



## SRWA Review of the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019

Following our Briefing and conversations with Members of Parliament on Tuesday 17<sup>th</sup> September on the pressing need for reform to WA's fine default legislation, and the high profile imprisonment of another woman after reporting a burglary on the 21<sup>st</sup> September, Social Reinvestment WA was pleased to see the Attorney General announce and bring before parliament Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 on Tuesday 24<sup>th</sup> September.

We appreciate your involvement and participation with the issue and briefing last month, and have summarised for you key parts of the new legislation that align with the asks in our [policy papers on fine default law reform](#)<sup>1</sup>.

### EXPANDING OPTIONS AND CREATING PROTECTIONS FOR PEOPLE IN HARDSHIP, WHO DO NOT HAVE THE ABILITY TO PAY FINES

Current Fines Enforcement legislation does not allow sufficient alternatives for people in hardship, with no capacity to pay off fines, to resolve their fines through other means. This contributes to a staggering number of people incarcerated in WA for unpaid fines alone, 820 people in 2018, many who are in circumstances of poverty. Even the limited existing options for working off fines through alternative means, are unavailable to fine defaulters until too late, when enforcement processes have had to be put in place either through Fines Enforcement Registry (FER) or the Courts.

SRWA is satisfied that the proposed legislative amendments to the FPINE Act will expand the options for persons in hardship to resolve unpaid fines, and create protections to ensure they are not unduly or disproportionately punished. Relevant inclusions are:

#### Introduction of a Statutory Principle of Hardship

- The first new statutory principle introduced is that “imprisonment for failure to pay a fine is an enforcement measure of last resort”; The second is *“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.”*
- Hardship is defined as someone experiencing financial hardship, family violence, mental illness, disability, homelessness, or alcohol and drug use problems.
- This definition will be used as relevant to assessing eligibility for WDP's and WDO's, and critically key in the context of whether imprisonment is used as an enforcement measure.

#### A Work and Development Permit Scheme Introduced

- Any offender who is categorised as in hardship can apply at any time to enter into the WDP Scheme, in lieu of paying off a fine. It differs from WDO's as it is not a Court Order, but elected by the offender, and is undertaken by community sector sponsors, rather than a Department of Justice jurisdiction.
- Eligibility is as follows “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.”
- 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; medical or mental health treatment provided under a treatment plan; an education, vocational or personal development course ; treatment for alcohol or drug use problems under a treatment plan; a mentoring program if under 25 years of age; other activities prescribed in regulations.

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<sup>1</sup> <https://www.socialreinvestmentwa.org.au/finedefaultreform>



- Approval for Sponsor organisations is granted in writing by the CEO (fines enforcement), who must establish and maintain a register of approved sponsors, published on website.
- People undertaking WDP's can elect to pay off fines in combination with partial payments.

#### Flexibility Enabled for Work and Development Orders to increase Accessibility

- WDO's can only be served if Registrar is satisfied person cannot pay or have property seized (so for those who classify as in hardship)
- Crucially the prescribed number of hours has been removed (12 hours a week mandatory minimum), which makes this option flexible and able to be tailored to offender's circumstances, or taken up by people who previously could not. Eg A single mum.

Increasing Access to Time to Pay Arrangements, prior to 'Enforcement Instruments' so people are enabled to pay off their fines in instalments in the first instance.

- Time to Pay can be accessed at any point for fines, you don't have to wait till you've failed to pay your fine and it's been passed on to FER or the Court.
- For infringements you can also access immediately, however to do so you must prove that you do not have the capacity to pay the amount within the 28 day period. FER can request a means test to prove hardship if they choose, once every 12 months.
- All other enforcement actions for infringements are suspended while TPP in force, including license violations.

Income Garnishing introduced as an enforcement option for incomes, but excluding Centrelink payments (people very likely to be in hardship). A 'protected amount' will be in regulations to ensure individuals have enough money to survive.

- Garnishing Income will occur, but the following payments *CANNOT* be garnished:  
"Money payable to the person under:  
- A child maintenance order made under the Family Court Act 1997; or Family Law Act 1975 of the Commonwealth; The Child Support (Registration and Collection) Act 1988 or Child Support Assessment Act 1988 of the Commonwealth;  
A pension, benefit or allowance payable to the person under:  
the Social Security Act 1991 of the Commonwealth; or the Veterans' Entitlements Act 1986"
- There will be 'protected income' amounts, but the method for calculating these will be determined under regulations, rather than in the legislation.

