FINES FURTHER AMENDMENT BILL 2008

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. John Hatzistergos.

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [5.22 p.m.]: I move:

That this bill be now read a second time.

The primary purpose of the Fines Further Amendment Bill 2008 is to improve the system for the administration and enforcement of court fines and penalty notices. Specifically, the amendments are intended to increase the recovery of court fines and penalty notices from low-income earners; divert vulnerable groups out of the fine and penalty notice system and provide them with meaningful and effective non-monetary sanctions; reduce enforcement costs by providing better-targeted fine payment and mitigation options; and reduce the incidence of secondary offending brought about by fine default. The bill makes amendments to the Fines Act 1996 and other related legislation to achieve these objectives.

Penalty notices are usually on-the-spot tickets for offences such as breaching water restrictions, riding a bicycle on a footpath and parking offences. Penalty notices can be issued for approximately 17,000 different offences under 97 separate laws in New South Wales. The main issuing agencies are police, local councils, RailCorp and the Roads and Traffic Authority. If a penalty notice is issued there is no court hearing unless the person elects to have the matter dealt with by the Local Court. Court fines may be imposed by a court if a person is found guilty of an offence following a hearing. While New South Wales does not have a strict sentencing hierarchy, fines fall towards the bottom end of the sentencing regime.

In general, a person has 28 days to pay a court fine or arrange an extension of time to pay, and about 60 days to pay a penalty notice or arrange an extension. If they do nothing their debt is referred to the State Debt Recovery Office for enforcement action under the Fines Act 1996. In 2005, the State Debt Recovery Office was processing 78,000 court fines and 2.6 million new penalty notices. The State Debt Recovery Office imposes a strict hierarchy of sanctions on people to encourage payment or to recover the money owing. These include suspending drivers licences, cancelling car registration, seizing property, garnisheeing bank accounts, issuing community service orders, or even imprisonment if a person breaches a community service order. Each of these sanctions incurs an additional enforcement fee, which is added to the fine debt.

Over the past few years several reports and inquiries have examined the fines and penalty notice system. These reports include the report of the Sentencing Council on the effectiveness of fines as a sentencing option, released in October 2006; the report by the Homeless Persons Legal Service and the Public Interest Advocacy Centre entitled "Not Such a Fine Thing", released in April 2006 and the report of the Standing Committee on Law and Justice entitled "Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations", released in March 2006. These reports indicate that for the most part court fines and penalty notices are a cost-effective, prompt and appropriate means of punishing offenders. However, they also highlighted the disproportionately heavy impact that the fine and penalty notice system is having on the most vulnerable people in our community.

It is the lack of flexibility in the system that is particularly problematic for vulnerable people—the homeless, people with a mental illness and people with intellectual disabilities. People in these groups often find it harder than the rest of us to understand or access the procedures for challenging the fine or asking for an extension of time to pay. When people do not address their

fine debt they automatically progress through the strict hierarchy of sanctions, and their debt increases. For people who lack income and assets, and other vulnerable groups, the enforcement system can cause additional and unintended hardship. For example, a 35-year-old woman with longstanding mental health issues accumulated nearly $1,800 in parking fines over a three-year period, not because she was recklessly disobeying the law but because she was homeless and living in her car. When the New South Wales Sentencing Council reviewed the operation of the system in October 2006 it reported that:

> It is clear beyond question that current enforcement procedures applicable to fines and penalties contribute to the difficulties of vulnerable people, particularly the unemployed, the young, prisoners, the Aboriginal community and those with intellectual or mental disability.

Real improvements need to be made to assist such people. By far the most disturbing problem exposed by the Sentencing Council's report into fine and penalty notices was secondary offending. This happens when people who have had their licence or vehicle registration suspended or cancelled because of fine default continue to drive. Driving without a valid licence or a properly registered vehicle is a serious offence that can ultimately lead to imprisonment. Secondary offending is a particular problem for disadvantaged people. If a person lacks the means or the organisational skills to pay a fine or penalty notice, that person will inevitably fall into default and attract licence sanctions. This compounds their difficulties as without a licence it is often more difficult to find employment or attend to day-to-day necessities, like going to the doctor or doing grocery shopping.

