

Fines Legislation Amendment Bill 2006

EXPLANATORY MEMORANDUM

The Fines Legislation Amendment Bill 2006 (“the Bill”) amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (“FPINE Act”), the *Sentencing Act 1995* and the *Sentence Administration Act 2003*. The changes in the Bill are a result of the Review of Fines Enforcement in 2003 in respect of improving the management of fines enforcement in Western Australia. The Bill provides for a fairer and more efficient system of fines administration.

PART 1 PRELIMINARY

Clause 1 Short title

Clause 1 provides that the Act may be cited as the Fines Legislation Amendment Act 2006 (“the Amendment Act”).

Clause 2 Commencement

Clause 2 provides that the Amendment Act comes into operation on a day or days to be fixed by proclamation.

PART 2 FINES, PENALTIES AND INFRINGEMENT NOTICES ACT 1994 AMENDED

Clause 3 The Act amended

Clause 3 provides that the Bill amends the FPINE Act.

Clause 4 Section 3 amended and consequential amendments

Clause 4 amends Section 3(1) of the FPINE Act by inserting an interpretation of “dishonoured payment”, expanding the means of purported payment in respect to dishonoured payments to include credit cards and direct debit arrangements. Consequential amendments to sections 21(7), 26(3), 102, 108(3)(e) and 108(4)(c) delete “cheque” and insert “payment” to reflect the expanded interpretation.

Clause 5 Section 5A inserted and consequential amendments

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

This amendment only applies to the following sections:

<i>Section 5</i>	Service of documents
<i>Section 17(2)</i>	Order to pay or elect
<i>Section 18(2)</i>	Notice of intention to suspend licences
<i>Section 19(7)</i>	Licence Suspension Order

<i>Section 20(4)</i>	Cancelling license suspension orders
<i>Section 27A(7)</i>	Registrar may suspend enforcement in certain cases
<i>Section 27C(2)</i>	Contravening a time to pay order
<i>Section 33(7)</i>	Time to pay order
<i>Section 33(8)</i>	Time to pay order
<i>Section 34(5)</i>	Offender may apply to have time to pay order amended
<i>Section 34(6)</i>	Offender may apply to have time to pay order amended
<i>Section 35(3)</i>	Court officer may amend time to pay order
<i>Section 34(5)</i>	Court officer may amend time to pay order
<i>Section 42(2)</i>	Notice of intention to suspend licences
<i>Section 43(7)</i>	License suspension order
<i>Section 44(4)</i>	Cancelling a license suspension order
<i>Section 55A(7)</i>	Registrar may suspend enforcement in certain cases
<i>Section 55B</i>	Amending a time to pay order
<i>Section 55C(2)</i>	Contravening a time to pay order
<i>Section 101C</i>	Proving licence suspension orders and service of documents

Clause 6 Section 10A is inserted

Proposed section 10A provides for the Registrar of the FER to disclose information to the Commissioner of Police on matters about the proceedings under the FPINE Act, primarily information contained on the database maintained by the Registrar.

Clause 7 Section 27 amended

Clause 7 amends section 27 of the FPINE Act by expanding the ability of the Registrar to either not impose a license suspension or cancel a license suspension order upon the offender entering into a time to pay arrangement, specifically on the grounds of medical necessity or employment as provided in section 27A(1)(c) and (d), to also include circumstances that would seriously hinder the alleged offender in performing family or personal responsibilities.

Clause 8 Section 32 amended

Clause 8 amends section 32 of the FPINE Act by eliminating the need to wait for 28 days to elapse after an offender is fined in a court before a matter can be referred to the FER, if the offender has other unpaid court imposed fines or infringement notices at the Registry.

Clause 9 Section 39 amended

Clause 39 repeals section 39(1) of the FPINE Act and inserts in its place proposed section 39(1).

Proposed section 39(1) eliminates the need to wait for 28 days to elapse after an offender is fined in a court before a matter can be referred to the FER, if the offender has other unpaid court imposed fines or infringement notices at the Registry. This amendment relates specifically to prosecuting authorities as described by section 39(2) of the FPINE Act, including matters imposed under the law of the

Commonwealth. This section requires the Prosecuting Authority to give the court officer written notice requesting the fine be registered with the FER.

