

## Fines Amendment (Electronic Penalty Notices) Bill 2016

### Second Reading

The Hon. DA VID CLARKE ( 15:06 ): On behalf of the Hon. Duncan Gay: 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 Fines Amendment (Electronic Penalty Notices) Bill 2016 amends the Fines Act 1996 to provide for the issuing of electronic infringement notices by the NSW Police Force and other agencies who are authorised to do so, with the understanding and consent of the recipient to receive a notice in this manner.

The amendment follows a successful proof of concept trial in 2013 in which five NSW Police Force Local Area Commands trialled the use of mobile technology to issue traffic infringement notices electronically.

While information technology companies have developed products that have been used by law enforcement agencies internationally, it is understood that the trial represented the first "in house" application to be developed by a law enforcement agency in the world.

This proof of concept generated wide interest from agencies including Microsoft, IBM, other Australian law enforcement jurisdictions and government agencies.

The bill, therefore, amends the Fines Act 1996, to provide that when police are to issue a penalty notice, the police officer may offer the recipient a choice to receive the notice electronically, by email or SMS.

Police will only issue electronic penalty notices when the recipient consents to this format. Should the person not understand the offer or choose to receive the notice in the paper format, penalty notices will be issued manually by police and sent by post, in line with current practice.

The recipient will be required to provide their email or SMS phone number for this purpose. These details will be stored on the police computerised operational policing system [COPS] as the person's address would be for the paper-based system.

Police with access to the mobile devices that will allow them to make the offer of an electronic penalty notice, will do so in the first instance. This will be the preferred method.

The amendments:

- provide for the voluntary provision of email addresses and phone numbers; and
- provide that children under the age of 16 will not be issued infringement notices electronically.

Without the legislative amendments, police will be unable to issue electronic infringement notices in the field.

The legislative amendments required have been the subject of consultation with the Office of State Revenue, Roads and Maritime Services, Transport for NSW, the Department of Justice and the Department of Finance, Services and Innovation.

In modern times, customers have an expectation that almost all transactions can be completed electronically. The use of infringement notices as a penalty for certain offences is an inevitable and essential provision for the NSW Police Force, although recipients will now have the convenient option of settling this penalty in electronic format.

A number of replacement provisions are included to modify or streamline the language of the Act as a consequence of the primary amendment. These amendments do not change the existing intent of these provisions

- Under section 3 (1) the definition of "penalty notice offence" is amended to "an offence under a statutory provision for which a penalty notice may be issued".

This clarifies the link between the Fines Act and those statutes which allow a penalty notice to be issued.

- This link is further clarified under amendments to section 19 (1) (a), which now reads "a person is alleged to have committed a penalty notice offence for which a penalty notice may be issued under a statutory provision".

- Section 19 (1) (al ) is amended to omit the term "the appropriate officer" and to insert "the officer who may issue a penalty notice".

This amendment clearly defines the authorised person who may issue a penalty notice or administer a caution in place of a penalty notice and facilitates the transition to this method by those agencies authorised to issue penalty notices.

- Section 19A (1) is amended to remove the term "appropriate officer" and insert "officer authorised to issue a penalty notice".

- Section 19A (1) is also amended to remove the term "an offence under a statutory provision for which a penalty notice may be issued" and insert "a penalty notice offence".

These amendments modernise the language of the Act in keeping with the new provisions.

- Section 20 (a) is amended to define a penalty notice as applicable to the person who has been issued with the penalty notice.

- Section 20 (b) is amended to clarify that should a person wish to pay the penalty notice without attending court, they may pay the appropriate amount, within the stated time and to the appropriate person, as specified on the notice.

The next clause is the primary amendment for the intent of this bill:

- Section 21 (3) is amended to provide for the issuing of electronic penalty notices by a police officer to a person's email address or telephone number. Persons authorised to issue electronic penalty notices by other agencies are also detailed in this subsection.

This section provides that a police officer may issue a penalty notice by causing the penalty notice to be sent to an email address or phone number, but only if the recipient elected to have the penalty notice issued on them in that way.

The recipient must also voluntarily provide an email address or phone number for the purposes of that issuance.

The need to obtain consent to issue a penalty notice electronically is consistent with recommendation 6.2 of the NSW Law Reform Commission's Report 132: Penalty Notices which was tabled in Parliament on 29 March 2012.

Recommendation 6.2 proposed an amendment to the Fines Act 1996 to allow agencies to issue penalty notices and subsequent notices, including reminder notices and enforcement notices, electronically where the penalty notice recipient has provided consent in advance.

At this time the intent is that only police officers will be issuing electronic penalty notices.

However the provisions "future-proof" the amendments so that when another agency develops the capacity to issue electronic notices and authorises their officers to do, they can commence without further legislative amendment required.

