohol or drug use problems under a treatment plan (***paragraph (d)***);
- a mentoring program if under 25 years of age (***paragraph (e)***); or
- other activities prescribed in regulations (***paragraph (f)***.

Any activity undertaken under a WDP is to be supervised by an approved sponsor.

New ***section 46B*** sets out a list of eligibility criteria for a WDP. An offender is eligible to undertake a WDP if they are experiencing hardship: ***subsection 46B(1)***. "Hardship" is a concept introduced into the FPINE Act through new section 4A, inserted through clause 10 of this Bill. However, "financial hardship" is only an eligibility criterion for a WDP where it affects the offender's capacity to pay a fine: ***subsection 46B(2)***.

The application process is outlined in ***section 46C***. Application is made by an approved sponsor directly to the Registrar, in the approved form.

Subsection 46C(1) provides that application can only be made with the offender's agreement. Application cannot be made unless a NIE has been issued, but can be made at any time following issue: ***subsection 46C(2)***. This is a departure from other enforcement measures to allow offenders experiencing hardship to apply for WDPs early in the process and avoid enforcement fees.

Subsection 46C(3) requires that an application must include an eligibility assessment, in writing, by the approved sponsor, which sets out the kinds of hardship the offender is experiencing and the basis on which the approved sponsor considers hardship is being experienced by the offender. "Hardship" may include circumstances other than those contemplated in subsection 4A(1). In addition, the application must also include the amount owed, the activity proposed to be undertaken and the rates prescribed for the purpose: ***subparagraphs 46C(3)(c)(i)-(iii)***.

Subsection 46C(4) provides that the Registrar is to rely on the eligibility assessment completed by the approved sponsor unless the Registrar believes on reasonable grounds that it should not be relied on. Under ***subsection 46C(5)*** the Registrar can require an approved sponsor to provide the information that the approved sponsor relied on in making their eligibility assessment of an offender within a specified time and, if the approved sponsor does not comply with a notice requiring such information, ***subsection 46C(6)*** provides that the WDP application is taken to have been withdrawn.

New ***section 46D*** deals with issuing a WDP: if the Registrar is satisfied that the offender is eligible, the Registrar may issue the WDP under ***subsection 46D(1)*** and serve a copy of the WDP on the offender and the approved sponsor under ***subsection 46D(3)***. However, under ***subsection 46D(2)***, the Registrar must refuse to issue a WDP if its issue would result in the maximum prescribed number of allowable work and development instruments (meaning, WDPs and WDOs) being in force in respect of the offender. As with issue, refusal to issue must also be served on the offender and approved sponsor: ***subsection 46D(4)***.

New ***section 46E*** outlines the information that must be contained in a WDP, being the amount owed: ***subparagraph 46E(1)(b)(i)***, the activity forming the WDP: ***subparagraph 46E(1)(b)(ii)*** and the rates applicable: ***subparagraph 46E(1)(b)(iii)***. Under ***subsection 46E(2)***, a WDP is to be issued in the terms applied for unless the approved sponsor and offender agree otherwise. For example, if the Registrar

proposes to amend a particular aspect of a WDP before it is issued, the Registrar must seek consent from both parties before issuing it in those amended terms.

Subsection 46E(3) provides that unpaid work, which is a WDP activity under subsection 46A(a), is cumulative on any activity undertaken under another WDP, the required hours under a WDO in force for the offender, any community work hours required under a Sentencing Act community order, and any community corrections activities required under the SA Act.

This means the unpaid work is additional to any other work requirements of another order the offender may be subject to. Any other WDP activity, meaning, anything other than unpaid work under subsection 46A(a), may be concurrent with any other activity an offender is required to undertake under a written law of the State or Commonwealth, as set out in ***subsection 46E(4)***.

As outlined in new ***section 46F***, WDPs come into force when they are issued (***subsection 46F(a)***) and remain in force until they are either completed (***paragraph 46F(b)(i)***) or cancelled (***paragraph 46F(b)(ii)***).

New ***section 46G*** outlines how an offender discharges their liability to pay a fine under a WDP. Liability is discharged when the offender either:

- undertakes all of the required WDP activity to the satisfaction of the approved sponsor (***paragraph 46G(1)(a)***),
- pays the amount owed (***paragraph 46G(1)(b)***), or
- partially completes WDP activity to the satisfaction of the approved sponsor and partially pays the amount owed (***paragraph 46G(1)(c)***).

