



Full Day Hansard Transcript (Legislative Council, 23 October 2013, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 23 October 2013 (Proof).

FINES AMENDMENT BILL 2013

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [9.26 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The State Debt Recovery Office is responsible for enforcing fines and recovering outstanding fines debt on behalf of the State of New South Wales. The Fines Amendment bill 2013 contains provisions to abolish the State Debt Recovery Office and vest its functions and powers in a new position, the Commissioner of Fines Administration. The bill also contains provisions which will enable the Commissioner to more efficiently enforce fines and recover State debt.

The State Debt Recovery Office [SDRO] is a statutory body corporate with functions relating to the administration of penalty notices, enforcement of fines and recovery of debts due to the State. It is part of the Office of State Revenue [OSR] within the Department of Finance and Services.

The Office of State Revenue has merged its debt recovery functions in relation to fines, taxes and benefits into a single debt management business unit using the name State Debt Recovery. These functions are currently the statutory responsibility of State Debt Recovery Office for fines, and of the Chief Commissioner of State Revenue for taxes and benefits. The Executive Director of Office of State Revenue holds both statutory positions of Chief Commissioner of State Revenue and Director State Debt Recovery Office.

The bill abolishes the State Debt Recovery Office and vests its statutory functions in a new position, the Commissioner of Fines Administration.

Savings and transitional provisions ensure that any actions by or in respect of State Debt Recovery Office, including legal proceedings, are taken to have been done by or in respect of the Commissioner.

Although it is desirable to maintain a formal functional separation between collecting civil debts such as taxes, and the enforcement of fines payable for breaches of the law, greater integration of the management of all debt administered by OSR can also provide benefits, and enhance Office of State Revenue's capability to provide debt management services to other Government agencies.

For example, experienced tax investigators could provide valuable assistance in the examination of a fine defaulter to determine the person's financial circumstances and ability to satisfy the fine. The bill therefore provides for the appointment of authorised officers to exercise enforcement functions under the Fines Act, including examination of fine defaulters. This is similar to the existing provisions for authorised officers under the Taxation Administration Act.

The bill authorises the commissioner to engage contractors to assist in fines debt recovery. This is consistent with the powers available to the Chief Commissioner of State Revenue for the purposes of administering taxation laws, and will facilitate the use of private sector debt recovery agents to improve the rate of collection of debts. These contractors are currently used for non-statutory debt collection functions, and the amended provisions will allow Office of State Revenue to use these contractors to exercise specified statutory functions, such as serving notices and orders.

To the extent that this proposal would entail the provision of personal information about fine defaulters to contractors, privacy rights are already protected by confidentiality requirements in the Fines Act, and by existing contractual arrangements.

In recognition of the fact that the name State Debt Recovery is known in the community as the government agency responsible for fines administration and enforcement, the bill retains that name for use in the exercise of those statutory functions, and otherwise in acting for the State for the purpose of recovering debts due to the State.

The bill makes numerous consequential amendments to other Acts and regulations to replace references to State Debt Recovery Office with references to the commissioner.

The bill also contains important provisions to ensure that fines imposed for breaches of the law can be enforced against interstate residents.

If an offence under New South Wales law is committed by a person who resides outside the state, many of the enforcement actions that would otherwise be available to the commissioner cannot be used. As a result, of the more than 60,000 New South Wales fines payable by interstate residents each year, more than 40,000 remain unpaid after 12 months. The total of outstanding fines payable by interstate residents is currently approximately \$97 million.

The State Debt Recovery Office has improved the rate of recovery of interstate fines in recent years, but a comprehensive solution cannot be implemented without the cooperation of other States and Territories in providing for reciprocal enforcement of interstate fines.

In March 2008 the Standing Committee of Attorneys-General gave in-principle approval to a system of mutual recognition of fines to permit enforcement if those fines in accordance with the laws of the State or Territory where the fine defaulter resides.

In November 2010 the Commonwealth passed amendments to the Service and Execution of Process Act 1992 to facilitate interstate enforcement of court fines.