Clause 10 Section 41(2) is inserted

Proposed section 41(2) allows the Fines Enforcement Registrar to return matters back to the court after registration if there is a good reason. For matters described by section 39(2) of the FPINE Act, including matters imposed under the law of the Commonwealth, the prosecuting authority must give consent. The Registrar is not able to return any matters to the court after a Warrant of Execution or Warrant of Commitment has been issued.

Clause 11 Section 53 amended

Clause 11 repeals sections 53(3), 53(4) and 53(8) of the FPINE Act and inserts in their place, proposed sections 53(3) and 53(8).

Proposed section 53(3) changes the method of calculation upon which imprisonment fine default is made. It simplifies the existing calculation method and ‘rounds’ down the default to allow the offender to be relieved of serving a day for less than full day default rate. Under the existing calculations, the default rate is one day per every \$150.00 *or part thereof* unpaid [emphasis added]. The proposal is that the “part thereof” be excluded. This is a fairer approach as some offenders may owe \$1.00 on the part unpaid and others may owe as much as \$149.00 and yet for either amount there is an extra day default. This clause also provides that the default period be ‘prescribed’, and the daily default rate amount is therefore removed from the FPINE Act to the FPINE Regulations and the Sentencing Regulations 1996.

Proposed section 53(8) changes the current legislation which requires cumulative default on all offenders serving fine default imprisonment to providing for offenders who are a currently serving a term of imprisonment, for fine default imprisonment be served concurrently with that imprisonment.

Proposed section 53(8)(a) allows the Registrar to recall warrants of commitment for good reason. Warrants of commitment are issued as a result of an order that originated from a decision of the Court. The recall of warrants of commitment is undertaken as an administrative process. In order to ensure that recalling of warrants of commitments by the Registrar is a valid process it is proposed to legislate to clarify and specifically enable the act to be done.

Clause 12 Section 55A amended

Clause 12 amends section 55A(1) of the FPINE Act by expanding the ability of the Registrar to either not impose a license suspension or cancel a license suspension order upon the offender entering into a time to pay arrangement, specifically on the grounds of medical necessity or employment reasons as provided in section 55A(1)(c) and (d), to include circumstances that would seriously hinder the alleged offender in performing family or personal responsibilities.

Clause 13 Section 101B amended

Clause 13 amends section 101B of the FPINE Act by providing that enforcement for a work and development order as provided for by sections 47A and 55D ceases to have effect when an appeal under section 101B is lodged, until such time that the appeal is disposed of.

Clause 14 Section 109 and Schedule 1 repealed

Section 109 and schedule 1 are no longer required as all matters the subject of the provisions have been dealt with and/or are no longer relevant.

PART 3 SENTENCING ACT 1995 amended

Clause 15 The Act amended in this part

Clause 15 provides that the amendments in this part are to the *Sentencing Act 1995*.

Clause 16 Section 59 amended

Clause 16 repeals sections 59(3) and 59(4) of the *Sentencing Act 1995* and inserts in their place proposed section 59(3).

Proposed section 59(3) changes the method of calculation upon which imprisonment fine default is made as per clause 11.

Clause 17 Section 67 amended

Clause 17 amends section 67(3) of *Sentencing Act 1995* by reducing the number of community service hours set by the court from 40 hours to at least 10 hours.

PART 4 SENTENCE ADMINISTRATION ACT 2003 amended

Clause 18 The Act amended in this part

Clause 18 provides that the amendments in this part are to the *Sentence Administration Act 2003*.

Clause 19 Section 7 amended

Clause 19 amends section 7(1) of the *Sentence Administration Act 2003* by deleting the definition of “fixed term” by inserting a new definition.

Proposed definition of fixed term includes imprisonment for fine default. This will clarify the order in which multiple terms of imprisonment that include fine default are to be served. A consequential amendment to section 7(2) is required as imprisonment for fine default is not a sentence of the court.