

OFFENCE NOTICES LEGISLATION AMENDMENT BILL 1993

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to:

- . insert in the *Justices Act 1886* a new Part which will be the central legislative framework for all infringement notice offences ('on-the-spot' fines);
- . provide that any proposal to adopt the infringement notice system for particular offences will only be effected by regulations pursuant to the *Justices Act*; and
- . consolidate the new standard infringement notice provisions with the existing SETONS (Self-Enforcing Ticketable Offences Notice System) provisions.

Reasons for the Bill

A significant number of offences created in legislation are of a minor regulatory nature attracting a relatively insubstantial fine. It is often inconvenient and costly for both the alleged offender and law enforcement agencies to process such breaches formally through the Court by way of summons. Sometimes a more attractive process for dealing with such offences is through a system of 'on-the-spot' fines.

Perhaps the most commonly known example of offences that are processed in this manner are parking tickets and similar minor traffic offences. Currently, minor traffic offences are processed by the initial issuing of an infringement notice, payment of which is settled through SETONS (Self-Enforcing Ticketable Offences Notice System), established under the *Justices Act*. A person in receipt of an infringement notice can

elect, within the prescribed time, to finalise the matter by payment of the fine (and thus avoid the time and expense of a Court proceeding) or to challenge the ticket in Court. This election option ensures that an alleged offender retains the fundamental right to a full Court hearing if desired.

The administrative advantages of ‘on-the-spot’ fines raises attractive possibilities of adopting such an infringement notice procedure for other minor, regulatory offences outside the traffic area. However, such a system can potentially pose a serious risk to civil liberties if it is allowed to be adopted for more serious offences.

It has therefore become important to standardise the procedure and ensure that a sufficient number of checks and balances, in line with certain fundamental legislative principles, are applied to all ‘infringement notice’ schemes. For example, infringement notice offences in respect of vehicles necessarily entails an ‘owner onus’ responsibility. It is therefore important to provide a mechanism whereby the owner can denounce such responsibility when the vehicle has been stolen or lent to another person who was the driver at the time.

Another reason for the standardisation of infringement notice procedures is to ensure that control over the types of offences which will be processed by way of infringement notices is centralised and streamlined within one agency. It is appropriate for that to be the agency which shares responsibility for overseeing the fundamental legislative principles in the *Legislative Standards Act* with the Office of Parliamentary Counsel. It is also the logical choice being the same agency which administers SETONS.

Centralising standard infringement notice provisions will facilitate the development of general policies and guidelines so as to ensure that no unreasonable and unjustified compromise of civil liberties occurs in relation to more serious offences which, by their very nature, ought be fully prosecuted in the Courts.

The proposed Bill seeks to achieve these policy objectives by inserting new Part 4A into the *Justices Act 1886* setting out the legislative framework for all ‘infringement notice’ offences. New Part 4A makes no substantive changes to the operation of SETONS provisions contained within existing Part 4A but merely consolidates the ‘infringement notice’ provisions with the SETONS provisions so that they are logically contained within the same Part. Under new Part 4A, an infringement notice scheme can only be applied to specific types of offences that are prescribed by regulation under

the *Justices Act 1886*. This means that the agency which is responsible for the administration of the *Justices Act*, will have policy responsibility to determine whether any particular offence is of such a minor nature as to justifiably be processed by way of an ‘on-the-spot’ fine.

Estimated Cost of Implementation

It is not anticipated that additional costs will be incurred by standardising a process for creating infringement notice offences. The proposal may, however, present considerable cost-savings to government by facilitating ‘on-the-spot’ fines for minor offences rather than the costly method of prosecuting by way of summons in the Courts. This may also ease the administrative burden associated with court preparation by departmental law enforcement officers. Any initial costs in transferring to the SETONS system will be borne by sponsoring agencies within existing budgets.

Consultation

All relevant Departments have been consulted, as has the Litigation Reform Commission and the Clerk of the SETONS court. All parties support the Bill.

NOTES ON PROVISIONS

Part 1—Preliminary

Clause 1 declares the short title of the Act to be the *Offence Notices Legislation Amendment Act 1993*.

Clause 2 declares that all provisions, except Part 3, commence on a day fixed by proclamation.

Part 2—Justices Act Amendments

Clause 3 states that the *Justices Act 1886* is amended as set out in this Part.

Clause 4 amends the long title of the *Justices Act* as the existing long title no longer reflects accurately the nature and content of the Act.

Clause 5 replaces existing Part 4A of the *Justices Act* with a new Part 4A entitled “Infringement Notices”. New Part 4A consists of four separate Divisions comprising new sections 98B - 98X.