Driver sanctions also have a disproportionate impact on people in remote and rural areas. Rural areas are among the most financially disadvantaged areas of the State, and they also lack the public transport facilities of large cities. The problems around secondary offending in rural and remote areas were highlighted in the report of the Standing Committee on Law and Justice. In evidence for this report, Magistrate Roger Prowse explained the problem as follows:

> When you are at Mungindi and it is 120 kilometres to Moree and there is no other form of transport, apart from walking or horseback, what do you do? You drive. When you are in Boggabilla and you need to get to Goondiwindi, which is in Queensland, because that is where the only shops are, are you going to walk the 10 to 15 kilometres when it is 38 or 43 degrees, or 4 degrees in winter? No. The people drive. They drive because it is a necessity and unfortunately they make the choice to drive whether they have a licence or not …

As the Sentencing Council noted, the imposition of a fine or penalty notice on an already disadvantaged person simply opens the door to an excessive interaction with the criminal justice system. This is obviously highly undesirable, given that fines and penalty notices are intended to be penalties for minor infractions or for offences that do not warrant imprisonment. More generally, reports by the Sentencing Council and others have highlighted areas where improvements are needed to enhance transparency, accountability, efficiency and fairness for all people who may be issued with a fine or penalty notice.

In the State Plan the Government identified a range of policy priorities, including supporting the most vulnerable people in our community, reducing re-offending, and cutting red tape. Accordingly, the Government took the concerns in those reports very seriously and accepted these challenges. The Local Court and the State Debt Recovery Office have made significant administrative improvements to their systems in response to the issues raised in these reports. They have developed clearer and more accessible information about procedures. They have simplified methods for applying for time to pay, and they have introduced better and more flexible payment options. However, the reports made clear that broader statutory and systemic changes were required. In 2007 the Government asked an interagency working group to develop strategies to improve the Fines Act 1996, and the fine and penalty notice enforcement system. The working group consulted widely across government and the community, and proposed a range of reforms that had broad-based support.

The amendments in this bill represent the Government's response to improve the legislative framework for the enforcement of court fines and penalty notices. They seek to ensure that the fine and penalty notice system works in a way that is fair, efficient, and effective for everyone. I

note that the changes proposed in this bill are the most urgent changes in response to the problems highlighted in the reports. The Government will also ask the New South Wales Law Reform Commission to undertake a general review of the laws relating to the use of penalty notices, including an examination of the consistency of penalty amounts for similar offences, whether penalty amounts are appropriate to the seriousness of the offences, the principles for determining which offences are suitable for enforcement by penalty notices, the method of fixing penalty amounts, and whether penalty notices should be issued to children, young people, and people with an intellectual disability or cognitive impairment, having regard to their limited earning capacity.

I will now discuss the provisions of the bill. The bill builds on the improved payment methods for fines and penalty notices that are now in place, by extending the availability of Centrepay. Centrepay is a means of allowing periodic deductions to be made from Centrelink payments. It has the potential to significantly improve the recovery rate for fines and penalties incurred by welfare recipients, with a consequent reduction in the amount of enforcement action taken. For operational reasons, Centrepay cannot be used to pay individual court fines or penalty notices, but is only available when a fine has progressed to enforcement. The bill therefore amends the Fines Act to allow the early referral of a court fine or penalty notice to the State Debt Recovery Office for the purpose of entering a time-to-pay arrangement using Centrepay. The usual enforcement costs will not apply for the making of the enforcement order in these cases. Initially this option will only be available to Centrelink benefit recipients, but could be extended in future to permit access to similar arrangement by people receiving other benefits, such as veterans pensions.