- Section 21 (3) (b) allows for other persons who are authorised by a relevant issuing agency to issue a penalty notice, to do so electronically.

- Section 21 (4) provides that a police officer, or other person authorised to issue penalty notices, is not to issue an electronic penalty notice on children under 16 years or over 10 years of age.

Young people under the age of 16 years (but over the age of 10 years) who commit offences attracting a penalty notice are usually dealt with pursuant to the requirements of the Young Offenders Act 1997.

The use of the Act, which encourages young people to take responsibility for their offending, is important.

There is not the intent that the proposed amendments should override matters usually dealt with under the Young Offenders Act.

This should serve as an assurance to parents that we still expect children and young persons to take responsibility for their offending behaviour, with their parents' support, via the provisions of the Young Offenders Act, which are appropriately tailored to provide suitable penalties in a productive way.

While police may issue penalty notices to persons who have committed minor offences, for example, travelling on public transport without a valid ticket, or riding a bicycle without a fitted and fastened helmet, and riding a bicycle on a footpath; the Fines Act in its current form does not apply to children who are under the age of 10 years at the time of the offence.

If a young person under the age of 16 years (but over the age of 10 years) or a young person over 16 did happen to receive a penalty notice; this would occur via the paper based system.

This provides a higher likelihood that parents may become aware of the notice and can encourage more appropriate behaviour

This will also allow parents to assist with paying the fine.

- Section 21 (5) required that a recipient only provide their email address or telephone number voluntarily for the issue of a penalty notice.

- Section 21 (6) allows a penalty notice to be issued electronically even if the statutory provision providing for the issue of the penalty notice does not authorise the issue of the penalty notice in this manner.

- Section 22 (1) is to be omitted as the new section 21 (1) gives effect to the same provision.

- Section 22A (1), (2) and (3) is to be inserted, which clarifies the effect of payment under a penalty notice.

Under this section, which also is updating the language of a current provision, if the recipient pays the penalty notice in full within the required time, no further proceedings will be laid against them.

Should the incident which caused the penalty notice to be issued result in a civil claim, action or proceeding, the recipient does not provide an admission of liability by paying for the notice.

Furthermore, payment of a penalty notice will not affect any disciplinary or other proceedings. This includes liability in the circumstances.

- Section 23 (2) and the accompanying note is omitted and a more modern language is provided with the same intent in section 22A (1).

- Section 23 (3) is inserted to ensure the amount specified in the penalty notice cannot exceed a fine imposed by the court for the same offence.

- Section 23 (4) is inserted to ensure the amount specified in the penalty notice cannot exceed the amount specified in any statutory provision providing for that penalty notice.

These existing, now updated, sections avoid any conflict with penalty notice provisions in other Acts that specifically limit the penalty notice amount prescribed by the accompanying regulations to less than the amount that can be imposed by a court.

- Section 23 (5) is inserted to provide for the varying amounts specified on penalty notices. This will allow for circumstances where different offences attract differing monetary penalties, as do varying severities of the same offence.

- Section 23AA (6) and 23AB (5) are omitted to insert the term "this section applies despite section 22A (1)". This amendment will clarify the Act relating to matters requiring a vehicle or

vessel driver nomination. These amendments are consequential to the recently passed Fines Amendment Bill 2016 and are required to ensure no anomaly exists with the provisions of that bill.

- Section 23A (3) (a) and section 36 (5) (a) are omitted and replaced with "section 22A (1) ceases to apply in relation to the person". This removes reference to section 23 (2), which is now omitted. The reference to section 22A (1) clarifies that proceedings will occur, as the recipient has elected this option.

- Sections 23A (2A), 24, 25, 26, 42 (1) (a) and 42 (1CC) are amended to clarify that a person is "issued" with a penalty notice, rather than "served". This brings the language of the legislation in line with the electronic method of administering penalty notices.

- Section 33 is amended to remove a reference to statutory provisions under which the notice was issued. This is unnecessary wording as reference is already made to payment in accordance with the penalty notice. Therefore, by paying the notice as originally instructed the matter is dealt with appropriately.

- Schedule 1 and reference to schedule 1 under section 19 (1) (b) are omitted. This amends the current structure of the Act. In recent years new penalty notice provisions have not been added to the schedule, rather, reference is made back to the Act, so its inclusion is now outdated and redundant.

However, this does not mean penalty notices cannot be issued for these offences. Instead, the statute which refers to a penalty notice provides for its issuance.

This streamlines the legislation without removing the option of issuing a penalty notice, if the relevant Act permits.

I now turn to the benefits of these provisions.

This amendment will improve administration and customer satisfaction rates, and will ensure we are delivering services that are responsive to the community and meet customer needs.

