

[Act 2002 No 46]



New South Wales

Crimes Legislation Amendment (Penalty Notice Offences) Bill 2002

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to enable police officers to issue penalty notices for certain offences for a trial period, and
- (b) to enable police officers to require persons who are to be issued with penalty notices under the new provisions while in force to disclose their identity, and
- (c) to confer on police officers power to take finger-prints and palm-prints from offenders when serving penalty notices and court attendance notices, and
- (d) to make other consequential amendments.

* Amended in committee—see table at end of volume.

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 a day or days to be appointed by proclamation, other than an amendment consequential on the commencement of the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*. That amendment will commence when the last of the relevant amendments commence.

Clause 3 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments set out in Schedule 3.

Schedule 1 Amendment of Criminal Procedure Act 1986

Schedule 1 [1] amends the *Criminal Procedure Act 1986* to insert proposed Part 8. Currently, police officers may issue penalty notices for offences under various Acts under which the power is conferred for the purposes of that Act. The proposed Part enables police officers to issue penalty notices for offences under any Act or regulation, if those offences are prescribed for the purposes of the proposed Part. Schedule 3 of the proposed Act prescribes offences for those purposes.

Proposed section 160 defines expressions used in the proposed Part.

Proposed section 161 enables police officers to issue penalty notices for penalty notice offences.

Proposed section 162 describes a penalty notice as a notice to the effect that, if the person served does not wish to have the matter concerned determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed for the offence if dealt with by way of penalty notice. A penalty notice must be served personally.

Proposed section 163 prohibits penalty notices under the proposed Part from being issued to persons under the age of 18 years and provides that, if a notice is issued to a person under 18, no amount is to be payable.

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Proposed section 164 enables regulations to be made prescribing offences as penalty notice offences.

Proposed section 165 enables regulations to be made prescribing the penalties for penalty notice offences. Any such penalty is not to exceed the maximum amount of penalty that may be imposed by a court for the offence concerned.

Proposed section 166 provides that, if the amount of penalty for a penalty notice offence is paid, no person is liable for any further proceedings for the alleged offence. Payment of a penalty is not to be taken 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.

Proposed section 167 prevents a police officer from serving a penalty notice under the proposed Part in relation to an industrial dispute, an apparently genuine demonstration or protest, a procession or an organised assembly.

Proposed section 168 enables a senior police officer to withdraw a penalty notice, with the effect that any amount payable under the notice is no longer payable and that further proceedings may be taken as if the penalty notice was never issued. However, further proceedings are not required to be taken.

Proposed section 169 enables a police officer to request a person to whom the police officer intends to issue a penalty notice under the proposed Part to state his or her name or address (or both). At the time of making a request, the police officer must provide the person with certain information, including a warning that failure to comply may constitute an offence. It will be an offence, without reasonable excuse, to fail or refuse to comply, to state a name that is false in a material particular or to state an address other than the full and correct address. A police officer may also request the person to provide proof of his or her name and address.

Proposed section 170 makes it clear that the proposed Part does not affect the operation of the *Criminal Procedure Act 1986* or any other provisions of other Acts relating to proceedings for offences or any other functions of police officers or require a police officer to issue a penalty notice instead of taking any other action.

Proposed section 171 enables regulations to be made limiting the areas within this State in which the proposed Part will apply.

Proposed section 172 provides for the operation of the proposed Part, and other provisions relating to taking finger-prints and palm-prints when issuing penalty notices, to be monitored and reported on by the Ombudsman.

Schedule 1 [2] makes an amendment consequential on the commencement of the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act.

Schedule 2 Amendment of Crimes Act 1900

Schedule 2 inserts proposed sections 353AC, 353AD and 353AE.

Proposed section 353AC enables a police officer who serves a penalty notice on a person under the *Criminal Procedure Act 1986* to require the person to have his or her finger-prints or palm-prints, or both, taken and to take those finger-prints and palm-prints. A requirement may not be made of a person who is under the age of 18 years and the finger-prints or palm-prints are to be destroyed on payment of the penalty under the penalty notice.

Proposed section 353AD enables a police officer who serves a court attendance notice personally on a person who is not in lawful custody for an offence to require the person to have his or her finger-prints or palm-prints, or both, taken and to take those finger-prints and palm-prints. A requirement may not be made of a person who is under the age of 18 years.

Proposed section 353AE requires a police officer exercising a power under proposed section 353AC or 353AD to provide evidence of his or her office and other details, as well as the reason for the exercise of the power and a warning as to the consequences of failure to comply.

Schedule 3 Other amendments

Schedule 3.1 makes a consequential amendment to the *Crimes (Forensic Procedures) Act 2000*.

Schedule 3.2 amends the *Criminal Procedure Regulation 2000* to prescribe the offences for which police officers may issue penalty notices and the penalties that may be imposed under the notices. Offences prescribed include the following offences:

- (a) offences under the *Crimes Act 1900*—common assault, larceny (up to \$500), obtaining money or a valuable thing or benefit by false representations and having stolen or unlawfully obtained things in custody,

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- (b) offences under the *Summary Offences Act 1988*—offensive conduct or offensive language in or near a public place or school, obstructing traffic in a public place and entering a vehicle or boat in a public place without the owner's consent.

The offences will be prescribed for a trial period of 12 months.

The areas in which the penalty notices may be issued are also specified.

Schedule 3.3 makes a consequential amendment to the *Fines Act 1996* to enable the enforcement of penalty notices issued by police officers under the proposed Part 8 of the *Criminal Procedure Act 1986*.