



New South Wales

## Fines Amendment Bill 2008

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Fines Act 1996*:

- (a) to make it clear that persons may pay an amount payable under a penalty notice (or penalty reminder notice) by part payments, so long as the full amount is paid within the time required by the notice concerned, and
  - (b) to provide that a person may elect to have a matter that is the subject of a penalty notice (or penalty reminder notice) dealt with by a court, even if the whole or part of the amount payable under such a notice has been paid, and
  - (c) to provide that a penalty reminder notice may be issued and a penalty notice enforcement order may be made even if the relevant penalty notice or penalty reminder notice (or both) was returned as being undelivered to its sender after being sent to the person at an address supplied by the person at the time of the offence concerned or current in the records of the Roads and Traffic Authority, and
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- (d) to clarify the manner in which a person served with a penalty reminder notice for a vehicle or vessel offence may name some other person as the person who was in charge of the vehicle or vessel concerned at the relevant time relating to the offence, and
- (e) to make amendments consequential on the merging of the Infringement Processing Bureau and the State Debt Recovery Office, and
- (f) to allow the State Debt Recovery Office and its staff to disclose information to certain tax and other officers, and
- (g) to make other miscellaneous amendments, and
- (h) to make law revision amendments and amendments of a savings and transitional nature.

The Bill also amends the *Criminal Procedure Act 1986* to make it clear that criminal proceedings relating to an offence for which a penalty notice was issued, the prosecutor of the offence may be represented and appear by a police prosecutor.

The Bill also makes a consequential amendment to the *Road Transport (Driver Licensing) Act 1998*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

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

**Clause 3** is a formal provision that gives effect to the amendments to the *Fines Act 1996* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Criminal Procedure Act 1986* and the *Road Transport (Driver Licensing) Act 1998* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after the proposed Act has commenced. Once the proposed Act has commenced it will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendment of Fines Act 1996

### Amendments relating to part payment of penalty amounts

**Schedule 1 [2] and [8]** insert proposed sections 23 (1A) and 33 (2) into the *Fines Act 1996* (*the Principal Act*) to give effect to the object set out in paragraph (a) of the Overview above. The proposed provisions provide that a person may pay an amount payable under a penalty notice or a penalty reminder notice by part payments. However, the full amount payable is to be paid within the time required by the notice.

**Schedule 1 [3], [5] and [6] and Schedule 2.2** make consequential amendments.

### **Amendments relating to court election even if penalty amount has been paid**

**Schedule 1 [4], [10] and [11]** insert proposed section 23A into, and amend section 36 of, the Principal Act to provide that a person may elect to have a matter that is the subject of a penalty notice or penalty reminder notice dealt with by a court, even if the whole or part of the amount payable under such a notice has been paid. Such an election must be made not later than 90 days after the penalty notice was served. Proposed sections 23A (3) and 36 (5) deal with the consequences of making such an election after any such penalty amount has been paid.

### **Amendments relating to certain notices sent to recently reported address and returned to sender**

Sections 25 and 26 of the Principal Act provide that a penalty reminder notice may be issued and served on a person if a penalty notice was served on the person and it appears that the amount payable under the penalty notice has not been paid within the time required by the notice. Section 42 (1) of the Principal Act provides that a penalty notice enforcement order may be made only if a penalty notice and a penalty reminder notice have been served on the person.

**Schedule 1 [31]** inserts proposed section 126A into the Principal Act to provide that:

- (a) despite sections 25 and 26, a penalty reminder notice may be issued to and served on a person even if the penalty notice to which it relates was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the appropriate officer concerned has received some other evidence that the penalty notice was not served on the person, and
- (b) despite section 42 (1), a penalty notice enforcement order may be made in relation to an offence even if the penalty notice or a penalty reminder notice (or both) in relation to the offence was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the State Debt Recovery Office has received some other evidence that the penalty notice was not served on the person.

A **recently reported address**, in relation to a penalty notice or penalty reminder notice sent to a person, is defined in the proposed section to mean:

- (a) if, at the time the offence concerned is alleged to have been committed:
  - (i) an address was duly supplied by the person to an appropriate officer in response to a request for that address, and
  - (ii) the person had a legal obligation to supply the address to that officer, unless paragraph (b) applies—the address so supplied, or
- (b) if, after an address was supplied to an appropriate officer in accordance with paragraph (a), the records of the Roads and Traffic Authority in relation to a current driver licence or vehicle registration were altered to show a different address for the person—that address, or

- (c) in any other case—an address shown in the records of the Roads and Traffic Authority in relation to a current driver licence or vehicle registration as the address of the person.

**Schedule 1 [21]** inserts proposed section 49 (2) (a1) into the Principal Act to provide that the State Debt Recovery Office must grant annulment of a penalty notice enforcement order if satisfied that the penalty reminder notice, or both the penalty notice and the penalty reminder notice, in relation to a particular offence were returned as being undelivered to its sender after being sent to the person at the person's recently reported address and notice of the enforcement order was served on the person at a different address.