If an offender pays part of the amount owed under the WDP, the Registrar must then amend the WDP to reduce the activity required under ***subsection 46G(2)***. If an offender completes some, but not all, of the required activity, their liability to pay the fine for which the WDP was issued is reduced only to the extent of the activity completed, in accordance with the prescribed rates: ***subsection 46G(3)***.

A WDP is completed when liability to pay the amount owed is wholly discharged: ***subsection 46G(4)***.

WDPs can be cancelled in the circumstances outlined in new ***section 46H***. Those circumstances are:

- on application by an approved sponsor on the grounds that they are unable to continue supervising the activity (***subsection 46H(1)***); or
- on application by an offender on the grounds that the offender believes the approved sponsor will be unable to continue to supervise the activity (***subsection 46H(2)***).

In those circumstances, the Registrar must cancel the WDP: ***subsection 46H(3)***.

Subsection 46H(4) provides that the Registrar may also cancel a WDP on the Registrar's own initiative if satisfied that:

- the offender has failed to undertake the WDP activity without a reasonable excuse (***paragraph (a)***);
- the offender no longer meets the section 46B eligibility criteria (***paragraph (b)***);
- the approved sponsor is unable to continue supervising the activity (***paragraph (c)***) or has contravened a requirement of Subdivision 2 or the regulations (***paragraph (d)***);
- the sponsor's approval has been revoked under subsection 46J(2) (***paragraph (e)***);
- false or misleading statements were included in the application for the WDP (***paragraph (f)***) or in the information or evidence provided to the Registrar on request under subsection 46C(5) (***paragraph (g)***); or
- if there is another good reason to cancel (***paragraph (h)***).

Notice of cancellation must be served on both parties under ***subsection 46H(5)***.

New ***section 46I*** sets out how a WDP can be amended: on application from the approved sponsor with the agreement of the offender under ***subsection 46I(1)***. The Registrar must either amend or refuse to amend the WDP: ***subsection 46I(2)***.

If ***subsection 46G(2)*** applies (meaning, the offender has partly paid the amount owed), the Registrar must amend the WDP. Notice of the Registrar's decision on amendment, being approval or refusal, must be served on both parties: ***subsection 46G(4)***.

New ***section 46J*** outlines how sponsors are approved. Approval is in writing by the CEO (fines enforcement) under ***subsection 46J(1)***, who must establish and maintain a register of approved sponsors which must be published on the Registrar's website: ***subsections 46J(3) and (5)***. The CEO (fines enforcement) can revoke approval under ***subsection 46J(2)***. Regulations made under ***subsection 46J(4)*** may prescribe particular requirements for the content and form of the register of approved sponsors.

New ***section 46K*** provides that an offender undertaking unpaid work under a WDP is not taken to be employed by or in a contract for services with the approved sponsor (***paragraph 46K(1)(a)***), and is not an employee for the purposes of industrial relations law (***paragraph 46K(1)(b)***). ***Subsection 46K(2)*** excludes approved sponsors from the operation of section 107 of the FPINE Act, which gives protection from liability for wrongdoing. The practical effect of this is that an approved sponsor may be held liable in relation to an act or omission and will be required to hold insurance cover.

The Minister may issue guidelines for WDPs under new ***section 46L***. Guidelines may deal with a range of issues, including:

- how to assess an offender's eligibility under section 46B, including what supporting information may be required: ***paragraph 46L(2)(a)***;
- how to apply the prescribed rates to WDP activity: ***paragraph 46L(2)(b)***;
- the WDP application process: ***paragraph 46L(2)(c)***; and
- approval and revocation of approval of sponsors: ***paragraph 46L(2)(d)***.

Guidelines can be amended or revoked at any time under ***subsection 46L(3)***, and must be published in a manner prescribed in regulations, with a power to make regulations for that purpose set out at ***subsection 46L(4)***. It is important to note that, as provided by ***subsection 46L(5)***, guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984* (WA) and that, in the case of any conflict or inconsistency between the guidelines and the FPINE Act, the FPINE Act prevails: ***subsection 46L(6)***.