Division 1—Interpretation

New Section 98B is the definition section for new Part 4A. An “infringement notice offence” means an offence, prescribed by regulation, to be an offence to which Part 4A applies and “administering authority” for an infringement notice or infringement notice offence means the entity, prescribed by regulation, as the administering authority for the notice or offence. The following definitions should also be noted as they will set the parameters of defences to infringement notices in later provisions:

- . “illegal user declaration” for offences involving a vehicle, is a statutory declaration stating facts establishing that the vehicle was stolen or illegally taken at the time the alleged offence was committed;
- . “known user declaration” for offences involving a vehicle, is a statutory declaration stating that the owner was not in charge of the vehicle (or, if the owner is a corporation, that the vehicle was not being used for the corporation) at the time of the commission of the offence and stating the name of the person who was in charge of the vehicle at

that time;

. “sold vehicle declaration” for an offence involving a vehicle, is a statutory declaration stating that the alleged owner had sold or otherwise disposed of the vehicle before the offence was committed and stating the name and address of the person to whom it was sold or disposed and the date of such sale;

. “unknown user declaration” for offences involving a vehicle, is a statutory declaration stating that the owner was not in charge of the vehicle (or if the owner is a corporation, that the vehicle was not being used for the corporation) at the time the alleged offence was committed and that the declarant has not been able to ascertain who was in charge of the vehicle at the time as well as stating the nature of the inquiries made for the purpose of ascertaining who was in charge.

It should also be noted that “vehicle” includes a boat or anything declared by regulation to be a vehicle. “SETONS” is an acronym for the self-enforcing ticketable offence notice system.

Division 2—Service of Infringement Notices

New section 98C enables the service of infringement notices pursuant to Part 4A and sets out the type of information which must be included in such a notice. In particular, a notice must be identified by a specific number, specify the name, address and identifying particulars of the alleged offender and, if the alleged offence involved a vehicle, the identifying particulars of the vehicle. The notice must also state the nature of the alleged offence (including the identifying particulars of the alleged offence), the time and place of the alleged offence and the penalty for the alleged offence. Most importantly, the notice must also inform the alleged offender that he or she may pay the penalty within 28 days if they do not wish to have the matter dealt with in a court, specify the place where and the person to whom such payments can be made, and inform the alleged offender that the notice may be withdrawn before or after the penalty is paid. If the alleged offence involves a vehicle, the notice must generally describe the ‘owner onus’ responsibility imposed by new section 98E as well as the possible defences that are also referred to in that section.

New section 98D applies only to alleged offences involving a vehicle. For such offences, the notice may be served on the owner, the person

specified in a “known user declaration” or a person specified in a “sold vehicle declaration”. If served by post, the notice may be addressed to the last address of the owner in the register of vehicles (if the alleged offender is the owner) or to the address noted in the declarations if served on a person named in a “sold vehicle declaration” or a “known vehicle declaration”. The notice may be served by securely attaching the notice, addressed to the owner, on the vehicle and if served in this way is taken to have been served on the owner. Sub-clause (6) provides that a person, other than the owner or the person in charge of the vehicle, must not remove, deface or interfere with an infringement notice that is attached to a vehicle.

New section 98E declares the liability attaching to an infringement notice involving a vehicle. In effect, notices of this kind impose an “owner onus” responsibility (i.e. the owner is taken to have committed the offence) even though the actual offender may have been another person. However, if the actual offender is another person, the owner and the actual offender cannot both be held liable for the offence. Moreover, it is not to be assumed that the owner committed the offence if, within 28 days, he or she makes an “illegal user declaration”, a “known or unknown used declaration” or a “sold user declaration”. These terms are defined in section 98B.

New section 98F provides that the alleged offender cannot be prosecuted in a court for the alleged offence if the penalty is paid in accordance with the notice. This is the case even if multiple infringement notices have been served on the alleged offender for the alleged offence. In other words, a person cannot be held twice liable for one and the same offence. Sub-section 98F(4) states however, that the section is subject to section 98F which allows for the subsequent withdrawal of the infringement notice. By implication, if a notice is subsequently withdrawn in accordance with section 98F, a person may be prosecuted in a court.

New section 98G states the effect of an illegal user declaration. If the owner makes an illegal user declaration and the court is satisfied that the vehicle was stolen or illegally taken, the court must not find the owner liable for the offence.