The bill makes amendments to the Fines Act to make clear that officers who issue penalty notices may instead issue cautions, in appropriate circumstances. Several major issuing agencies have already introduced cautions and warnings as a matter of policy and practice. The amendments in this bill endorse and formalise this practice. The new provisions will provide that in making a decision whether or not to issue a caution, the relevant officer must have regard to guidelines. The Attorney General will make guidelines on the use of cautions. However, the legislation also permits agencies to make or adopt their own guidelines, provided they are consistent with those made by the Attorney General. An officer will be empowered to issue a formal caution to a person where the officer reasonably believes that a penalty notice offence has been committed and considers it appropriate that the person receive a formal caution rather than a penalty notice in light of all the circumstances of the case and relevant guidelines. The guidelines will require officers to consider matters such as the seriousness or triviality of the offending conduct; whether the person has voluntarily complied with a request to stop the offending conduct; whether the commission of the offence was knowing and deliberate; the age of the person; and other specified circumstances, for example, intellectual disability and homelessness. I note that the guidelines relating to cautions will not apply to police officers, given that police discretion in this regard is already dealt with in legislation, and in police training and operating procedures. The bill also makes clear that a caution will not affect the powers of the issuing agency to take other action they would otherwise be permitted to take in respect of the offence. For instance, if it later transpires that a person's conduct was more serious than was originally thought, an appropriate officer could issue a penalty notice, or commence court proceedings in respect of the offence. Normal statutory time limits for this action would apply.

The bill also introduces a scheme for the internal review of penalty notices. In its report, the Sentencing Council was concerned about the absence of a clear legislative power or procedure for internal review of penalty notices. The Sentencing Council recommended that all issuing agencies be empowered to conduct internal reviews of penalty notices, and that the grounds for review be clearly identified. Again, some agencies already have internal review processes in place. However, there is no clear legislative basis for these practices. While the Fines Act provides for the withdrawal of a penalty reminder notice, it is silent on the ability of agencies to review and withdraw penalty notices themselves. This bill responds to this issue by introducing a standard, statutory process for the review of penalty notices.

The bill allows regulations to be made to exempt certain penalty notices from this process. This

is because some agencies that already have effective internal review processes in place may prefer not to modify their current practices. Accordingly, before the internal review provisions come into force, the Government will make regulations that make clear which penalty notices will be subject to the internal review process under the Fines Act. The internal review process as set out in the bill is, by and large, a formalised version of the existing processes that the State Debt Recovery Office undertakes when a person writes to challenge a penalty notice. However, there are some modifications and improvements in the new standard process.

The amendments provide that a person may apply for a penalty notice to be withdrawn on the following grounds. First, the penalty notice was issued contrary to law. Secondly, the issue of the penalty notice involved a mistake of identity. For example, a person might seek review on the ground that his or her vehicle was stolen while the offence was committed. Thirdly, the conduct for which the penalty notice was issued should be excused having regard to exceptional circumstances relating to the offence. For example, a person might seek review of a parking offence on the grounds of a medical emergency. Fourthly, the recipient of the penalty notice has a mental illness, intellectual disability or cognitive impairment, or is homeless, and that condition results in the person being unable either to understand that the conduct constitutes an offence, or to control the conduct. Last, an official caution should have been given in place of the penalty notice.

On review, the agency may confirm the decision to issue a penalty notice, withdraw the penalty notice, or issue an official caution in place of the penalty notice. If the application for review raises concerns about someone's ability to drive, the State Debt Recovery Office will refer the matter to the Roads and Traffic Authority for consideration, in line with current procedure. In the interests of safety, the road transport legislation already provides authority for such information to be referred to the Roads and Traffic Authority. The bill will add a new provision regarding the review of penalty notices after enforcement action has commenced. By the time enforcement has commenced, a person no longer has the right to elect to have the matter dealt with by a court. However, the Fines Act provides an exception in cases where the person was unable to exercise the right to court-elect before the enforcement order was made.

In those cases, the enforcement order is annulled and the State Debt Recovery Office must refer the matter to court, which can be a time-consuming, expensive and distressing process. In many cases the grounds for withdrawal of the enforcement order would also have constituted grounds for withdrawal of the penalty notice itself if the information had been available to the issuing agency or the State Debt Recovery Office at an earlier time. In those cases, referral to court is an inefficient use of resources. Accordingly, the bill amends section 49A of the Fines Act to provide that in any case where an enforcement order seems eligible for annulment, the State Debt Recovery Office or the issuing agency must review the original penalty notice to determine whether it should be withdrawn instead of referring the matter to court.

