

JUSTICES (COURTESY LETTERS) AMENDMENT BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Justices Act 1902:

- (a) to change the requirements of section 100J of the Act as to the contents of a courtesy letter so that the Act reflects the practice that has developed with respect to courtesy letters; and
- (b) to create a presumption that courtesy letters sent by post are received 7 days after they are posted, but at the same time leaving it open to a person to establish, if it is the case, that a courtesy letter took longer than 7 days to reach him or her; and
- (c) to make consequential amendments to some provisions; and
- (d) to validate courtesy letters previously issued (and action subsequently taken in respect of them) to remove any doubt as to their validity.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on the date of assent.

Clause 3 gives effect to Schedule 1.

Schedule 1 makes the amendments to the Justices Act 1902 described above.

Background

The issue of courtesy letters under section 100J of the Justices Act 1902 forms one step in the penalty notice enforcement scheme. Penalty notices are issued for a number of minor offences created under various Acts, including the Traffic Act 1909, the National Parks and Wildlife Act 1974 and the Local Government Act 1993. The person to whom the penalty notice is directed (the defendant) has the option of paying the amount shown on the notice, electing to have the matter dealt with by a court or (in some cases) nominating the person who is actually liable for the alleged offence. If the

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defendant fails to take any of the options, a courtesy letter is issued. This acts as a reminder to the defendant that the penalty is still outstanding. The defendant is again given the opportunity to pay the amount, elect to go to court or nominate the actual offender.

If the defendant does not take any action on receiving the courtesy letter, the prosecuting authority can then enforce the penalty notice. Depending on the particular offence alleged, enforcement action may be by referral of the matter to the Roads and Traffic Authority for licence or registration cancellation or by referral to an authorised justice for the issue of an enforcement order. The issue of the courtesy letter is a prerequisite to further enforcement action being taken.

Doubts have been expressed as to whether the form of courtesy letter currently in use complies in every respect with section 100J and what the effect of any non-compliance might be. For example, the letter does not contain a warning that, if the defendant fails to pay the outstanding amount, further action may be taken to enforce the penalty notice. The letter does not contain the name and address of the person to whom the court election notice should be sent. The letter does not state that the person receiving it has 21 days from the date of service of the letter in which to pay the penalty.

Amendments

Schedule 1 (1) (a) substitutes paragraphs (a) and (b) of section 100J (1) of the Justices Act 1902.

At present, under paragraph (a) and subsection (2), a person has a further period of 21 days after the date of service of the courtesy letter in which to pay the amount of the penalty. This is replaced with a provision to the effect that a person has until a “**due date**” specified in the courtesy letter (which must not be less than 21 days after the courtesy letter is served on the person) to make the payment.

At present, under paragraph (b), a courtesy letter is required to state that, in default of payment, the person may be dealt with under Division 2 of Part 4B of the Justices Act 1902. This is to be replaced with a statement that, if payment is not made by the due date, further enforcement action will be taken against the person, which could include the issue of an enforcement order for the payment of the penalty and additional costs.

Schedule 1 (1) (b) and (c) make consequential amendments.

Schedule 1 (1) (d) adds new subsections (7) and (8) to section 100J. Proposed subsection (7) makes it clear that the regulations may, but need not, prescribe the form of a courtesy letter. Proposed subsection (8) makes it clear that the validity of a courtesy letter is not affected by the inclusion in it of additional information and directions for the guidance of the person on whom it is served.

Schedule 1 (2) inserts a proposed new section 100JA. This section creates a presumption that a courtesy letter that is posted to a person is served on the person 7 days after the letter is posted. This will enable the insertion in a courtesy letter as the “due date” of a date that is not less than 28 days after the letter is posted. This accords more closely with current practice. The presumption created by the section is rebuttable. If a person on whom a courtesy letter is served later than 7 days after it is posted is able to prove the later service, the “due date” is postponed by operation of the proposed section until 21 days after the courtesy letter was actually served.

Schedule 1 (3) and (4) make consequential amendments.

Validation

Schedule 1 (5) amends the Second Schedule—Savings transitional and other provisions—to validate courtesy letters issued before the date of assent to the proposed Act and action subsequently taken in respect of them.

It also provides that the amendments made by the proposed Act (including the presumption as to service of a courtesy letter contained in proposed section 100JA) do not apply to a courtesy letter that is posted before the date of commencement of the proposed Act.