The amendment aligns with the Premier's priority to improve government services by increasing the level of online transactions to 70 per cent by 2018-19.

The proof of concept trial proved to be a huge success for the NSW Police Force and the Office of State Revenue with respect to the security and applicability of the technology, and was an efficient and cost-effective way for government agencies to do business.

The project returned significant time savings for front-line police by eliminating unnecessary data duplication and entry requirements.

The Office of State Revenue has estimated that \$1.2 million could be saved each year by eliminating the manual handling of traffic infringement notices alone.

The NSW Police Force Highway Patrol has estimated that approximately an hour per day per police officer will be saved through the service of traffic infringement notices electronically.

This equates to around 240,000 hours a year, and will allow more time to be spent working on the front line rather than undertaking administrative tasks.

This initiative will form an essential component of the Mobile Policing Strategy, which is designed to implement an "Anytime, Anywhere Policing" model.

This strategy will increase time spent by front-line staff in the field and improve access to information, which will in turn improve both response times and officer safety outcomes.

I will now describe the process of issuing an electronic penalty notice.

Police will first seek a person's consent to send the penalty notice via email or text message, not both; or should the person prefer, by Australia Post.

The application contains a number of fields which police populate with all necessary data, in connection with the offence.

These include the person's proof of identity—his or her driver's licence details, the location, date and time of the offence, vehicle registration number if required and the offences which are alleged to have been committed.

The location field uses GPS technology and a map to pinpoint the exact spot the offence occurred.

If the recipient elects to receive the penalty electronically, a PDF of the penalty notice will be sent to the person via email or text message which they will then be able to download and print; or pay via a hyperlink to the Office of State Revenue website.

The electronic penalty notice will contain the same information as that found on the existing paper-based notice.

A separate penalty notice will be issued for each offence, if applicable, to ensure the recipient understands the concept of receiving each ticket electronically.

If the person receiving the notice chooses to pay one and challenge another in court, they will be able to do so using the unique penalty notice number.

As with current practice, the electronic penalty notice will provide a number of payment options for the person concerned.

If a person wishes to have one or all of the offences determined by a court, then he or she will be required to complete and submit the court election format provided at [www.sdro.nsw.gov.au](http://www.sdro.nsw.gov.au).

If submitting the request electronically, the online court election format requires the person to enter the penalty notice number for the matter with which they want dealt at court.

It is anticipated that additional paperwork and administration will be eliminated, as the police officer will not be required to re-enter data from his or her notebook onto the COPS when they return to the station. The data will automatically upload to the COPS database from the field.

The security model used to protect the application, the device and cloud during the trial worked flawlessly and there were no security breaches. This same model will be used in the future.

If the person declines to provide a phone number or email address then the officer will issue the infringement notice manually and send it by post, in line with current practice.

It is inevitable that officers will encounter vulnerable persons when issuing an infringement notice. If the recipient does not understand the process of paying for an infringement notice electronically, or does not have the technology, the officer will issue the infringement notice manually.

Officers who issue infringement notices are well trained and highly experienced in assessing the needs of vulnerable persons and will be more than capable of gauging the recipient's understanding of the process.

In the event that a person fails to provide a bona fide email address or phone number then he or she will be dealt with via the Office of State Revenue's follow-up procedures.

The Office of State Revenue issues reminder notices 28 days after the initial notice has been issued. These reminder notices are mailed to the person's residential address as shown on their driver's licence.

If a police officer believes at the time that the email address or phone number being provided is false, they may choose to proceed with a manual paper notice.

In this way avoidance of service, in terms of an electronic penalty notice, will not differ from the current process where issues may occur with the person not receiving a paper fine.

In the event that an electronic infringement notice is issued to an email address or phone number which belongs to a person other than the intended recipient, a disclaimer will be provided on the infringement notice with instructions requesting that the person contact police and, quoting the infringement notice number, advise that the notice has been sent in error.

A link will also be provided which will take the person to the NSWPF Contact Us page on its website. There, the person will be able to select the area they wish to contact, in this case the Customer Assistance Unit, and enter all necessary details. Should the person wish to provide additional details, such as their name, email and contact number they can, however it is not compulsory to do so.

The Police Assistance Line [PAL] number will also be available and PAL staff advised on how to record and deal with issues relating to electronic infringement notices.

If a tablet is lost, police will have the capability to locate, lock and wipe the device remotely.

Accountability mechanisms have also been built into the infringement notice application to ensure that all of the required fields have been entered and checked prior to sending. This will mitigate any instances of an error occurring.

These are straightforward amendments that serve a good purpose: they enable the NSW Police Force to provide a technological response in a highly technological society where electronic communications are fast replacing more traditional methods.

I commend the bill to the House.