Enforcement of Orders Under the Justices Act 1902

Terms of Reference

In 1974 the Commission received a general reference to review the *Justices Act 1902* (WA), which regulates the procedure of the Courts of Petty Sessions.

Background of Reference

Part III of the reference dealt with the enforcement of orders of Courts of Petty Sessions. Generally, this involves the collection of fines and the consequences of default in their payment. At the time of the reference, fines were the most frequently used penalty by Courts of Petty Sessions.

This reference had been closely associated with the Commission's parallel reference to review the *Local Courts Act 1904* (WA) and the *Local Court Rules 1961* (WA).[1] The Commission had originally decided to combine the two parts of each of the parallel references, which dealt respectively with the enforcement of orders of Courts of Petty Sessions and the enforcement of judgments of Local Courts and to draft one discussion paper canvassing all the issues raised by each reference. Mr Archie Zariski, a Senior Lecturer in law at Murdoch University, was engaged to prepare this paper. In September 1993, however, the Attorney-General indicated that the Commission should give a high priority to the issue of enforcement of orders of Courts of Petty Sessions. This was because the Attorney-General wanted the Commission to comment on the Cullen Report,[2] a Ministry of Justice inquiry on fines enforcement, which was to be completed early in 1994. The Commission accordingly abandoned its plans to produce a joint discussion paper and instead, with the assistance of Mr Zariski, prepared a final report which dealt with improvements to the system of enforcing orders of Courts of Petty Sessions and commented on the proposals of the Cullen Report.

The inquiry that led to the Cullen Report was established in June 1993. The Cullen Report identified a number of problems with the fines enforcement system. In particular, the report found that the amount of people imprisoned for fine default was too high, that the value of fines as a sentencing option may fall into disrepute if offenders believe they can ignore or manipulate the system and that the system was cumbersome and costly to administer.

Nature and Extent of Consultation

In April and June of 1992 the Commission wrote to a number of organisations and individuals asking for preliminary submissions to assist in the identification of issues for consideration. The preparation of the final report was assisted by those responses. The Commission submitted its final report to the Attorney-General in April 1994.[3]

Recommendations

Essentially, the Commission agreed with the recommendations of the Cullen Report, but concluded that the recommendations did not give sufficient consideration to the position of indigent fine defaulters, both at the time that the fine is imposed and when payment arrangements were settled and enforced. The Commission's primary recommendations were designed to ensure that indigent defaulters were not inequitably affected by the proposals.

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1 See Law Reform Commission of Western Australia, *Local Courts: Jurisdiction, Procedure and Administration*, Project No 16 (I) (1988).
2 Ministry of Justice and Police Fines Policy Development, *Infringement Notice and Fines Management System Western Australia*, 1993.
3 Law Reform Commission of Western Australia, *Enforcement of Orders Under the Justices Act 1902*, Project No 55(III) (1994).

Legislative or Other Action Undertaken

In 1994 the Parliament enacted the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) ("the *Fines Act*") and the *Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994* (WA) to implement the proposals of the Cullen Report as well as a number of the Commission's recommendations.

The recommendations that were not adopted either did not meet the policy objectives of the government at the time or were subjected to further consideration because they related to local government authorities. The Commission had further recommended that the provisions relating to enforcement of orders of Courts of Petty Sessions should be retained in the *Justices Act 1902* (WA) rather than within a new enactment.

Many of the recommendations of the Commission that were not adopted related to the notion of flexibility within the fines enforcement system. A number of amendments were ultimately made to the *Fines Act* in 2000 to address issues of inflexibility, hardship and to generally improve the operation of the enforcement system.[4] These amendments allowed for fines to be converted to a work and development order where an offender has no capacity to pay and licence suspension is unlikely to be effective and provided the Fines Enforcement Registrar with the discretion to not impose a licence suspension where undue hardship may be caused to the offender. These amendments reflect the essence of the Commission's primary recommendations for a more equitable enforcement system and for ensuring that indigent fine defaulters are not disadvantaged.

4 These amendments were effected by the enactment of the *Acts Amendment (Fines Enforcement) Act 2000* (WA) and the *Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000* (WA).