This bill makes amendments to enable a trial Work and Development Order scheme. This scheme will allow eligible people who are experiencing hardship to apply to address their fine and penalty notice debts by doing unpaid work for charitable and other organisations, or by participating in certain courses or treatment. The Fines Act currently provides two options to address outstanding fines and penalty notices in cases of hardship. A fine/penalty notice defaulter may apply to the State Debt Recovery Office for either a time to pay arrangement or to have his or her entire debt written off. Those two options are not well adapted to the needs of people who are experiencing acute economic hardship, who are homeless, or who have an intellectual disability, cognitive impairment or mental illness. In many cases, people in those vulnerable groups have little or no capacity to pay their fine debts, so time to pay alone will not assist them. Enforcement action is also unlikely to be ineffective, given many do not hold driver licences and many have no assets. And simply writing off the fine or penalty notice is both inappropriate and unlikely to cause, or to maintain, behavioural change.

As a consequence, the deterrent effect of fines and penalty notices on offending behaviour is greatly reduced, while the likelihood of re-offending and secondary offending is increased. The Sentencing Council’s report strongly supported the need for alternatives to monetary penalties

for impecunious or other suitable offenders. The council's report noted that in a judicial survey 80 per cent of magistrates wanted the ability to impose a community service type penalty or fine option order as a first instance alternative to a fine. The council also suggested that consideration be given to the establishment of a mechanism whereby:

> Recipients of penalty notices could engage in voluntary community service, utilising reputable welfare and community organisations, or for diversion into an appropriate rehabilitation program to encourage behavioural change, where they are unable to meet the penalties imposed.

Accordingly, in order to provide a more meaningful response than a monetary penalty for offending by vulnerable groups, this bill makes amendments to support a trial work and development order scheme.

The trial scheme will operate for two years and will be open to up to 2,000 people who have fine and penalty notice debts. Strict eligibility criteria will apply. Work and development orders will be available only to people who are homeless, have a mental illness, an intellectual disability or cognitive impairment, or who are otherwise experiencing acute economic hardship. A work and development order will require the person to undertake unpaid work with an approved organisation; mental health or other medical treatment; an educational, vocational or life skills course; financial or other counselling; drug and alcohol treatment; or a mentoring program if the person is under 25 years of age. In his or her application the applicant will propose the work or development to be undertaken according to guidelines that will govern the scheme. The application will have to be made with the support of an approved organisation or, in the case of mental health or medical treatment, a medical professional or registered psychologist.

Similar to community service orders, there will be an hourly rate at which voluntary work can diminish a fine or penalty notice debt. Fine and penalty notice debts will also be reduced according to the duration of a person's participation in courses or treatment. This will be set out in the scheme guidelines. An example of how the scheme will work is as follows: An eligible person would approach a non-government organisation that is participating in the scheme. The St Vincent de Paul Society and Father Chris Riley's Youth off the Streets have confirmed that they will seek to participate in the scheme, and a number of other organisations have also expressed an interest in participating.

Together with the participating organisation, the person would identify what unpaid work is available and suitable for the person's circumstances and skills. The organisation and the person would then make a joint application to the State Debt Recovery Office for a work and development order outlining the proposed work, the number of hours of unpaid work, supervision arrangements and proof of eligibility for the scheme. If the application were accepted, the State Debt Recovery Office would make a work and development order and suspend enforcement action while the order is in force. The organisation would report to the State Debt Recovery Office once the order is fulfilled and the person will be taken to have paid his or her fine and penalty notice debt. Reporting requirements will apply to the scheme. If a person fails to complete his or her work and development order, the State Debt Recovery Office will be able to recommence enforcement action against the person. Penalties will also apply for providing false or misleading information to the State Debt Recovery Office in relation to applications for a work and development order, or in reports about the progress of such orders.