The bill amends the Fines Act to complement the Commonwealth provisions by providing for interstate enforcement of fines payable under penalty notices or similar administrative processes. The provisions would authorise the Commissioner to take recovery and enforcement action under the Fines Act in relation to fines imposed by or under the laws of other states and territories, request authorities in other states and territories with reciprocal legislation in place to take recovery and enforcement action in relation to New South Wales fines, and enter into operational and financial arrangements with authorities in other states and territories in relation to those matters.

In New South Wales, the enforcement process for both court imposed fines and fines under penalty notices currently commences with the making of an enforcement order by the State Debt Recovery Office. The bill applies the same process to the enforcement of interstate fines following a request by the fines enforcement agency of the other state or territory.

An enforcement order would only be made if the fine defaulter has a relevant connection with New South Wales, such as being resident in New South Wales, having a driver licence or registered motor vehicle in New South Wales, having debts due in New South Wales, or owning property in New South Wales.

The fines would then be enforced using the same enforcement actions that apply to New South Wales fines. These include suspension or cancellation of the offender's driver licence or vehicle registration, and civil enforcement such as property seizure, garnishment of wages, and community service.

An interstate fine could not be enforced by imprisonment of the fine defaulter, as this is prohibited in some states. However, this is effectively a last resort enforcement action, and to date has not been applied under the Fines Act.

Amounts paid to the commissioner in respect of interstate fines would be applied in the same manner as amounts paid under other enforcement orders, being first toward New South Wales enforcement costs, secondly toward any outstanding New South Wales fines, and, thirdly, the balance toward the interstate fine, payable to the referring agency.

Allowing the commissioner to retain enforcement costs will ensure that much if the additional cost to the Office of State Revenue in collecting interstate fines is recovered.

The scheme introduced by the bill also authorises the commissioner to request enforcement of New South Wales fines in another participating jurisdiction.

The commissioner would only request an interstate fine enforcement agency to enforce a New South Wales fine if enforcement action by the commissioner has not been or is unlikely to be successful in satisfying the fine, and the fine defaulter has a relevant connection with that other jurisdiction.

Enforcement could only occur in one jurisdiction at a time, so that the commissioner would not be permitted to take or continue any enforcement action under the Fines Act while the fine is subject to enforcement interstate.

Other operational and financial arrangements would be dealt with by agreement between the Commissioner and the relevant authority of the other state or territory.

In developing these provisions, the Office of State Revenue has consulted with the Department of Attorney General and Justice. In addition, a draft of the provisions has been considered by other states and territories through the forum of the Parliamentary Counsel's Committee.

The bill contains four other provisions to improve enforcement of fines.

The first measure is to facilitate a trial of enforcement of amounts payable under victims restitution orders.

The Government recently introduced legislation to establish a new Victims Support Scheme to address delays and costs blowouts in the current Victims Compensation Scheme. A secondary problem with the existing scheme was the inability to recover compensation amounts payable by offenders.

Last financial year \$4.08 million was recovered and paid into the Victims Compensation Fund, to be used to make payments of compensation. The shortfall in funding is appropriated from the Consolidated Fund.

Under the new scheme, the Commissioner of Victims Rights may make an order for recovery from an offender of amounts awarded to victims as statutory compensation. The amounts payable under these victims restitution orders will be recovered by the Commissioner of Victims Rights and paid into the Victims Support Fund. These amounts can only be recovered as judgement debts, with limited enforcement options available. The Auditor General has noted in his report to Parliament that of \$310 million in restitution debts owing by offenders at 30 June 2012, only \$19.7 million was likely to be recovered.

It is clear that some offenders are avoiding their obligations to pay restitution. It is therefore proposed to implement a trial under which the Commissioner of Fines Administration will recover restitution debts using the fine enforcement processes in the Fines Act.

The wide range of enforcement action available to the commissioner is anticipated to result in a significantly improved recovery rate. Amounts recoverable under the equivalent scheme in Queensland are enforced as if they were court fines. New South Wales victims compensation levies, which are separately payable as part of the funding for the compensation scheme, are already enforceable by the commissioner as fines.

The bill amends the Fines Act to provide that an amount payable under a restitution order can be recovered as a fine for the purposes of the trial, as an alternative to recovery under the Victims Rights and Support Act. Imprisonment for failure to pay the debt will not be an option.

