

JUSTICES (PENALTY DEFAULTS) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Motor Traffic (Penalty Defaults) Amendment Bill 1987.

The object of this Bill is to amend the Justices Act 1902 to allow for the enforcement, otherwise than by imprisonment, of penalties imposed by an infringement notice or by a Local Court in relation to certain offences. The offences concerned are mainly driving or traffic offences.

Enforcement of penalties for these offences will at first instance be attempted by the Commissioner for Motor Transport under new powers vested in the Commissioner by the proposed Motor Traffic (Penalty Defaults) Amendment Act 1987 and the proposed Transport (Penalty Defaults) Amendment Act 1987.

Provision for enforcement by imprisonment is, however, retained in the Justices Act for those cases in which the Commissioner's enforcement procedures (involving cancellation of drivers' or riders' licences and vehicle registrations) cannot be brought to bear on a particular defaulter.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 January 1988.

Clause 3 gives effect to Schedule 1 which amends the Principal Act.

Schedule 1 (1) amends section 82 (2) of the Principal Act so that a court imposing a fine on a person convicted of an offence to which the Commissioner for Motor Transport's enforcement procedures apply need not, in the conviction, specify a period of imprisonment to be served by the defendant in default of payment of the fine and any costs.

Schedule 1 (2) amends section 87 of the Principal Act as a consequence of the amendment made by Schedule 1 (1).

Justices (Penalty Defaults) Amendment 1987

Schedule 1 (3) inserts a new section 87A into the Principal Act. It provides for the issue of a warrant of commitment to prison for penalty defaulters in the same way as section 87 of the Principal Act, except that the period of imprisonment is to be specified in the warrant (since it will not, as with offences to which section 87 applies, have been specified in the conviction). It is intended that the warrant under the new section will be issued only where recourse cannot be had to the enforcement procedures available to the Commissioner for Motor Transport.

Schedule 1 (4) inserts a new Division 4 into Part IVB of the Principal Act which makes provision for due process of any valid complaint by an alleged offender that he or she had no reasonable opportunity of a proper hearing in relation to the alleged offence. The new provisions may be explained as follows:

Section 100Y allows a person whose licence, or the registration of whose vehicle, has been cancelled under the Commissioner for Motor Transport's new cancellation powers to approach a Local Court.

Section 100Z allows the Minister to refer to a Local Court any offence that resulted in cancellation of a licence or vehicle registration, if the Minister is of the opinion that some question or doubt has arisen in relation to liability in respect of the offence.

Section 100ZA allows the Clerk of the Local Court to deal with applications under section 100Y and references from the Minister under section 100Z. If satisfied that there are proper grounds for doing so, the Clerk will require the Commissioner of Police to send particulars amounting to an information in relation to the offence concerned.

Section 100ZB applies the provisions of section 100T of the Principal Act to afford a right of appeal against any unfavourable decision of the Clerk of a Court under section 100ZA. The appeal is to a Justice at the Court.

Section 100ZC applies the provisions of section 100TA of the Principal Act to allow postal service of notices for the purposes of the new provisions.

Section 100ZD enables a statement of particulars sent under section 100ZA to be regarded as an information laid so that proceedings may be taken in a Local Court for an offence which has been thought proper, under section 100ZA or 100ZB, to be brought before the Local Court.

Section 100ZE provides for restoration of a cancelled licence or registration, pending a court hearing of the offence that resulted in the cancellation.

Section 100ZF allows a number of offences alleged to have been committed by the same person to be dealt with under the new Division at the same time.

Section 100ZG allows a penalty to be imposed by a Court hearing proceedings under the new Division in the event that the alleged offender fails to appear.