New ***section 46M*** requires the guidelines to be taken into account. The intended purpose of the guidelines, as set out at ***subsection 46M(1)***, is to assist the CEO (fines enforcement) and other persons (for example, Registry staff) in the performance of functions under the FPINE Act and provide information to approved sponsors, offenders and the public.

Subsection 46M(2) provides that where a function to be performed under Subdivision 2 of Part 4 Division 3C of the FPINE Act relates to a matter addressed in the guidelines, the guidelines must be taken into account in the performance of that function. This requirement does not preclude a person taking into account other matters not set out in the guidelines, derogate from a person's duty to perform a function, or require a person to have regard to a guideline that is inconsistent with the relevant provision of the FPINE Act relating to the function to be performed: ***subsection 46M(3)***.

Section 46N gives a power to make regulations about WDPs. The regulations must prescribe the rates to be assigned to WDP activity; however, different rates may be prescribed for different activities in accordance with ***subsection 46N(2)***. In addition, ***subsection 46N(3)*** outlines that regulations may set out requirements for approved sponsors and offenders relevant to Subdivision 2 generally, including recordkeeping, notice and information requirements and insurance and health and safety matters.

Clause 96 – Part 4 Division 3C Subdivision 3 heading inserted

Clause 96 inserts a new heading before section 47 to create a new ***Subdivision 3***, Work and development orders. This is to clearly delineate between different work and development instruments.

Clause 97 – Section 50 amended

Clause 97 amends paragraph 50(3)(a), which outlines that required hours under a WDO are cumulative on other work. New ***paragraph (aa)*** is inserted into subsection 50(3) to provide that a WDO is cumulative on unpaid work undertaken under a WDP for consistency with subsection 46E(3).

Clause 98 – Section 55A amended

Clause 98 amends ***section 55A*** to include a reference to Division 3C Subdivision 2, being the Subdivision dealing with WDPs.

Clause 99 – Section 100 amended

Clause 99 amends ***section 100*** to insert the new defined term "approved sponsor" into Part 7A – Information sharing.

Clause 100 – Section 100A amended

Clause 100 amends ***section 100A*** to include a reference to an approved sponsor for the purpose of the Registrar's and Sheriff's ability to request disclosure of information.

Clause 101 – Section 100B amended

Clause 101 amends section 100B by inserting new ***paragraph (aa)*** at subsection 100B(3) to permit disclosure of information about offenders or fines to approved sponsors for purposes connected with WDPs.

Clause 102 – Section 101B amended

Clause 102 amends section 101B to outline the effect of an appeal on the operation of a WDP:

- if a WDP has been issued but not served when a fine is appealed, the WDP is taken as being cancelled (new ***paragraph 101B(3)(da)***);
- if a WDP has been served when a fine is appealed, the WDP ceases to have effect (new ***paragraph 101B(4)(b)***); and
- if the fine which was appealed is still payable following disposal of the appeal, the WDP has effect again (new ***paragraph 101B(5)(ca)***).

Clause 103 – Section 109B inserted

Clause 103 inserts new ***section 109B***, "Review of amendments made by *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019* Part 2 Division 4 Division 3C Subdivision 2"*.* This will provide for a statutory review specific to the operation and effectiveness of the WDP provisions. The WDP provisions must be reviewed as soon as practicable after the third anniversary of the day after

commencement, with a report of that review laid before Parliament no later than 12 months after that three years.

Clause 104 – Section 115 amended

Clause 104 amends ***section 115*** which outlines terms used for the purposes of Part 9 of the FPINE Act (which deals with transitional and validation provisions). The term "third commencement day" is inserted into section 115 to refer to the commencement of Part 2 Division 4 of this Bill.

Clause 105 – Section 120 amended

Clause 105 amends ***section 120*** to provide that WDPs will be available for fines registered before commencement of the WDP provisions.

Part 3 – Other Acts amended

Part 3 of the Bill sets out amendments to other Acts. These are the CTEPF Act, CI Act, CBJ Act, EC Act, RTA Act, RTV Act, SA Act and Sentencing Act.

Division 1 – *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* amended

Clause 106 – Act amended

Clause 106 provides that Division 1 of Part 3 amends the CTEPF Act.

