



New South Wales

# Fines Amendment Bill 2019

## 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* as follows—

- (a) to make further provision for the electronic service of penalty notices and to enable the electronic service of penalty reminder notices and penalty notice enforcement orders,
- (b) to make further provision for the Commissioner of Fines Administration (the **Commissioner**) to withdraw penalty notice enforcement orders, on the Commissioner's own initiative or on an application by a person in respect of whom an order has been made,
- (c) to enable a person to whom a penalty notice is issued to apply for a review of the decision to issue the penalty notice even after a penalty notice enforcement order has been made,
- (d) to extend the circumstances in which a person with an outstanding fine may seek further time to pay,
- (e) to make further provision for the Commissioner to use an amount that is repayable to a person to pay another amount owed by the person to the Commissioner, instead of refunding the amount to the person,
- (f) to enable a person to nominate themselves as the driver responsible for an offence for which a penalty notice has been issued, rather than requiring the owner of the vehicle to nominate that person.

This Bill also—

- (a) makes consequential amendments to the *Fines Regulation 2015*, and

- (b) amends the *Road Transport Act 2013* to enable a person to nominate themselves as the person in charge of a vehicle at the time of a camera recorded offence or parking offence, rather than requiring the owner of the vehicle to nominate the person, and
- (c) amends the *Road Transport (General) Regulation 2013* to permit a penalty notice to be issued for an offence of failing to supply a statutory declaration to verify a nomination of a person in charge of a vehicle.

## 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 proclaimed.

## Schedule 1 Amendment of Fines Act 1996 No 99

### Electronic service of penalty notices and other documents

**Schedule 1 [13]** further provides for the electronic issue of a penalty notice in an approved electronic manner and **Schedule 1 [19] and [51]** enable service of a penalty reminder notice or a notice of a fine enforcement order, in an approved electronic manner.

**Schedule 1 [3]** defines *approved electronic manner* to mean—

- (a) sending a penalty notice, penalty reminder notice or fine enforcement order, or a penalty notification, to a telephone number or email address provided by the person for the purposes of the issue or service of the notice or order, or
- (b) providing the person access to a penalty notice, penalty reminder notice or fine enforcement order, or a penalty notification, via the online notification system if the person consents to the use of that system, or
- (c) any other electronic manner prescribed by the regulations.

An *online notification system* means an online system approved by the Commissioner for the purposes of enabling a person to securely access, by means of a website, mobile telephone or mobile device or by other electronic means, a penalty notice, penalty reminder notice, fine enforcement order or penalty notification that is issued to, or made in respect of, the person.

A *penalty notification* means a written notification stating the following—

- (a) a penalty notice, penalty reminder notice or fine enforcement order (as the case requires) has been issued to, or made in respect of, the person,
- (b) the sending of the penalty notification to the person, or providing the person access to the penalty notification, is taken to be the issue of the penalty notice to the person or service of the penalty reminder notice or notice of the fine enforcement order on the person (as the case requires),
- (c) how the person can access the penalty notice, penalty reminder notice or fine enforcement order by means of a website, mobile telephone or mobile device or by other electronic means.

Penalty reminder notices and notice of fine enforcement orders may not be served in an approved electronic manner on a person under the age of 16 years. This is consistent with the existing restriction on the electronic issue of penalty notices.

**Schedule 1 [22] and [57]** remove references to service of documents by facsimile and permit service of documents relating to court election and interstate fine enforcement orders by electronic means approved by the Commissioner.

**Schedule 1 [1], [14], [15], [20], [52] and [60]–[64]** are consequential amendments.

### Withdrawal and annulment of penalty notice enforcement orders

**Schedule 1 [35]** repeals existing provisions relating to the withdrawal and annulment of penalty notice enforcement orders by the Commissioner. **Schedule 1 [37]** provides for new arrangements

under which the Commissioner will be able to withdraw a penalty notice enforcement order on certain grounds. **Schedule 1 [38]–[40]** enable a person to apply to the Local Court for the annulment of a penalty notice enforcement order after an application for withdrawal has been refused by the Commissioner. The Local Court will be able to annul penalty notice enforcement orders on any of the grounds on which the Commissioner may withdraw the orders. **Schedule 1 [41]–[43]** clarify how the Local Court is to deal with a matter following the withdrawal or annulment of a penalty notice enforcement order. **Schedule 1 [44]–[47] and [49]** are consequential on the new arrangements and the restructure of Division 5 of Part 3 of the *Fines Act 1996* (the *principal Act*).

Section 49A is repealed because it is no longer necessary as a person will be able to apply for an internal review of the decision to issue a penalty notice under Division 2A of Part 3 of the principal Act even if a penalty notice enforcement order has been made (see **Schedule 1 [16]**).

