



Fines Amendment Bill.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands [8.40 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.

In 2002, the Fines Act was the subject of a statutory review to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

While the review confirmed the validity and appropriateness of the Act, a number of issues were raised in submissions to the review. These primarily relate to the role of the State Debt Recovery Office [SDRO] as the co-ordinating body in the fine enforcement system and concerns about the efficiency and fairness of review processes.

One concern was the inconsistency of procedures between SDRO and the Infringement Processing Bureau [IPB], including a lack of procedures for review of matters once they had been referred from IPB to SDRO. IPB is the source of approximately 80 per cent of fines administered by SDRO. This concern has been addressed in part by the transfer on 1 October 2003 of the IPB from NSW Police to become a part of SDRO. This move has improved the administration of fines in New South Wales and further improvements will continue to be made.

The amendments to the Fines Act contained in the bill will further improve the efficiency and fairness of the fines enforcement system.

The first group of changes under the bill relates to the mechanisms for review within the fines enforcement system.

The review of the Fines Act identified a number of concerns regarding a lack of knowledge of SDRO review mechanisms and how to apply for them.

The bill therefore clarifies and codifies review mechanisms in the legislation.

This includes a requirement for SDRO to specify in the notice given to a fine defaulter, the review processes that are available if the fine defaulter wishes to challenge the liability for the fine, is unable to pay the fine, or has concerns with the fairness of the enforcement process. This will formalise and extend SDRO's existing practices.

As part of these changes, the bill expands on the circumstances in which enforcement orders could be withdrawn. These include where a motor vehicle that is the subject of a fine was sold prior to the fine being incurred; the fine is a duplicate; or an error has occurred in identifying the person named in the enforcement order.

The bill codifies a part of the process for lifting sanctions where the defaulter is paying by instalments. The provisions that allow time to pay a fine currently suspend any further enforcement action, but do not require the lifting of sanctions already in place. For example, a fine defaulter whose licence has been suspended is not entitled to have the suspension lifted until the fine is paid in full.

The bill provides that a licence suspension and any other restrictions on dealings with the Roads and Traffic Authority must be lifted after six payments have been made in accordance with SDRO's initial time-to-pay order. Further sanctions can be implemented if the fine defaulter fails to pay in accordance with that order.

The Fines Act already specifies some of the circumstances in which a penalty notice enforcement order must be annulled, including where the person was unaware of the penalty notice, or where the person was hindered by accident, illness or misadventure from taking action in relation to the penalty notice. The bill clarifies and expands on the circumstances in which enforcement orders may be annulled.

Currently, a fine defaulter may apply to SDRO for annulment of a penalty notice enforcement order within one year after the making of the enforcement order. The bill will remove the time limit for lodging an annulment application.

The bill introduces a new process for review of fines relating to penalty notices. In some cases, evidence is provided to SDRO to raise a doubt about the person's liability for the penalty.

The bill provides an alternative to referral to court in those cases where the available evidence suggests that the fine defaulter might not be found guilty of the offence. Prior to annulment of the enforcement order, SDRO will be required to refer the fine back to the issuing agency or referring agency to review the matter and determine whether to withdraw the fine.

The bill provides for a further administrative review of decisions made by SDRO in relation to a person's capacity to pay, such as decisions on an application to allow time to pay a fine, or to write off a fine. Although SDRO approves the overwhelming majority of such applications, the bill establishes a statutory hardship review board with the authority to review specified decisions of SDRO. The board will have the power to direct SDRO to allow further time to pay a fine, to defer a fine by way of write off, or to lift a sanction in advance of full payment of the fine.

Although the board will have a wide discretion to make such a direction, the board will be required to consider matters such as the fine defaulter's capacity to pay, the likelihood of successful enforcement using civil sanctions, and the fine defaulter's suitability for community service.

However, the board will not be limited to consideration of financial hardship and could, for example, consider factors such as serious economic and social hardship experienced by Aboriginal or people in remote communities. SDRO protocols will enable the board to take into account the special circumstances of people with physical or intellectual disabilities.

