

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT (GENERAL) (INFRINGEMENT NOTICES) AMENDMENT
BILL 2012**

EXPLANATORY STATEMENT

**Circulated by
Amanda Bresnan MLA**

Introduction

This explanatory statement relates to the Road Transport (General) (Infringement Notices) Amendment Bill 2012 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of changes

The Bill proposes to amend the *Road Transport (General) Act 1999* (the Act) so that the administering authority¹ may in certain circumstances allow:

- flexible payment options for traffic infringement penalties, and
- reinstatement of a person's drivers licence that was suspended for non-payment of fines.

The purpose of the amendments is to ensure that the ACT's system of traffic infringement administration can take into account the circumstances of disadvantaged and vulnerable people and the potentially devastating impact that fines and licence suspension can have on their lives. The changes proposed in the Bill are expected to result in more socially just outcomes, reduce the number of people who drive while their licence is suspended, and increase the number of people who engage with the fine payment system - ultimately increasing the amount of fines that are recovered.

The existing system

The current system of traffic infringement administration is inflexible and does not appropriately consider the circumstances of disadvantaged and vulnerable people in the ACT, such as people with low income, disabilities, drug addiction or homelessness. Its application can result in harsh and unjust outcomes.

Currently, a person who receives a traffic infringement notice has a prescribed amount of time to pay the infringement penalty.² If a person fails to pay a traffic infringement notice within the prescribed time the person's drivers licence is automatically suspended.³ It can only be reinstated when the fine is paid in full (or if the person successfully contests liability).

¹ The administering authority is either ACT Police or the Road Transport Authority, depending on the offence.

² 28 days, plus a further 28 days following a reminder notice, plus 10 days from the date of a suspension notice.

³ Section 44, *Road Transport (General) Act 1999*.

For a person who cannot pay the fine, there are limited options available in the period before their licence is suspended for non-payment:

- They may go to court to challenge liability for the offence, or to plead guilty. In this case, the court may order flexible payment options. The requirement to go to court can be expensive, difficult, and risks the imposition of a higher penalty. This is a particular disincentive for people who already have limited means.
- They can request the administering authority to withdraw an infringement notice.⁴ However, this also results in withdrawal of the fine as well as any demerit points associated with the offence. It would usually apply to individuals who make representations based on a good driving record,⁵ not to disadvantaged individuals who may have difficulties paying the fine on time.
- A person can request the administering authority to grant up to 6 months additional time to pay the notice.⁶

In addition to the limited payment options available before licence suspension, the system is too rigid once a person's licence is suspended. Following suspension, the person cannot apply for an extension of time to pay, for instalments, for a restricted licence, or to have their licence reinstated while they pay off the fine. The time to dispute the fine in Court and to seek a Court ordered instalment plan will have passed. The person cannot regain their licence until the fine is paid in full.

For low income or other disadvantaged people, once their licence is fine-suspended, it can be very difficult to get it back. The situation is compounded by the fact that people often rely on their drivers licence to access employment, income, support and housing. The consequences of the fine system can cause a spiral of disadvantage, resulting in lost employment and even resulting in homelessness. Numerous examples have been documented by ACT community organisations.

In the ACT, the circumstances of some disadvantaged people mean they are not able to pay traffic infringements within the time limit, or even within a much longer time. In some cases, a person's circumstances mean that they are not aware of or do not respond to a traffic infringement notice until the time period has already expired. This is most likely to be people who already suffer a disadvantage such as illness, disability or addiction.

Other jurisdictions in Australia already permit the administering authority to afford flexibility for infringement payments, as well as to reinstate fine-suspended licences while the payments are being made.⁷

⁴ Section 30, *Road Transport (General) Act 1999*.

⁵ Explanatory Memorandum, *Road Transport (General) Bill 1999*.

⁶ Section 28 *Road Transport (General) Act 1999*.

⁷ For examples, see the State Debt Recovery Office in NSW, or Fines Victoria.