New section 98H states the effect of a known user declaration. If the owner makes a known user declaration, section 98E applies as if the person named in the declaration as the person in charge of the vehicle at the relevant time was the owner; but a proceeding against the person named can only be commenced if that person has been served with a copy of the declaration.

In a proceeding against the user, the declaration is evidence that the person was in charge of the vehicle at the relevant time. In a proceeding against the owner, the court must not find the owner liable if it is satisfied that someone else was in charge of the vehicle at the relevant time.

New section 98I states the effect of a sold vehicle declaration. If the owner makes a sold vehicle declaration, section 98E applies as if the person named in the declaration as the person to whom the vehicle was sold or disposed was the owner of the vehicle from the time of the sale; but a proceeding against the buyer can only be commenced if that person has been served with a copy of the declaration. In such a proceeding against the buyer, the declaration is evidence that the person was the owner of the vehicle at the relevant time. In a proceeding against the person initially presumed to be the owner, a court must not hold that person liable if it is satisfied that he or she had sold or disposed of the vehicle before the relevant time.

New section 98J states the effect of an unknown user declaration. If the owner makes an unknown user declaration, the court must not find the owner liable for the offence if it is satisfied that the owner was not in charge of the vehicle at the relevant time (or if the owner is a corporation, that the vehicle was not being used for the purposes of the corporation at the relevant time) and that the inquiries that were made to find out the name and address of the person who was in charge of the vehicle at the relevant time were reasonable in the circumstances and carried out with due diligence.

New section 98K allows for certain evidentiary certificates to be issued in relation to:

- . infringement notices (that a specified infringement notice was served on a particular person; that the penalty was not paid; that an infringement notice has been withdrawn);
- . infringement notice offences (that the alleged offence involved a specified vehicle or animal); and
- . persons served with an infringement notice (that the person has not made an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration; that the person was the owner of the vehicle or animal at the relevant time; that a specified address is the latest recorded address of the owner of a registered vehicle).

Such certificates are taken to be evidence of the matters contained in them.

New section 98L provides that an administering authority may withdraw an infringement notice within 28 days of its issue regardless of whether or not the penalty has been paid. However, if the penalty has been paid the amount is repayable to the alleged offender. Sub-section 98L(3)(c) further provides that proceedings may nevertheless still be taken against any person, including the alleged offender, as if the notice had not been served. In other words, the withdrawal of the infringement notice does not prevent any other proceedings for the alleged offence.

The policy reasons for this provision requires explanation. The advantage of an 'on-the-spot' penalty for offenders is that such a fine does not constitute a criminal conviction and the amount of the penalty is usually significantly lower compared to the penalty for the same offence prosecuted by way of summons. Sometimes, the seriousness of a particular offence is not appreciated when the roadside ticket is issued but only becomes apparent at a later stage. For example, a police officer who writes a ticket for a driver who runs a red light at an intersection may wish to withdraw that ticket in the light of a subsequent report that five kilometres previously, the driver of the same registered vehicle was witnessed driving in such a reckless fashion that he or she hit a parked car.

The seriousness of such events in their entirety would justify the withdrawal of the ticket and prosecuting the driver for the more serious offence of dangerous driving.

New section 98M provides that the fact that an infringement notice could be issued against an alleged offender does not affect the starting or continuation of a court proceeding against the person or anyone else for the alleged offence. In other words, just because an offence may be processed by way of an infringement notice does not mean that such an offence must be processed in this way. It is still open for law enforcement agencies to choose to prosecute through the courts in appropriate cases and the fact that offences of that nature are prescribed infringement notice offences should not be taken to limit or otherwise affect the penalty that may be imposed by a court. Clearly however, a person cannot be held liable both for an infringement notice penalty and for a court prosecution for the same offence - section 98F(1) prevents a prosecution if an infringement notice has been issued and the penalty is paid.

Division 3—Enforcement of infringement notices by registration

New section 98N has the same effect of existing section 98D, providing for the service of a ‘reminder notice’ on a person who has received an infringement notice, and has neither paid the penalty nor made any one of the declarations in defence, and the infringement notice has not been withdrawn. The reminder must specify the infringement notice and the alleged offence and inform the alleged offender that, within the specified time (not less than 28 days), they may elect to have the matter dealt with by a court or choose to pay the amount specified in the reminder notice. The reminder notice must also inform the alleged offender that further costs may be incurred if no election is made. Further, a reminder notice must specify the place where and the manner in which payment can be made as well as contain any other prescribed information.