The trial will commence almost immediately, and will be limited to 1,000 matters with a total outstanding debt value of approximately \$10 million. The commissioner will provide the Department of Attorney General and Justice with a report after six months on the progress of the trial, and an evaluation including a cost-benefit analysis will be conducted after 12 months to determine whether to implement the process on a permanent basis.

The trial can be extended by regulation, but any permanent transfer of responsibility to the commissioner would be subject to a further legislative amendment.

The bill extends the types of enforcement actions that may be taken in relation to fines imposed for driving offences.

One of the principles behind the introduction of the Fines Act was that a privilege granted by the State, being the right to drive on State roads, can be withdrawn if the person defaults in an undertaking to the Crown, being the payment of a fine. As a consequence, the first action required to be taken when a fine enforcement order is made is the suspension of the fine defaulter's driver licence.

Interstate and international visitors to New South Wales are exempt from the requirement to hold a New South Wales driver licence if they hold a current Australian driver licence issued in another jurisdiction or a current foreign driver licence. These visiting driver privileges can be withdrawn by Roads and Maritime Services [RMS] in some circumstances, but not as a result of failing to pay a fine.

It is anomalous that people who reside outside the State can retain the privilege of driving on New South Wales roads in circumstances where that privilege would be withdrawn from a New South Wales resident, especially when the fine default relates to traffic offences committed on New South Wales roads.

It is recognised that withdrawal of New South Wales driver privileges would have little effect on one-off interstate or international visitors who have defaulted on a fine. However, there are still many thousands of regular users of New South Wales roads with visiting driver privileges who incur multiple penalty notices but escape payment of the fines, including some with debts of many thousands of dollars.

The bill provides that the commissioner can direct Roads and Maritime Services to withdraw the person's visiting driver privileges if the fine defaulter is subject to two or more enforcement orders relating to traffic or parking offences. Roads and Maritime Services would be required to notify the person in writing, consistent with the existing procedures for withdrawal of visiting driver privileges. The standard enforcement costs payable for enforcement action taken by Roads and Maritime Services, currently \$40, would be payable.

The bill removes a procedural delay affecting the enforcement of some fines.

One of the options available for the commissioner to recover outstanding fines is to make payment instalment arrangements with the fine defaulter. It is common for people with multiple outstanding fines to agree to a payment instalment plan covering all of their fines.

If a fine defaulter who is subject to an existing enforcement order receives a court imposed fine or penalty notice in respect of a further offence, the amount of the new fine cannot be incorporated into the payment instalment plan until there has been a default in payment of the new fine.

These fine defaulters will often request inclusion of the new fine in the payment instalment plan, as they are unlikely to be able to pay the new fine on time in addition to their existing instalment payments. The requests are usually to increase the number of instalments payable rather than increasing the amount of the instalments.

Voluntary early enforcement is already available, but only for people who are in receipt of a Commonwealth benefit from Centrelink who can make direct debit payments under Centrepay. In other cases, arrangements cannot be made until the new fine is overdue.

The bill therefore amends the Fines Act to allow an enforcement order to be made prior to default in payment of a fine if the person in receipt of the fine is subject to a current fine enforcement order, and the early enforcement is for the

purpose of agreeing to a combined payment instalment plan.

As approximately 40 per cent of people on payment instalment plans default, the standard enforcement costs payable on the making of an enforcement order, currently \$65, would apply, subject to the existing discretion for the Commissioner to waive costs. As these costs would still apply if early enforcement is not available, they do not represent an additional cost to fine defaulters and will not raise any additional revenue.

People who apply for voluntary enforcement are advised that once an enforcement order is issued, they will not be able to elect to have the liability for the fine reviewed or to have the fine referred to a court.

Finally, the bill introduces a provision to allow the commissioner to reallocate overpayments towards amounts payable under other fine enforcement orders in force in relation to the same person. This extends the currently limited power to reallocate, but will be subject to a right to a refund of the reallocated money to ensure that reallocation does not cause financial hardship to a person who has overpaid by mistake.

In conclusion, the Fines Amendment bill continues the Government's record of improving the administration and enforcement of fines. It will enable more efficient administration of fines by the Office of State Revenue, and improve the recovery of fines debts due to New South Wales by interstate residents.

I commend the bill to the House.