

Passed by both Houses



New South Wales

Crimes Legislation Amendment (Penalty Notice Offences) Bill 2002

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council

2002

Clerk of the Parliaments



New South Wales

Crimes Legislation Amendment (Penalty Notice Offences) Bill 2002

Act No , 2002

An Act to amend the *Criminal Procedure Act 1986* with respect to the issue of penalty notices; to amend the *Crimes Act 1900* to confer powers on police officers relating to the taking of finger-prints and palm-prints; and for other purposes.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [2] commences on the commencement of Schedule 1 [132] to the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* or on the commencement of Schedule 1 [1] to this Act, whichever is the later.

3 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 1.

4 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 2.

5 Other amendments

Each Act and Regulation specified in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Amendment of Criminal Procedure Act 1986

(Section 3)

[1] Part 8

Insert after Part 7:

Part 8 Penalty notice offences

160 Definitions

(1) In this Part:

penalty notice offence means an offence prescribed by the regulations under this Part as a penalty notice offence.

senior police officer means:

- (a) a Local Area Commander of Police, or
- (b) a Duty Officer for a police station, or
- (c) any other police officer of the rank of Inspector or above.

(2) Notes included in this Part are explanatory notes and do not form part of this Part.

161 Police may issue penalty notices for certain offences

A police officer may serve a penalty notice on a person if it appears to the officer that the person has committed a penalty notice offence.

Note. This Part does not require a police officer to serve a penalty notice rather than taking any other action (see section 170 (3)).

162 Penalty notices

(1) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this Part.

- (2) A penalty notice must be served personally.

163 Penalty notices may not be issued to children

- (1) A penalty notice may not be issued under this Part to a person who is under the age of 18 years.
- (2) If a penalty notice is issued under this Part to a person who is under the age of 18 years, the following provisions have effect:
- (a) The amount that was payable under the notice is not payable.
 - (b) Any amount that is paid under the notice is repayable to the person by whom it is paid.
 - (c) Further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.
- (3) Nothing in this section requires further proceedings to be taken in respect of an alleged offence if a penalty notice is issued to a person who is under the age of 18 years.

164 Penalty notice offences

- (1) The regulations may prescribe an offence under any Act or statutory rule made under an Act as a penalty notice offence for the purposes of penalty notices served by police officers under this Part.
- (2) Any such regulation may specify the offence or refer to the provision creating the offence.

165 Penalties

- (1) The regulations may:
- (a) prescribe the penalty payable for a penalty notice offence dealt with under this Part, and
 - (b) prescribe different penalties for different offences or classes of offences, and
 - (c) prescribe different penalties for the same penalty notice offence.

- (2) The amount of a penalty prescribed for a penalty notice offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

166 Effect of payment of penalty

- (1) If the amount of penalty prescribed for an alleged penalty notice offence is paid, no person is liable to any further proceedings for the alleged offence.
- (2) Payment of a penalty under this Part 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.
- (3) This section is subject to sections 163 and 168.

Note. The *Fines Act 1996* sets out the procedures if a person fails to pay a penalty under a penalty notice and for the annulment of resulting fine enforcement orders.

167 Limitation on exercise of penalty notice powers

This Part does not authorise a police officer to serve a penalty notice in relation to:

- (a) an industrial dispute, or
- (b) an apparently genuine demonstration or protest, or
- (c) a procession, or
- (d) an organised assembly.

168 Withdrawal of penalty notice

- (1) A senior police officer may withdraw a penalty notice issued by a police officer before the due date for payment under the notice under this Part.
- (2) A senior police officer must withdraw a penalty notice immediately if directed to do so by the Director of Public Prosecutions.
- (3) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section:
 - (a) The amount that was payable under the notice ceases to be payable.

- (b) Any amount that has been paid under the notice is repayable to the person by whom it was paid.
 - (c) Further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.
- (4) Nothing in this section requires further proceedings to be taken in respect of an alleged offence if a penalty notice is withdrawn.
- (5) For the purposes of section 39 of the *Fines Act 1996*, the appropriate officer is a senior police officer.

169 Powers relating to identity

- (1) A police officer who intends to issue a penalty notice, under this Part, to a person whose name or address is, or name and address are, unknown to the officer may request the person to state his or her name or address (or both).
- (2) A police officer may make a request under subsection (1) only if at the time of making the request the police officer:
- (a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and
 - (b) provides his or her name and place of duty, and
 - (c) informs the person of the reason for the request, and
 - (d) warns the person that failure to comply with the request may be an offence.
- (3) A person must not, without reasonable excuse, (proof of which lies on the person), in response to a request made by a police officer in accordance with subsections (1) and (2):
- (a) fail or refuse to comply with the request, or
 - (b) state a name that is false in a material particular, or
 - (c) state an address other than the full and correct address of his or her residence.

Maximum penalty: 2 penalty units.

- (4) A police officer may request a person to provide proof of the person's name and address.

- (5) Nothing in this section limits any functions that police officers may have apart from this section.