Proposed changes

In summary, the changes proposed in the Bill would allow:

1. *Payment of fines by instalments*: The Bill would allow people to apply to the administering authority to pay a traffic infringement fine in instalments (over a period that can be longer than 6 months). A person could also apply for this option after their licence has been fine-suspended.
2. *Payment of fines by community work or social development program*: The Bill would allow people in financial hardship or with special circumstances to apply to the authority to pay off a traffic fine by undertaking community work or a social development program. A person could also apply for this option after their licence has been fine-suspended.
3. *Waiver of fines in special circumstances*: The Bill would allow people to apply to the authority to have a traffic fine waived. This will only be granted where the applicant has special circumstances (such as disability or homelessness), cannot pay the fine and is unlikely to ever be able to pay the fine, and is not suitable to undertake community work or a social development program.
4. *Option to have licence reinstated*: The Bill gives the Road Transport Authority the power to re-instate a person's fine-suspended licence. This is permitted where a person has been granted one of the new flexible payment options (instalments or community work) and is complying with the arrangement. If the applicant does not comply with the requirements of this payment undertaking, the authority may reinstate the suspension.
5. *Option to apply for review of decisions*: The Bill will allow applicants who were refused one of the above options to apply for review of the decision to the ACT Civil and Administrative Tribunal.

Human rights, delegation, and financial issues

The new options for flexible payment require an applicant to provide details of their financial circumstances and other 'special circumstances' to the administering authority. This could be considered a limitation on the right to privacy under the Human Rights Act 2004.

It is considered that the requirement to provide this information is a reasonable and proportionate limitation on the right. The only information required is information relevant to the administering authority's decision to grant or not to grant the applicant an option to make a flexible payment. It only applies to applicants who choose to apply for special consideration based on their circumstances. The information is required in the context of providing a benefit to the applicant – that is, allowing them to make payments in a way that takes account of their circumstances.

The Bill also affords discretion to the authority that administers traffic infringements, allowing them to decide whether applicants are eligible for flexible payment options or waiver. It is considered that these discretions are sufficiently defined with reference to the circumstances relevant to the decision in each case. It should be noted that the Bill makes each of these discretionary decisions reviewable decisions in the ACT Civil and Administrative Tribunal.

It is also noted that changes in the Bill could be perceived as a form of discrimination, given they afford the benefits of flexible payment options and licence reinstatement to a certain class of people: those who are on low incomes or are socially disadvantaged. Providing these benefits is intended to address an inequality in the system of traffic fine administration. The changes recognise that assisting people who are currently disadvantaged by the system will better protect human rights more generally.

The Bill has no significant financial impacts, but may result in minor administrative costs associated with managing the new payment options.

Notes on Clauses

Clause 1 - Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 - Commencement

This clause explains that the proposed Act will commence on a day fixed by the Minister by written notice. If the Minister does not fix a commencement day the Act will automatically commence 6 months from the Act's notification day. This period will allow time to make administrative arrangements to allow the flexible payment options and to approve community work and social development programs.

Clause 3 - Legislation Amended

This clause is a formal provision to identify that the Bill amends the *Road Transport (General) Act 1999*, the *Road Transport (Driver Licensing) Act 1999* and the *Road Transport (General) Regulation 2000*.

Clause 4 - Additional information in infringement notices - New section 26 (1) (ba)

The new section ensures that infringement notices will contain information about the options for paying by instalments/discharging/waiving an infringement notice penalty.

Clause 5 - New section 26 (2) (ba)

The new section ensures that infringement notices will contain information about how to apply to pay by instalments/discharge/waive an infringement notice penalty.

Clause 6 - New sections 28A to 28D

New Section 28A - Payment of penalty by instalments

New section 28A allows a person served with an infringement notice or reminder notice to apply to the administering authority for payment of all or part of the penalty by instalments.

While the existing option for an extension of time is limited to 6 months (s28), section 28A allows the payment of instalments over a time that may be longer than six months. This recognises that some people may have very limited means and may need a longer time to pay.

