



New South Wales

Fines Amendment (Electronic Penalty Notices) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Fines Act 1996* to allow penalty notices to be issued electronically. The Bill also includes other amendments to the *Fines Act 1996* to consolidate and standardise provisions relating to penalty notices.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Fines Act 1996 No 99

Schedule 1 [6] allows a penalty notice to be issued electronically by sending it to an email address, or a phone number, voluntarily provided by the person to whom the penalty notice is to be issued. A penalty notice can only be issued electronically to a person aged 16 years or more and only by a police officer or by an officer authorised to do so by the agency in which the officer is employed. Schedule 1 [6] also revises the provision describing the nature of a penalty notice. **Schedule 1 [1], [2], [4], [7], [20] and [24]** make consequential amendments.

Schedule 1 [8] and [10] transfer to the *Fines Act 1996* the substance of provisions currently found in specific sections of other Acts providing for the issue of penalty notices. **Schedule 1 [9], [11], [13], [15] and [21]** make consequential amendments.

Schedule 1 [3] and [5] make minor clarifying amendments regarding the officer who may give an official caution instead of issuing a penalty notice.

Schedule 1 [12], [14], [16]–[19], [22] and [23] standardise terminology.



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New South Wales

Fines Amendment (Electronic Penalty Notices) Bill 2016

No. , 2016

A Bill for

An Act to amend the *Fines Act 1996* with respect to electronic penalty notices; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Fines Amendment (Electronic Penalty Notices) Act 2016*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Fines Act 1996 No 99	1
[1] Section 3 Definitions		2
	Omit the definition of <i>penalty notice offence</i> from section 3 (1). Insert instead:	3
	<i>penalty notice offence</i> means an offence under a statutory provision for which a penalty notice may be issued.	4 5
[2] Section 19 Summary of penalty notice procedure		6
	Omit section 19 (1) (a). Insert instead:	7
	(a) Person alleged to have committed penalty notice offence	8
	A person is alleged to have committed a penalty notice offence for which a penalty notice may be issued under a statutory provision (see Division 2).	9 10 11
[3] Section 19 (1) (a1)		12
	Omit “The appropriate officer”.	13
	Insert instead “The officer who may issue a penalty notice”.	14
[4] Section 19 (1) (b)		15
	Omit “and Schedule 1”.	16
[5] Section 19A Official caution may be given instead of penalty notice		17
	Omit section 19A (1). Insert instead:	18
	(1) An officer authorised to issue a penalty notice may give a person an official caution instead of issuing a penalty notice if the officer believes:	19 20
	(a) on reasonable grounds that the person has committed a penalty notice offence, and	21 22
	(b) that it is appropriate to give an official caution in the circumstances.	23
[6] Sections 20 and 21		24
	Omit the sections. Insert instead:	25
20 What is a penalty notice?		26
	A penalty notice is a notice issued under a statutory provision to the effect that:	27
	(a) the person to whom the notice is issued has committed the penalty notice offence specified in the notice, and	28 29
	(b) if the person does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount for the offence specified in the notice.	30 31 32
21 Issue of penalty notices		33
	(1) A penalty notice may be issued by an officer authorised by, and in the circumstances specified in, the statutory provision providing for the issue of the notice.	34 35 36
	(2) A penalty notice may be issued to a person:	37
	(a) personally, or	38
	(b) by post, or	39

