



Fines Amendment Bill 2008

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Extract from NSW Legislative Assembly Hansard and Papers Wednesday 2 April 2008.

Agreement in Principle

Ms TANYA GADIEL (Parramatta—Parliamentary Secretary) [11.20 a.m.]: I move:

That this bill be now agreed to in principle.

The Fines Amendment Bill 2008 implements improvements to processes relating to the administration of penalty notices and fines enforcement. In 1996 the Government introduced the Fines Act as a major reform of the fines enforcement system. It is now 10 years since the establishment of the State Debt Recovery Office as the central agency to coordinate fines enforcement processes. In the intervening years the Fines Act and the State Debt Recovery Office have been the subject of a number of reviews that have led to improvements in these processes. The Government has an ongoing commitment to ensuring the fines enforcement system remains fair and efficient. The amendments proposed by this bill build on the improvements made in recent years.

The bill implements six proposals that address fines avoidance practices, improve the options for resolving outstanding fines and facilitate improved administration by the State Debt Recovery Office. The first proposal relates to deemed service of penalty notices. Most penalty notices and reminder notices are served by mail. If returned to the State Debt Recovery Office as return-to-sender mail, the notice is not validly served and cannot be enforced. The State Debt Recovery Office conducts ongoing data matching with other government agencies such as the Roads and Traffic Authority [RTA] and the State Electoral Office to identify correct addresses. However, some notices are sent to the wrong address because the person involved failed to notify the Roads and Traffic Authority of a change of address, despite this being an offence under road traffic regulations.

Other instances involve the fine recipient supplying a false address, or deliberately returning mail unopened knowing that it relates to a fine. In these cases the statutory limitation period will often expire before the notice can be served and the payment of fines and application of driver licence demerit points are avoided. The amendment will provide that a penalty notice or penalty reminder notice that has been posted to the address provided by the fine recipient or to the address held by the Roads and Traffic Authority is deemed to have been served, despite being returned to its sender as undelivered. This change will prevent alleged offenders from deferring payment of a fine until proceedings for the offence become statute barred. The amendment does not extend to enforcement orders for which actual service before enforcement continues to be a requirement, such as cancellation of the person's driver licence or vehicle registration.

The second proposal relates to false nominations for traffic offences. For some offences, such as speed camera or red light camera offences, the owner of the vehicle is deemed to be responsible for the offence unless he or she provides the name and address of the person actually in charge of the vehicle at the time of the offence. The State Debt Recovery Office has encountered problems in prosecuting people who falsely nominate another driver to avoid the fine and licence demerit points. The bill makes an amendment to the Fines Act to address these problems. It creates an offence under the Fines Act of knowingly providing false or misleading information in a statement nominating another person as the driver. This amendment will enhance the ability of the State Debt Recovery Office to correctly identify offenders and enforce penalty notices for vehicle offences.

The third proposal in the bill deals with a person's right to elect to have a penalty notice offence dealt with by a court. The amendment will make clear that payment of the fine payable under a penalty notice does not prevent a person from exercising his or her right to have the matter dealt with by a court if the election is made within the required time period. The majority of fines under penalty notices and penalty reminder notices are paid on time. In these cases no further action is taken other than the recording of driver licence demerit points for some offences. However, in some cases the person alleged to have committed the offence seeks to have the matter referred to a court after the fine has been paid. This may occur because additional information becomes available to the person. For example, instances have occurred where the person named in the penalty notice initially was unaware of the notice because a family member had paid the fine. The amendment will allow the fine to be refunded and any demerit points withdrawn until the court decides the matter.

The fourth proposal encompasses two amendments that will provide greater flexibility in the fines enforcement process: first, to provide flexibility in the use of time to pay orders by allowing them to be varied if the fine defaulter's financial circumstances change; and, second, to allow part payment of penalty notices. At present, part payment is allowed only later in the enforcement process, at which stage additional costs have been incurred. Facilitating part payment at an earlier stage will allow people on lower incomes or who otherwise are

suffering financial hardship to begin to meet their obligations in a manageable way. This will also reduce the risk of secondary offending by persons whose driver licence or car registration is suspended or cancelled.

The fifth proposal is to formally recognise the current structure of the State Debt Recovery Office. The State Debt Recovery Office and the Infringement Processing Bureau originally were separate agencies in different government departments but they have now been integrated as the fines division of the Office of State Revenue. This integration has enhanced the role of the State Debt Recovery Office as the central fine enforcement agency, but the Fines Act does not adequately reflect the expanded functions of the State Debt Recovery Office. The amendments will recognise these functions, provide greater accountability in relation to financial matters, and remove redundant legislative requirements.

The final proposal is to recognise the longstanding practice of the State Debt Recovery Office of using the services of police prosecutors in the Local Court when prosecuting matters that have been the subject of a penalty notice. Most prosecuting authorities, such as local councils, have contracted through the State Debt Recovery Office to use the services of police prosecutors who have the knowledge and experience to assist the court in proceedings for penalty notice offences. Despite this practice being supported by decisions of the Supreme Court, magistrates have discretion to refuse leave for police prosecutors to appear.

Refusal of leave to appear imposes additional costs on the prosecuting authorities and could result in charges being dismissed due to the absence of an appropriate representative. The bill therefore provides a statutory right for a police prosecutor to appear for the prosecution in proceedings for an offence in relation to which a penalty notice has been issued. This bill is part of the Government's ongoing commitment to improving the system for administering penalty notices and enforcing fines. The amendments will help to ensure offenders meet their obligations under penalty notices while maintaining the fairness of enforcement processes. I commend the bill to the House.