



Legislative Council

Crimes Legislation Amendment (Penalty Notice Offences) Bill

Hansard - Extract

18/06/2002

Second Reading

The Hon. MICHAEL COSTA (Minister for Police) [7.49 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes Legislation Amendment (Penalty Notice Offences) Bill 2002. The bill provides police officers with three new significant powers and corresponding safeguards. The purpose of the bill is to establish a trial to enable police officers to issue penalty notices for certain offences in certain locations. The bill will enable police officers to require persons who are to be issued with penalty notices under the trial to disclose their identity. It will allow police officers to take fingerprints and palm prints from people when serving penalty notices under the trial, and will allow police officers to take fingerprints and palm prints from people served with court attendance notices. Penalty notices are utilised by the police and various government departments as an important tool in dealing with a limited number of offences. In 1997 the Law Reform Commission concluded in its sentencing report that:

... the infringement notice system should be expanded, in recognition of the benefits to individuals who wish to avoid the trauma of court proceedings, as well as the economic and administrative advantages of diverting minor offenders from the court system.

The proposal to issue penalty notices for an extended number of offences provides police with an additional enforcement tool. It allows police to use their discretion to deal with minor matters in an appropriate way. The scheme is not mandatory. It does not exclude the exercise of discretion to dispose of an offence by administering a warning or to file a charge. The courts will still deal with more serious offences and offenders. Police will continue to exercise their discretion to caution and warn where appropriate in very minor matters. The offender's right to have the matter determined by the court and to plead in mitigation of penalty is retained.

This is an "opt-in" program: Any person issued with a penalty notice has the option of either paying the fine—set at the median fine amount for that offence—or requesting that the matter be heard in court. A recent Victorian report found that the overwhelming majority of persons receiving infringement notices opt to pay the amount set out in them. This is because the offender knows in advance what the penalty is and the infringement penalty is fixed at a monetary level lower than the normal statutory maximum fine for the offence. In addition, payment of the fixed penalty results in the offender acquiring neither a conviction nor a record. The offender can avoid the social stigma and legal disabilities that attach to prosecution and conviction in a criminal court.

I turn now to the provisions of the bill. Schedule 1 inserts a new part 8 into the Criminal Procedure Act. Proposed section 161 provides police with the power to issue penalty notices for the offences described in the regulations. Those offences, as listed in schedule 3, are common assault; larceny, where the value of goods stolen is up to \$500; obtaining money or benefit by deception; goods in custody; offensive language or conduct; obstructing traffic; and entering a vehicle or boat in a public place without the owner's consent. The trial will operate for a period of 12 months and will take place in 12 local area commands designated in schedule 3. In recognition of the limited capacity to pay, proposed section 163 prohibits penalty notices for offences covered by this trial from being issued to juveniles.

In addition, penalty notices may not be issued in relation to an industrial dispute, demonstration or protest, procession or organised assembly. Under section 166, if a person opts to pay the penalty notice, that person is not liable for any further proceedings for the alleged offence. The penalty notice will not form part of the person's criminal history. The NSW Police Service will keep a record of the penalty notice issued in order to ensure that notices are not issued inappropriately—for example, to the same offender for further offences of the same nature in the future. I emphasise that there is no requirement that police officers must issue a penalty notice rather than a caution or warning or proceed by way of a court attendance notice, summons or charge. Proposed section 170 makes this clear. Each officer will use his or her discretion, taking into account the seriousness of the offence or any prior convictions of the person, for example, before issuing a penalty notice.

The second significant power proposed in the bill is outlined in section 169. This power enables police officers to request the name and address of a person about to be issued with a penalty notice in order to identify that person. A penalty of \$220 may be enforced if the person fails, without reasonable excuse, to provide that information. Several safeguards must be adhered to by the police officer when making that request. These safeguards include providing evidence that he or she is a police officer, providing his or her name and place of duty, informing the person of the reason for the request and warning the person that failure to comply with the request may be an offence.

Schedule 2 of the bill amends the Crimes Act to enable police officers to take fingerprints and palm prints from persons who have been issued with a penalty notice under section 353AC or a court attendance notice under section 353AD. This is the third significant power in the bill. It is important for me to reiterate that this power—indeed, this trial—does not apply to juveniles. Proposed sections 353AC (2) and 353AD (2) require that fingerprints and palm prints must not be taken from juveniles who have been issued with a penalty notice or court attendance notice. In relation to the penalty notice trial only, fingerprints and palm prints are to be destroyed once identity is confirmed upon payment of the penalty notice.

In the case of court attendance notices, the normal procedures will apply—that is, defendants found not guilty or who have had their charges dismissed may apply to the court for the destruction of their fingerprints. Proposed section 353AE contains the safeguards attached to the exercise of these powers. There is no offence attached to not consenting to have prints taken in the field, but police may warn the person that if he or she refuses to consent he or she may be arrested and conveyed to a police station and charged, and his or her prints taken.

Proposed section 172 requires the Ombudsman to monitor the operation of the trial. The ease with which penalty notices can be issued makes it open to criticism that notices will be used when a caution or warning without further action would have been more appropriate. The education and guidelines that will be provided to police officers will address this issue. In addition, the Ombudsman's review will pay close attention to any net-widening effect of the legislation. The evaluation of the trial will ensure that any operational issues are identified and solved before a decision is made whether the legislation should be implemented statewide. This proposal extends the use of penalty notices and allows them to become a general tool in the array of responses available to police. It provides police with greater flexibility in their response to criminal behaviour. I commend the bill to the House.