Clause 107 – Section 95 deleted

Clause 107 deletes ***section 95*** of the CTEPF Act. That section, which remains unproclaimed, proposed the deletion of section 105 of the FPINE Act. As section 105 of the FPINE Act is being amended through clause 82 of this Bill, the opportunity was taken to repeal this unproclaimed provision from the statute book.

Division 2 – *Criminal Investigation Act 2006* amended

Clause 108 – Act amended

Clause 108 provides that Division 2 of Part 3 amends the CI Act.

Clause 109 – Section 125 amended

Clause 109 amends ***section 125*** of the CI Act to expressly include release under section 52ZB of the FPINE Act pursuant to an arrest warrant issued under subsection 52Q(1)(b). Section 125 is the first section within Part 12 of the CI Act, which deals with arrests and related matters. This amendment will clarify that an offender will cease to be under arrest for the purposes of the CI Act when they are released under a conditional release undertaking under section 52ZB of the FPINE Act, inserted through clause 56 of this Bill.

Division 3 – *Cross-border Justice Act 2008* amended

Clause 110 – Act amended

Clause 110 provides that Division 3 of Part 3 amends the CBJ Act.

Clause 111 – Section 7 amended

Clause 111 amends ***section 7*** of the CBJ Act, which defines "non-custodial orders", to delete reference to section 47A, which has been deleted through clause 49 of this Bill.

Clause 112 – Section 120 amended

Clause 112 amends ***section 120*** of the CBJ Act to update terminology by replacing the definition of "fines enforcement agency" in reference to South Australia and the Northern Territory.

Clause 113 – Section 121 amended

Clause 113 amends ***section 121*** of the CBJ Act, which deals with making requests to enforce fines in participating jurisdictions, to delete the reference to fines being registered under "section 41(1)" and replace it with a reference to "section 32(2)(a) or 32B".

Clause 114 – Section 122 amended

Clause 114 amends ***section 122*** of the CBJ Act, which deals with the effect of a request to enforce fines in participating jurisdictions, to include reference to a WDP and delete the reference to Division 3 of Part 4 of the FPINE Act. This is achieved by replacing paragraph (a) of section 122.

Clause 115 – Section 127 amended

Clause 115 amends ***section 127*** of the CBJ Act, which deals with the effect of registration of a fine, to:

- delete the reference to fines being registered under "section 41(1)" and replace it with a reference to "section 32(2)(a) or 32B"; and
- delete references to the Registrar's power to issue a warrant of commitment and instead refer to the new process of applying for a WOC Inquiry under section 52N.

Clause 116 – Section 130 amended

Clause 116 amends ***section 130*** of the CBJ Act, which deals with the effect of a request to cease enforcement of a fine, to include reference to a WDP and delete the reference to Division 3 of Part 4 of the FPINE Act. This is achieved by replacing paragraph (a) of subsection 130(2).

Clause 117 – Various references to Northern Territory legislation amended

Clause 117 amends various citations of Northern Territory legislation contained within the CBJ Act to reflect that Northern Territory citations now include the enactment year following amendments to the *Interpretation Act 1978* (NT).

Division 4 – *Electricity Corporations Act 2005* amended

Clause 118 – Act amended

Clause 118 provides that Division 4 of Part 3 amends the EC Act.

Clause 119 – Section 40 deleted

Clause 119 deletes section 40 of the EC Act, which dealt with requests for information from the Registrar. Section 40 is replaced with new section 72, inserted by clause 120.

Clause 120 – Section 72 inserted

Clause 120 inserts new ***section 72*** into the EC Act. This new section 72 has the same effect as previous section 40 and has been updated in line with contemporary drafting practice and to expressly reference the new disclosure provisions at section 100A of the FPINE Act, inserted through clause 78 of this Bill. In addition, the scope has been broadened to include a request from the Sheriff.

Division 5 – *Road Traffic (Administration) Act 2008* amended

Clause 121 – Act amended

Clause 121 provides that Division 5 of Part 3 amends the RTA Act.

Clause 122 – Section 13C replaced

Clause 122 replaces existing ***section 13C*** of the RTA Act, which is a mirror provision to old section 40 (now new section 72) of the EC Act and deals with requests for information from the Registrar.

