

Legislative Council Hansard – 08 March 2017 – Proof

FINES AMENDMENT BILL 2017*Second Reading***The Hon. SCOTT FARLOW (15:44):** On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

The main purpose of this bill is to amend the Fines Act 1996 and the Victims Rights and Support Act 2013 to transfer responsibility for enforcing victims restitution debts to the Commissioner of Fines Administration. This follows a successful trial by the Office of State Revenue of enforcing restitution orders as court fines. A restitution order made under the Victims Rights and Support Act 2013 enables all or some of the compensation paid to a victim of violent crime to be recovered from the offender. Each year between 1,500 and 2,000 restitution orders are made, requiring payment of around \$20 million, but only \$4 million is recovered. Currently Victims Services can enforce these orders only as a judgement debt requiring application to a court. Such action is generally uneconomic because most offenders have limited capacity to pay. During a 12-month trial the Office of State Revenue enforced 1,000 restitution orders worth \$10.55 million by applying the same enforcement measures available for fines. By the end of the trial period 70 per cent of the debt either was paid or was under active management through an instalment payment arrangement or work and development order.

The Government therefore has decided to permanently transfer the recovery of restitution debts to the Office of State Revenue. This will provide an improved debt recovery performance as part of the Government's strategy of utilising the advantages of the Office of State Revenue as the State's specialist debt recovery agency. Those advantages include: access to better data, including more comprehensive access to current addresses; more timely enforcement, which results in earlier engagement with customers and higher recovery rates; the ability to consolidate multiple fines debts to individual debtors, including matching of restitution order debtors with existing customers of the Office of State Revenue; wider enforcement powers, including licence and vehicle sanctions imposed by Roads and Maritime Services, and civil debt enforcement such as garnishee orders, property seizure orders and charges on land; and alternative debt resolution options, including instalment arrangements and work and development orders.

Administration of restitution orders will remain the responsibility of Victims Services within the Department of Justice. The bill amends the Victims Rights and Support Act 2013 to separate those functions from the functions relating to enforcement and debt recovery. I should add that the amendments in no way affect the functions of Victims Services in providing support to victims of crime and that victims personal information cannot be disclosed as a result of the transfer of enforcement functions to the Office of State Revenue. Victims Services and the Commissioner of Victims Rights will continue to make and confirm restitution orders and will manage the objection and review process under which defendants can dispute their liability to pay the restitution amount.

The bill streamlines the process by which a restitution order is confirmed, including a requirement for the Commissioner of Victims Rights to serve a debt notice on the person advising of the consequences of failing to pay. The current provision, which allows a liability to make a restitution payment to be offset against the same person's entitlement to receive financial support or a recognition payment, is updated to allow that entitlement to be paid to the Office of State Revenue in satisfaction of the person's debt. The bill also authorises the expenses incurred by the Commissioner of Fines Administration in recovering restitution debts to be paid from The Victims Support Fund and requires all restitution debts recovered by the commissioner to be paid into that fund. This maintains the current position whereby expenses incurred by the Commissioner of Victims Rights in administering restitution orders are paid from the Victims Support Fund, but also will ensure that the fund benefits from all the additional debt collected.

The amendments to the Fines Act 1996 allow restitution orders to be enforced under the Fines Act in the same manner as court fines. This includes an improved process for the defendant to enter into a payment arrangement by allowing early voluntary enforcement of the order for the purpose of entering into a time to pay arrangement under the Fines Act. In cases of voluntary enforcement, the Fines Regulation already provides that enforcement costs otherwise payable to the Office of State Revenue on the making of the fine enforcement order are postponed and must be waived if the person complies with the terms of the arrangement.

Apart from permitting restitution orders to be enforced as court fines, the amendments to the Fines Act include a number of special provisions applying to restitution orders. Firstly, a provision currently in the Victims Rights and Support Act which authorised attachment of prison earnings by Victims Services is transferred to the Fines Act to allow that enforcement action to be taken by the Office of State Revenue. Secondly, a new provision will allow separate fines enforcement action to be taken against two or more persons who are jointly and severally liable under a restitution order. Thirdly, imprisonment for breach of a community service order will not be available under enforcement orders for restitution debts. Finally, the Commissioner of Fines Administration will be required to suspend enforcement action, and vary or withdraw the enforcement order as required if a review or appeal is commenced which could affect the defendant's liability to pay restitution.

The additional revenue recovered by this initiative will reduce the cost to government of compensating victims of crime by ensuring that additional debt is recovered and paid into the Victims Support Fund. The bill contains further amendments to the Fines Act 1996 unrelated to restitution orders. These amendments will allow the Office of State Revenue to better target different fines enforcement actions in individual cases. At present, the first fines enforcement action taken by the Office of State Revenue is to direct Roads and Maritime Services [RMS] to impose licence, vehicle registration and business restrictions on the fine defaulter. The fine defaulter is charged an additional enforcement fee of \$40 for each enforcement action taken by RMS.

If available, these RMS sanctions must be attempted before the Office of State Revenue can attempt any other enforcement action, such as a garnishee order. This requirement limits the flexibility to take the most appropriate action, having regard to the particular circumstances of the offender. In some cases the imposition of RMS sanctions, such as driver licence suspension, is unlikely to result in the recovery of fines and may, in fact, be counterproductive in terms of an individual's employment and access to services. This is particularly applicable to vulnerable members of the community or people living in rural or remote locations. The Office of State Revenue's processes and systems have been designed to allow identification of the most effective enforcement action for particular clients or categories of clients.

The bill therefore amends the Fines Act to provide the Office of State Revenue with the discretion not to direct RMS to impose licence, vehicle registration and business restrictions before civil sanctions are imposed where the Office of State Revenue is satisfied that, having regard to the individual's circumstances, a better fine enforcement outcome would be achieved. This will allow the Office of State Revenue to recover fines earlier than is currently permitted with less negative impact on vulnerable members of the community. The amendments contained in the Fines Amendment Bill 2017 will provide greater convenience to the public in dealing with a single government agency to pay off multiple fines-related debts. More offenders will be held to account for the harm caused to victims and to the public purse and better targeted fines enforcement action will reduce the negative impact of that action on some members of the community. I commend the bill to the House.