**Schedule 1 [10], [11], [30], [34], [36], [65] and [66]** are consequential amendments.

### **Refunds and reallocation of overpayments**

**Schedule 1 [59]** substitutes the existing provision that enables the Commissioner to reallocate an overpayment made by a person under a fine enforcement order towards any other amount owed by the person under another fine enforcement order. Under the new provision, the Commissioner is required to refund to a person any amount that exceeds the amount payable by the person under the principal Act and any other amount repayable to the person under the principal Act. The Commissioner may, in certain circumstances, reallocate the refundable amount towards the payment of any other amount owed by the person.

**Schedule 1 [8] and [48]** are consequential amendments to notes.

### **Internal review of penalty notices**

**Schedule 1 [16]** extends the current provision that enables a person to apply for an internal review of a decision to issue a penalty notice within certain time frames so that generally a person will be able to make an application at any time, including after the whole or part of the amount under the penalty notice has been paid or a penalty notice enforcement order has been made. The existing time limit of 60 days after a penalty notice is issued will still apply if the whole of the amount payable under the penalty notice has been paid and a penalty reminder notice has not been served. **Schedule 1 [18]** provides that if a penalty notice is withdrawn following an internal review, any penalty notice enforcement order is also taken to be withdrawn. **Schedule 1 [17]** inserts a note to make it clear that enforcement action may be taken if an internal review confirms the decision to issue a penalty notice and a penalty notice enforcement order has already been made. **Schedule 1 [21]** provides that a person may elect to have a matter dealt with by a court while an internal review is in progress, provided that the person applied for the review on or before the due date for payment specified in the penalty reminder notice concerned. **Schedule 1 [9], [31] and [33]** are consequential amendments.

### **Early enforcement arrangements**

**Schedule 1 [5], [6], [32] and [54]** remove some restrictions on who can apply for a time to pay order in relation to an outstanding fine and when a person can apply, including by providing that a person no longer has to be in receipt of a Government benefit to seek a time to pay order. The Commissioner will be able to make a fine enforcement order, which is required before a work and development order or time to pay order can be made, at any time that a person applies for a work and development order or a time to pay order. **Schedule 1 [2]** omits the definition of *combined payment arrangement* (that is, an arrangement for the payment of an outstanding fine in conjunction with payment of another fine for which a fine enforcement order has been made) as the arrangements are no longer required. **Schedule 1 [58]** is a consequential amendment to repeal a redundant provision. **Schedule 1 [7], [55] and [56]** are consequential amendments.

### **Nominating person in charge of vehicle**

**Schedule 1 [23]** enables a person to nominate themselves as the person in charge of a vehicle or vessel at the time an offence for which a penalty notice has been issued was committed. Currently, only the person on whom the penalty reminder notice was served is able to nominate that other person. **Schedule 1 [24]–[29]** are consequential amendments.

### **Other amendments**

**Schedule 1 [53]** enables the Commissioner to amend a fine enforcement order to correct an error.

**Schedule 1 [17] and [50]** remove the requirement for the Commissioner to serve a penalty reminder notice or notice of a fine enforcement order in certain circumstances where the affected person will otherwise be made aware of the notice or order.

**Schedule 1 [4]** updates references to the Department of Communities and Justice and **Schedule 1 [12]** updates references to Revenue NSW.

**Schedule 1 [67]** repeals redundant provisions. **Schedule 1 [68]** makes a consequential amendment.

**Schedule 1 [69]** inserts transitional provisions.

## **Schedule 2      Amendment of other legislation**

**Schedule 2.1 [2]** amends the *Fines Regulation 2015* to remove the requirement to pay a fee for an application to annul a penalty notice enforcement order. **Schedule 2.1 [1] and [3]** are consequential amendments.

**Schedule 2.2 [2]** amends the *Road Transport Act 2013* to enable a person to nominate themselves as the person in charge of a vehicle at the time a camera recorded offence or parking offence was committed. Currently, only the owner of the vehicle is able to nominate that other person. **Schedule 2.2 [1] and [3]–[11]** are consequential amendments. These amendments are in line with the amendments made to the *Fines Act 1996* by Schedule 1 [23]–[29].

**Schedule 2.3** amends the *Road Transport (General) Regulation 2013* to provide that the offence under section 189(4) of the *Road Transport Act 2013* of failing to provide a statutory declaration as required by an authorised officer in relation to a nomination of the person who was in charge of a vehicle at the time of a camera recorded offence or parking offence is a penalty notice offence. The amount payable is \$686 for an individual and \$1,449 for a first offence by a corporation and \$3,887 for a second or subsequent offence within the last 5 years by a corporation.