**Schedule 1 [22]** inserts proposed section 49 (8) into the Principal Act to make it clear that the State Debt Recovery Office may still grant an application for annulment (and annul the penalty notice enforcement order) on the ground that the person was not aware that a penalty notice had been issued until the enforcement order was served even if proposed section 126A permitted the issue and service of a penalty reminder notice in relation to a particular offence referred to in the enforcement order or permitted the making of the penalty notice enforcement order (or both).

### **Amendments relating to method of naming other person in charge of vehicle or vessel at time offence occurred**

Section 38 of the Principal Act provides that a person on whom a penalty reminder notice is served in relation to a vehicle or vessel offence is not liable to make any payment under the penalty notice if the person on or before the due date specified in the penalty reminder notice supplies by statutory declaration the name and address of some other person who was in charge of the vehicle or vessel concerned at all relevant times relating to the offence. It is an offence under section 25 of the *Oaths Act 1900* to wilfully and corruptly make and subscribe a statutory declaration, knowing it to be untrue in any material particular. The offence carries a maximum penalty of imprisonment for 5 years.

**Schedule 1 [12] and [13]** amend section 38 of the Principal Act to provide that such a person is to give the name and address of the person in charge of a vehicle or vessel in a notice that:

- (a) is verified by statutory declaration, and
- (b) is given to the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the penalty reminder notice).

**Schedule 1 [16]** inserts proposed section 38 (3A) and (3B) into the Principal Act. Proposed section 38 (3A) makes it an offence for a person, in such a notice, to make a statement or provide information knowing that it is false or misleading in a material particular. The offence is to carry a maximum penalty of 50 penalty units (currently \$5,500). Proposed section 38 (3B) makes it clear that if the same facts establish an offence under section 38 and an offence under the *Oaths Act 1900*, the person is not liable to be convicted of both offences.

**Schedule 1 [7], [14], [15] and [17]** make consequential amendments.

### **Amendments consequent on the merger of the State Debt Recovery Office and the Infringement Processing Bureau**

The following proposed amendments relating to the administration and execution of the Principal Act are made as a consequence of the merger of the State Debt Recovery Office and the Infringement Processing Bureau.

**Schedule 1 [18]** replaces section 41 of the Principal Act to make it clear that the State Debt Recovery Office may, on application by an appropriate officer for a penalty notice or its own initiative, make a penalty notice enforcement order. **Schedule 1 [19], [24] and [25]** make consequential amendments.

**Schedule 1 [26]** inserts proposed section 100 (4A) into the Principal Act to provide that an order under section 100 allowing further time to pay a fine may be amended or revoked by a further order made on the application of the person liable to pay the fine or on the State Debt Recovery Office's own initiative.

**Schedule 1 [27]** clarifies the functions of the State Debt Recovery Office with respect to the types of arrangements that it may enter into with persons who issue penalty notices, or on whose behalf penalty notices are issued, regarding such penalty notices.

### **Amendment relating to delegations**

**Schedule 1 [28]** inserts proposed section 116A into the Principal Act to provide that the State Debt Recovery Office may delegate the exercise of certain of its functions under that Act.

### **Amendments relating to disclosure of certain information to tax and other officers**

Section 117A of the Principal Act sets out the circumstances in which the State Debt Recovery Office, the Director of the Office, a member of the staff of the Office and other persons engaged in the administration of that Act may disclose personal information obtained in relation to a person in the administration or execution of that Act.

**Schedule 1 [29]** inserts proposed section 117A (1) (a1) and (a2) to provide that such information may also be disclosed to:

- (a) a tax officer for the purposes of the administration or execution of a taxation law, and
- (b) a person engaged in the administration or execution of the following laws for the purposes of the administration or execution of those laws:
  - (i) the *First Home Owner Grant Act 2000* or a corresponding law of another State or a Territory,
  - (ii) the *Unclaimed Money Act 1995*.

**Schedule 1 [30]** inserts proposed section 117A (3A) into the Principal Act to provide that a tax officer who has obtained personal information under proposed section 117A (1) (a1) may disclose that information, in accordance with the *Taxation Administration Act 1996*, as if that information had been obtained under or in relation to the administration of a taxation law.

### **Miscellaneous amendments**

**Schedule 1 [1], [9], [20] and [23]** make law revision amendments.

**Schedule 1 [32]** makes an amendment to enable regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

## **Schedule 2 Amendment of other Acts**

### **Amendment in relation to police prosecutors**

**Schedule 2.1** inserts proposed section 36A into the *Criminal Procedure Act 1986*. The proposed section provides that in any criminal proceedings relating to an offence for which a penalty notice was issued, the prosecutor of the offence may be represented and appear by a police prosecutor. The proposed section also makes it clear that nothing in the section:

- (a) requires a police prosecutor to represent or appear for any person, or
- (b) prevents any person from appearing personally, or being represented and appearing by an Australian legal practitioner or other person empowered by an Act or other law to appear for the person, in any proceedings.

### **Consequential amendment of Road Transport (Driver Licensing) Act 1998**

**Schedule 2.2** makes a consequential amendment to section 14 of the *Road Transport (Driver Licensing) Act 1998*. The amendment is consequent on the amendments made by **Schedule 1 [2] and [8]** relating to part payments.