Schedule 2.3 to the bill inserts a new offence of driving while licence suspended or cancelled due to fine default. The Fines Act provides that if a court fine or penalty notice is not paid after the due date and reminder letter, the person is considered to be in default and their matter is referred to the State Debt Recovery Office where an enforcement order is made. If the amount is still not paid the person's drivers licence can be suspended. It is a criminal offence in New South Wales to drive with a suspended or cancelled licence.

The threat of licence sanctions is a highly effective way of encouraging prompt payment of outstanding fines and penalty notices. However, the current offence of driving while licence suspended or cancelled does not distinguish between licence suspension for unsafe driving and

licence suspension for fine default. This is problematic for two reasons. First, the lack of a specific offence prevents an accurate assessment of the extent to which fine default is leading to secondary offending. Secondly, it prevents courts from imposing appropriate sanctions for this offence to reflect the lower threat to the community posed by those who have lost their licence through fine default as compared to those who have lost their licence because of unsafe driving.

Accordingly, the bill will amend the Road Transport (Driver Licensing) Act 1998 to create a specific offence of driving whilst suspended due to fine default. This will enable the Government to collect better data on the extent of secondary offending due to fine default. Importantly, it will also enable the monitoring of the reforms contained in the bill. The penalties for the new offence would still include minimum disqualification periods; however, these would be lower than those that currently apply under section 25 A (2) of the Road Transport (Driver Licensing) Act 1998 to reflect the fact that licence suspension for fine default is less serious than, for example, suspension due to driving offences.

The intention is for the lower minimum disqualification period to encourage people with licence suspensions to pay their fines and penalty notices sooner. Currently, a driver disqualified for 12 months for fine default has no incentive to repay his or her fine quickly. This is because even if the fine is fully repaid the licence is not reinstated until 12 months have expired. By contrast the new offence would give people who receive the proposed three-month minimum suspension a stronger incentive to pay their outstanding fines within that time so that their licence can be reinstated as soon as the three months have expired.

The new offence will also include requirements that courts consider certain factors when determining the precise period of disqualification that should apply to the new offence. Those factors could include the impact that a lengthy disqualification would have on employment and the offender's ability to pay the outstanding debt. This will ensure that where, for example, a person has ample means to pay the fine the courts take this fact into account in determining whether the person should be disqualified for more than the statutory minimum period.

The new offence would not be a relevant offence for the purposes of the Habitual Traffic Offender Scheme. This scheme is aimed at preventing unsafe drivers from driving and is not directed to, or appropriate for, fine and penalty notice defaulters. The habitual traffic offender scheme five-year disqualification period is disproportionate and too severe in the context of fine default, particularly considering that the mandatory disqualification periods under the offence will still apply.

The bill also makes a number of technical amendments to streamline the enforcement process and to make it more flexible and responsive to people's circumstances. These include amendments to ensure that the State Debt Recovery Office can, in appropriate circumstances, waive certain fees and costs; allow the State Debt Recovery Office to include the cost of some application fees into a person's fine debt rather than requiring payment of the fee before the application is processed; allow the State Debt Recovery Office and the Hardship Review Board to partially write-off a person's fine debt—at the moment the Fines Act only permits write-off of the full amount owing; and allow the State Debt Recovery Office and the Department of Corrective Services to share information. This will mean that unnecessary enforcement action can be stayed while people are imprisoned. It will also enable the Department of Corrective Services to assist people under their supervision to address their fine and penalty notice debts via available means.

In conclusion, the proposals in this bill are based on several detailed reports into the fine and penalty notice system, research and broad-based consultation. We anticipate the reforms will increase the recovery of court fines and penalty notices from low-income earners by improving access to payment arrangements, including Centrepay; divert vulnerable groups out of the fine and penalty notice system and provide them with meaningful and effective non-monetary sanctions; reduce enforcement costs by providing better targeted fine payment and mitigation options; and reduce the incidence of secondary offending brought about by fine default.

The Government intends to review the reforms in the bill two years after they have come into operation to evaluate their effectiveness and to consider whether any further reforms are necessary. A cross-agency working group has developed the reforms in the bill over two years, and I thank the working group for its work and its persistence in developing and consulting on these new reforms. They will bring about significant improvements to the fine and penalty notice system. I commend the bill to the house.