The board as formally constituted would consist of the Secretary of the Treasury, the Chief Commissioner of State Revenue, and the Director-General of the Attorney General's Department. A board member may appoint a person to act in the member's place at meetings of the board.

One notable change to enforcement procedures is in relation to fines imposed on people aged under 18 years. The Act currently provides that certain types of enforcement action cannot be taken against a fine defaulter who was under the age of 18 years at the time that he or she committed the offence.

If the fine defaulter, at the time of the offence, was not and had never been the holder of a drivers licence, a drivers licence acquired after that date cannot be suspended or cancelled in relation to that fine.

The bill restricts the use of RTA sanctions, in the case of a defaulter under the age of 18, to fines for traffic and parking offences and not by reference to whether or not the offender held a licence at that time. This will ensure that enforcement action is appropriate to the nature of the offence.

Each step in the fine enforcement process incurs additional costs that are payable by the fine defaulter. People aged under 18 years generally have limited means to pay even minor fines. Enforcement costs subsequently attached to a fine can be more than the original fine.

The Director of SDRO has the power to waive costs on a case-by-case basis and it is not unusual for juveniles to have enforcement costs waived.

The bill provides that all enforcement costs incurred by people aged under 18 years will be waived, with the exception of the initial fee for the issue of an enforcement order. Retaining that fee will act as a deterrent to deferring payment, although the power to waive in individual cases will remain. However, the fee for an enforcement order will be reduced from \$50 to \$25 for fines incurred by people aged under 18 years.

If any further offences are committed after the fine defaulter reaches the age of 18 years, any fine enforcement action by SDRO in relation to the further fines would be subject to the full range of sanctions and enforcement costs.

The bill also extends the limitation period for certain actions in the fines recovery process to ensure that any delay in issuing infringement notices does not cause a backlog, resulting in people who break the law avoiding the consequences of their actions.

In September 2002, the IPB relocated from Parramatta to Maitland. Following the loss of experienced staff and the introduction of a new fines processing system, a backlog of infringement processing built up during the 2002-03 financial year.

The Government has since taken steps to improve the efficiency of the IPB including increasing staff, but it is also taking action to reduce the risk of a fines backlog occurring in future. Last year the limitation period for commencing proceedings for owner-onus offences, such as speeding, red light and parking offences, was extended from 6 to 12 months.

The Fines Amendment Bill will make a similar extension of time for offences that currently have a limitation period of less than 12 months, if a penalty notice is issued within the original limitation period. It should be noted that the onus remains on the relevant agency to issue notices within the applicable limitation period.

The bill also makes a number of amendments to clarify administrative provisions in the Fines Act.

The bill removes an anomaly in the provisions dealing with imprisonment. A fine defaulter will be liable to imprisonment only if he or she is capable of and suitable for community service and has defaulted on a community service order.

The bill authorises SDRO to disclose personal information on fine defaulters to prosecuting agencies, but only to the extent that the information is reasonably necessary to monitor the status of outstanding fines.

Other amendments include allowing SDRO to use information obtained from other government agencies as the address for service of notice of a fine enforcement order and authorising electronic transmission of documents to the RTA, Sheriff, police officers, or an officer of the court. The bill also clarifies the circumstances in which SDRO may make a penalty notice enforcement order and clarifies the authority given by a warrant of commitment to a correctional centre under the Fines Act.

The bill incorporates a number of the provisions of the Fines Regulation into the principal Act with no substantive change. In particular, the amounts of enforcement costs and application fees are not increased. The remaining provisions will be remade in a new regulation.

Following the review of the Fines Act in 2002, a Fines Enforcement Reference Group was established comprising representatives of the Attorney General's Department, the Juvenile Justice Department, NSW Police, the Probation and Parole Service, Roads and Traffic Authority, State Electoral Office and a number of Treasury agencies.

This group has overseen a number of administrative changes over the past two years that have improved procedures. Most of the remaining issues raised by the review are addressed by the amendments contained in this bill.

The Government will continue to monitor the fine enforcement process to ensure it is fair and efficient. The Fines Amendment Bill represents a significant improvement in fines enforcement in New South Wales.

I commend the bill to the House.

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