170 Effect of Part on other procedures and powers

- (1) This Part (except as provided by section 166) does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (2) Nothing in this Part limits any functions that police officers have apart from this Part (including the power to issue a penalty notice under any other Act or statutory rule).
- (3) Nothing in this Part requires a police officer to issue a penalty notice instead of taking any other proceeding or action a police officer may take in respect of an alleged offence.

171 Limited implementation of penalty notice provisions

- (1) The regulations may limit the application of the provisions of this Part to offences dealt with in a specified part or parts of New South Wales for a specified period or periods.
- (2) If a regulation is made under this section, the application of the Part is limited as specified by the regulation even though the specified provisions of this Part have commenced.

172 Monitoring of Part by Ombudsman

- (1) For the period of 12 months after the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of this Part and the regulations made under this Part and sections 353AC and 353AE (in so far as it relates to the exercise of powers under section 353AC) of the *Crimes Act 1900*.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority's participation in the operation of the provisions referred to in subsection (1).

- (3) The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report on the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and the Commissioner of Police.
- (4) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of the provisions referred to in subsection (1).
- (5) The Minister is to lay (or cause to be laid) a copy of the report furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (6) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (7) The report:
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

[2] Part 8 (as inserted by this Act)

Renumber as the last Part in Chapter 7 with appropriate Part and section numbering.

[3] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Crimes Legislation Amendment (Penalty Notice Offences)
Act 2002*

Schedule 2 Amendment of Crimes Act 1900

(Section 4)

Sections 353AC, 353AD and 353AE

Insert after section 353AB:

353AC Taking of finger-prints and palm-prints from persons issued penalty notices

- (1) A police officer who serves a penalty notice on a person under the *Criminal Procedure Act 1986* may require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.
- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.
- (3) The Commissioner of Police must ensure that a finger-print or palm-print taken under this section is destroyed on payment of the penalty under the penalty notice.

353AD Taking of finger-prints and palm-prints from persons required to attend court

- (1) A police officer who serves a court attendance notice personally on a person who is not in lawful custody for an offence may require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.
- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.

353AE Safeguards for exercise of powers to obtain finger-prints and palm-prints without arrest

- (1) A police officer must, at the time of exercising a power to require finger-prints or palm-prints, or both, to be taken under section 353AC or 353AD, provide the person subject to the exercise of the power with the following:
 - (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
 - (b) the name of the police officer and his or her place of duty,
 - (c) the reason for the exercise of the power,
 - (d) a warning that, if the person fails to comply with the requirement, the person may be arrested for the offence concerned and that, while in custody, the person's finger-prints and palm-prints may be taken without the person's consent.
- (2) If 2 or more police officers are exercising a power, only one officer present is required to comply with this section.
- (3) However, if a person asks another police officer present for information as to the name of the police officer and his or her place of duty, the police officer must give to the person the information requested.

Schedule 3 Other amendments

(Section 5)

3.1 Crimes (Forensic Procedures) Act 2000 No 59

Section 112 Relationship with certain provisions of Crimes Act 1900

Insert at the end of section 112 (c):

, or

- (d) from a person in accordance with section 353AC or 353AD of the *Crimes Act 1900*,

3.2 Criminal Procedure Regulation 2000

[1] Part 3A

Insert after Part 3:

Part 3A Penalty notice offences

11A Penalty notice offences

- (1) For the purposes of section 164 of the Act, each offence created by a provision specified in Column 1 of Schedule 2 is prescribed as a penalty notice offence.
- (2) For the purposes of section 165 of the Act, the prescribed penalty for any such offence is the amount specified in Column 2 of Schedule 2 opposite the offence.

11B Limitation of areas in which penalty notices may be issued

The provisions of the Act relating to penalty notice offences and penalty notices are to apply, for the period referred to in clause 11C, only to offences dealt with in that period in the

areas of New South Wales covered by the following police Local Area Commands:

- (a) Albury,
- (b) Bankstown,
- (c) Blacktown,
- (d) Brisbane Waters,
- (e) City Central,
- (f) Lake Illawarra,
- (g) Lake Macquarie,
- (h) Miranda,
- (i) Parramatta,
- (j) Penrith,
- (k) The Rocks,
- (l) Tuggerah Lakes.

11C Expiry of Part and Schedule 2

This Part and Schedule 2 expire at the end of the period of 12 months commencing on the day on which this clause commences.

[2] Schedule 2

Insert after Schedule 1:

Schedule 2 Penalty notice offences

(Clause 11A)

Column 1	Column 2
Offence	Amount of penalty
Crimes Act 1900	
section 61	\$400
section 117, where the value of the property or amount does not exceed \$300	\$300

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Schedule 3 Other amendments

Column 1	Column 2
Offence	Amount of penalty
section 527A	\$300
section 527C	\$350
Summary Offences Act 1988	
section 4 (1)	\$200
section 4A (1)	\$150
section 6	\$200
section 6A	\$250

3.3 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Criminal Procedure Act 1986, section 161