As with the EC Act amendments, new section 13C has the same effect as previous section 13C and has been updated in line with contemporary drafting practice and to expressly reference the new disclosure provisions at section 100A of the FPINE Act, inserted through clause 78 of this Bill. In addition, the scope has been broadened to include a request from the Sheriff.

Division 6 – *Road Traffic (Vehicles) Act 2012* amended

Clause 123 – Act amended

Clause 123 provides that Division 6 of Part 3 amends the RTV Act.

Clause 124 – Section 5 amended

Clause 124 amends ***section 5*** of the RTV Act, which deals with applications for the grant, renewal, transfer and variation of vehicle licenses, to reflect the new "vehicle licence suspension and disqualification" and "vehicle licence cancellation and disqualification" orders.

Clause 125 – Section 16 amended

Clause 125 amends ***section 16*** of the RTV Act, which deals with the effect of licence suspension orders, to reflect the new "vehicle licence suspension and disqualification" and "vehicle licence cancellation and disqualification" orders.

Division 7 – *Sentence Administration Act 2003* amended

Clause 126 – Act amended

Clause 126 provides that Division 7 of Part 3 amends the SA Act.

Clause 127 – Section 78 amended

Clause 127 amends ***section 78*** of the SA Act, which deals with the suspension of minimum hours requirements in community orders in cases of illness, to update the reference to the "minimum hours requirement" in the context of a WDO.

This change is consequential on the changes made to section 50 of the FPINE Act through clause 53 of this Bill, which will allow a CCO to specify the number of hours to be completed under a WDO or amend a WDO to lower the number of hours required.

Subsection 78(2)(d) is also amended to remove the limitation on offenders becoming unfit to perform a WDO. Currently, an offender can be unfit to perform a WDO for no more than 12 weeks before that WDO is cancelled. Going forward, an offender could be unfit for a longer period. This will give more flexibility to both offenders and CCOs in situations where an offender is unfit, but will become fit, and able to complete their WDO.

Division 8 – *Sentencing Act 1995* amended

Clause 128 – Act amended

Clause 128 provides that Division 8 of Part 3 amends the Sentencing Act.

Clause 129 – Section 57A amended

Clause 129 amends ***section 57A*** of the Sentencing Act, which deals with the enforcement of fines by means of WDOs, in relation to FEWDOs (being WDOs that

are made directly by the court at time of sentencing rather than by a CCO as an enforcement option under the FPINE Act).

Currently, the Sentencing Act provides that the court must not make a FEWDO unless the offender is personally present in court (paragraph 57A(5)(a)) and the court is satisfied of the considerations set out at paragraph 57A(5)(b). This Bill deletes subsection (5), inserts a new ***(5)*** which still requires the personal presence of the offender before the court, and moves the considerations to new ***subsection 57A(5A)***.

The effect of this is that while the considerations must still be taken into account by the court, the findings of the court in relation to those considerations will not prevent the making of a FEWDO but remain factors that the court must take into account. In addition, the existing requirement that those considerations must be satisfied by evidence on oath has been removed to provide that the court may satisfy itself of the matters in subsection 57A(5A) by evidence on oath.

Consideration of whether the offender has a vehicle licence, formerly at subparagraph 57A(5)(b)(ii), has been removed and is not reinserted into new subsection 57A(5A).

Finally, current ***subsection 57A(8)*** is deleted and replaced to indicate that the FPINE Act applies to a FEWDO issued under the Sentencing Act.

Clause 130 – section 57B amended

Clause 130 amends ***section 57B*** of the Sentencing Act, which provides that a court may cancel a FEWDO on the Registrar's application, to include reference to new subsection 57A(5A) in the considerations for the court on an application to cancel a FEWDO.

Clause 131 – Section 136 amended

Clause 131 amends ***section 136G*** of the Sentencing Act, which deals with the court's powers for re-sentencing, to include reference to a community based order (a CBO), which was inadvertently not included in the list of conditional orders contemplated by Part 18A of the Sentencing Act which was inserted in 2016 by the *Sentencing Legislation Amendment Act 2016* (WA). In addition, "CEO" is clarified to refer to the CEO of the Department of Justice in relation to a conditional release order and the CEO (corrections) in relation to all other orders.