## ENSURING FINES ENFORCEMENT OPTIONS ARE SENSIBLE, FAIR AND PROPORTIONATE

Whilst it is important that there are meaningful consequences for actions, the current Fines Enforcement options in WA are not common sense, or proportionately fair in outcome. Imprisonment as an enforcement option for unpaid fines is a severe consequence for a mild offense or infringement. Even more so when an enforcement warrants for unpaid fines leads to poor social outcomes, such as suspending driving license of people living in remote areas who have no alternative transport options, and even deaths in custody. It is also economically costly for the state, at \$770 per person, per day with their fines only being cut out at a rate of \$250 a day. Furthermore, granting the ability to public servants at FER to serve Warrants of Commitment is alarming, considering their lack of judicial authority. SRWA is satisfied that the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 returns ultimate authority rightfully to the judiciary, and will ensure those experiencing hardship or disadvantage due to geographical location will not be incarcerated for unpaid fines due to these factors. Relevant inclusions are:

**Making Imprisonment a true last resort; And removing Power to Imprison from a public servant not part of the judicial system, the Fines Enforcement Registrar.**



- Warrants of Commitment (WOC) can no longer be issued by the FER, except for individuals in custody for concurrent sentences. The FER can only issue a Warrant of Commitment Inquiry to summons fine defaulters in the community to appear before a Magistrate.
- Magistrates can only jail a person if the defendant has means to pay, and is unsuitable for WDO. Hardship protections remain in place, meaning only those with the means to pay who shirk responsibility could potentially be imprisoned once all other options are exhausted.
- The Fines Enforcement Registrar can't enforce MULTIPLE instruments of enforcement at once.
- Sheriff can stay execution of Enforcement Warrant if debtor agrees to enter arrangement to pay.

#### Removing License Suspensions as an Enforcement Option for People Living in Remote Areas.

- People living in remote areas can no longer have their license suspended as an enforcement option for unpaid fines.
- Others can apply to have license or vehicle suspension lifted with reasonable cause.

#### Safeties for people brought into custody for Unpaid Fines

- If it does get to the point where a Warrant of Commitment Inquiry is in place by the FER, police can only hold persons in custody for a maximum of 24 hours before release or appearance before a Magistrate.
- Upon introduction of this legislation, any existing warrants of commitment for unpaid fines will be cancelled, and any persons incarcerated for unpaid fines alone will be released.

## FUTURE ISSUES OF CONCERN IN THE AREA OF FINE DEFAULT REFORM

Whilst Social Reinvestment WA recognises this Bill addresses the majority of our [policy requests for fine default law reform](#)<sup>2</sup>, the legislation before Parliament does not resolve a few key issues.

We highlight the following two areas for note by MP's as future areas of interest.

- **Resourcing for the sector to implement Work and Development Permits is not laid out in this Bill.** As we have previously recommended, upskilling NGO's and the community services sector to act proficiently as 'Sponsors' will take resources, expertise and time. If the new WDP scheme comes with no resources for upskilling and community awareness raising in the sector, it risks failing due to a lack of take up by potential 'Sponsors.' In review of the [NSW Work and Development Order Scheme](#)<sup>3</sup>, the resourcing to Legal Aid and ALS to train and upskill the sector to act as Sponsors and be able to move clients onto WDP's was key to the schemes success. While resourcing does not need to be legislated, SRWA ascertain it will be crucial in ensuring the effectiveness of the FPINE legislative reforms.
- **This legislation applies to those with Fines, and not people with Infringements, even if they are facing hardship.** Persons with an Infringements (such as parking tickets or Transperth or council infringements) rather than Court issued Fines, who are also experiencing hardship, cannot currently access the Work and Development Permit Scheme. Enabling access to both people with infringements and fines is key to ensuring vulnerable people are not disproportionately punished for being in hardship. In statements, the Attorney General has indicated that legislative reform in the area for Infringements is underway, however there is currently no public timetable for these important changes.

**For further information from SRWA, please don't hesitate to contact our coalition's Coordinator:**

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<sup>2</sup> <https://www.socialreinvestmentwa.org.au/finedefaultreform>

<sup>3</sup> <https://www.legalaid.nsw.gov.au/what-we-do/civil-law/work-and-development-order-service>