New section 98O corresponds with existing section 98E and provides for the enforcement procedure, by registering an enforcement notice with the SETONS clerk, when a reminder notice has not received a satisfactory response (i.e. payment of the penalty or an election for a court proceeding) within the specified time. The enforcement notice to the SETONS clerk must also contain the relevant information specified in subsections (2). If there is a legal limit on the time within which the alleged offence may be commenced, an enforcement notice must not be issued after that time.

On the issuing of an enforcement notice, the amount owing for the alleged offence escalates to the summation of the amount specified in the reminder notice plus the amount of the enforcement notice filing fee and an amount prescribed by regulation for the giving of the enforcement notice. Once an enforcement notice is given, a court proceeding for the alleged offence can only be commenced in accordance with Division 3.

New section 98P corresponds with existing section 98F and provides that, on registering an enforcement notice, the SETONS clerk must make an enforcement order stating that the alleged offender is to pay the outstanding fine to the SETONS clerk within the specified time (not less than 7 days after service), default of which will incur a prison sentence. (A formula is set out in subsection 98P(1) for calculating the length of the prison sentence.) An enforcement order is taken to be an order of the court prescribed by regulation and, for the purposes of the *Penalties and Sentences Act 1992* only, is taken to have been made after a conviction has been recorded. (This reference to the *Penalties and Sentences Act* is merely

necessary so that fine option orders may be available for infringement notice offences. The provision re-enacts similar amendments contained in the *Penalties and Sentences Legislation Amendment Act 1993*).

New section 98Q corresponds with existing section 98G, providing that a notice about the enforcement order must be served on the alleged offender by certified mail. The notice must inform the alleged offender that an enforcement order has been made and that, within the specified time, the amount must be paid or an election made to have the matter dealt with by a court and that, if neither payment nor an election for a court hearing is made, a warrant may be issued for the alleged offence.

New section 98R corresponds with existing section 98H and allows an alleged offender to apply to the SETONS clerk for an extension of time.

New section 98S corresponds with existing section 98I and enables a warrant of commitment or a warrant of execution to be issued against the person or against the person's property respectively when the penalty has not been paid or an election for a court proceeding has not been made.

New section 98T corresponds with existing section 98J and states that, if the penalty is paid or a warrant is executed under Division 3, the proceedings that may be brought and the penalties that may be imposed are limited to proceedings and penalties that could be brought as if the person had already been convicted of the offence. However, the making of an enforcement order does not constitute a conviction (and thus a person does not incur a criminal record). However, section 177 (remission of penalty) applies to an enforcement order in the same way as it applies to a conviction. Generally, payment of the penalty is not to be taken, for the purposes of any subsequent proceeding, as an admission of any events which gave rise to the issuing of the infringement notice.

New section 98U corresponds with existing section 98K and allows for fine option orders to be applied for in relation to enforcement orders.

New section 98V corresponds to existing section 98L and allows for alleged offenders to elect to have the matter determined by a court after an enforcement order has been served.

New section 98W corresponds with existing section 98M, setting out the procedure to be followed if the prosecuting authority determines to withdraw the matter. In such circumstances, any enforcement notice that has been issued ceases to have effect and any prosecution that has started is discontinued.

Division 4—Miscellaneous

New section 98X allows for the delegation and sub-delegation of the powers of an administering authority to another person.

Clause 6 replaces the heading to section 268.

Clause 7 inserts new sections 269 and 270. These transitional provisions will preserve the application of existing Part 4A to any existing use of the SETONS system that is contained in other statutes. This is necessary because from the date of commencement of the *Offence Notices Legislation Amendment Bill*, any future proposal for the adoption of the SETONS scheme can only be effected pursuant to the *Justices Act*. However, the transitional provisions will expire 1 year after the commencement of the *Offence Notices Legislation Amendment Bill*. This means that all current users of the SETONS scheme must convert to the *Justices Act* infringement notice system within 1 year. Eventually then, all ‘on-the-spot’ fines that are enforced through SETONS will come within the *Justices Act* provisions.

Part 3—Amendment of Motor Vehicles Safety Amendment Act 1993

Clause 8 provides that the *Motor Vehicles Safety Amendment Act 1993* is amended as set out in this Part.

Clause 9 clarifies the intended effect of the amendments made by the *Motor Vehicles Safety Amendment Act 1993* by omitting section 11.

Part 4—Amendment of the Traffic Act 1949

Clause 10 provides that the *Traffic Act 1949* is amended as set out in this Part.

Clause 11 amends section 44V of the *Traffic Act* by substituting “section 98D” for “section 98N”. This is merely a consequential amendment as existing section 98D now becomes section 98N of the *Justices Act*.