(c)	in any other manner authorised by the statutory provisions providing for the issue of the penalty notice.	1 2
(3)	A penalty notice may be issued to a person electronically by sending it to an email address, or to a phone number, voluntarily provided by the person for the issue of the penalty notice if the penalty notice is issued by:	3 4 5
(a)	a police officer, or	6
(b)	an officer authorised to issue the penalty notice electronically by the relevant issuing agency.	7 8
(4)	A penalty notice may not be issued to a person electronically if the person is under the age of 16 years.	9 10
(5)	An email address or a phone number may be voluntarily provided by a person for the issue of a particular penalty notice or for the issue of penalty notices of a particular kind or for a particular period.	11 12 13
(6)	A penalty notice may 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 that manner.	14 15 16
[7]	Section 22 Persons who may deal with penalty notices (appropriate officers)	17
	Omit section 22 (1).	18
[8]	Section 22A	19
	Insert after section 22:	20
22A	Effect of payment under penalty notice	21
(1)	If the full amount specified in a penalty notice for an alleged offence is paid in accordance with the notice, no person is liable to any further proceedings for the alleged offence.	22 23 24
(2)	Payment under a penalty notice is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.	25 26 27
(3)	This section does not affect any disciplinary or other proceedings, or liability, to which a person is expressly subject under another Act in relation to the payment of an amount under a penalty notice.	28 29 30
[9]	Section 23 Amount payable under penalty notice	31
	Omit section 23 (2) and the note.	32
[10]	Section 23 (3)–(5)	33
	Insert at the end of section 23:	34
(3)	The amount specified in a penalty notice cannot exceed the maximum amount of the penalty that could be imposed by a court for the offence to which the penalty notice relates.	35 36 37
(4)	If the statutory provision providing for the issue of the penalty notice provides for a lesser amount, the amount specified in the penalty notice cannot exceed that lesser amount.	38 39 40

(5)	An instrument under a statutory provision providing for the issue of a penalty notice that prescribes the amount payable under the notice for an alleged offence may:	1
		2
		3
(a)	prescribe different amounts for different offences, and	4
(b)	prescribe different amounts for the same kind of offence committed in specified circumstances.	5
		6
[11]	Section 23AA Payment of fine before vehicle or vessel offence nomination made— payment by or for nominated person	7
	Omit section 23AA (6). Insert instead:	8
		9
(6)	This section applies despite section 22A (1).	10
[12]	Section 23AB Payment of fine before vehicle or vessel offence nomination made— other cases	11
	Omit “on whom the notice was served” from section 23AB (3) (c).	12
	Insert instead “to whom the notice was issued”.	13
[13]	Section 23AB (5)	14
	Omit the subsection. Insert instead:	15
		16
(5)	This section applies despite section 22A (1).	17
[14]	Section 23A Person may elect to have matter dealt with by court	18
	Omit “served” from section 23A (2A). Insert instead “issued”.	19
[15]	Section 23A (3) (a)	20
	Omit the paragraph. Insert instead:	21
		22
(a)	section 22A (1) ceases to apply in relation to the person, and	23
[16]	Sections 24, 24A (3) (a), 28 (2) (b) and (c), 42 (1) (a) and (1CC) (a), 61 (3) (b) and (c), 65 (3) (a) (ii) and 102A (1) (b)	24
	Omit “served with”, “was served”, “served on” and “served by” wherever occurring.	25
	Instead “issued with”, “was issued”, “issued to” and “issued by”, respectively.	26
[17]	Section 25 What is a penalty reminder notice?	27
	Omit “on whom a penalty notice (and any matter annexed to, or enclosed with, a notice) has been served”.	28
		29
	Insert instead “to whom a penalty notice (and any matter annexed to, or enclosed with, a notice) has been issued”.	30
		31
[18]	Section 26 When a penalty reminder notice may be sent	32
	Omit “on whom a penalty notice was served”.	33
	Insert instead “to whom a penalty notice was issued”.	34
[19]	Sections 28 (2) (a) and 61 (3) (a)	35
	Omit “service” wherever occurring. Insert instead “issue”.	36

[20]	Section 33 Payment under penalty reminder notice	1
	Omit “and the relevant provisions of the statutory provision under which the notice was served” from section 33 (1).	2 3
[21]	Section 36 How a person may elect to have matter dealt with by court	4
	Omit section 36 (5) (a). Insert instead:	5
	(a) section 22A (1) ceases to apply in relation to the person, and	6
[22]	Section 126A (1)	7
	Omit “issued to and”.	8
[23]	Section 126A (1) and (2)	9
	Omit “served on the person” wherever occurring. Insert instead “issued to the person”.	10
[24]	Schedule 1 Statutory provisions under which penalty notices issued	11
	Omit the Schedule.	12