The intention is to establish an administrative scheme for instalment plans. This will save people having to access the courts to seek a flexible payment option, which saves court time and reduces the risk of applicants incurring additional costs. It will allow people the ability to pay fines off over time when otherwise they would struggle to pay them without facing significant hardship.

An applicant with a Centrelink Health Care Card or Pensioner Concession Card, or a Department of Veterans' Affairs Pensioner Concession Card or Gold Card is automatically eligible to pay by instalments. Holders of these cards are already recognised as being suitable for financial assistance such as cheaper medicines under the Pharmaceutical Benefits Scheme. The administering authority retains discretion in relation to non card holders to allow instalment plans if it is justified by the person's financial circumstances.

An applicant must apply within 28 days of the infringement notice or reminder notice – the usual period for payment under the Act. However, the administering authority may accept applications outside of this time if satisfied on reasonable grounds that there are circumstances why the application could not be made within the 28 day period. The authority is afforded a broad discretion here, recognising that there are many circumstances that could justify someone not applying within the time limit. These could include temporary circumstances such as injury/illness or absence from the jurisdiction, or more permanent circumstances such as homelessness or disability.

Importantly, the possibility of applying for an instalment plan beyond the usual 28 days will allow applicants the ability to pay off their fine via instalments even if their licence has been fine-suspended. Under new section 48A, a person may have their licence returned while they are paying the fine. This will allow them to use their vehicle to access income. Section 48A(2) refers to section 28A, ensuring that the Road Transport Authority has the ability to revoke a suspension if satisfied the person is paying the suspension in compliance with an instalment arrangement.

This addresses a problem in the existing scheme whereby a person who failed to pay an infringement notice in time has no way to access an instalment payment plan.

Section 28A(4) allows for a person to nominate a maximum amount that the authority can automatically deduct from fortnightly Centrelink benefits to pay off the fine. This allows the use of Centrepay, which is Centrelink's free direct bill-paying service. It is an option that many Centrelink recipients use to help them budget.

New Section 28B and 28C - Discharging penalty by community work or social development program

New section 28B allows a person served with an infringement notice or reminder notice to apply to the administering authority to discharge the penalty by undertaking approved community work or an approved social development program.

These programs would be rehabilitative and/or beneficial to the community. This would include activities such as volunteer work for community organisations, medical or mental health treatment in accordance with a health plan, counselling, mentoring, education or skills courses, and drug or alcohol treatment.

This new option recognises that there are some people in the community who simply cannot pay their infringement penalties, and that for some people, it will be more appropriate to discharge their penalty through community work or social development program. It will enable people on low incomes to discharge fines and avoid the serious consequences that can result from having their licence fine-suspended. It also allows people on low incomes or with other special circumstances the opportunity to be engaged in the community, receive support, and learn new skills.

The Bill permits the Minister to approve community work or social development programs (section 28C). It is expected that individuals or community groups will apply for approval of these programs and that the ACT Government, community groups, health practitioners or other organisations would cooperate to approve various community work or social development programs for this purpose. The Minister may also set, via notifiable instrument, the rate at which a program discharges the penalty.

The new option allows the administering authority to allow payment via community work or social development programs. An option already exists for people to discharge Court-ordered fines through community work; however this option is only available for traffic infringements if a person goes to Court and disputes the fine.

The administering authority may allow an application if satisfied on reasonable grounds that it is justified by the applicant's financial circumstances and/or special circumstances. 'Special circumstances' are defined to cover limited circumstances: mental or intellectual disability, disease or illness; physical disability, disease or illness; addiction to drugs, alcohol or another substance; domestic violence; and homelessness, or living in crisis or transitional or supported accommodation.

As with section 28A, an applicant must apply within 28 days of the infringement notice or reminder notice. The administering authority may accept applications outside of this time if satisfied on reasonable grounds that there are circumstances why the application could not be made within the 28 day period. This allows people the possibility of discharging their penalty via community work/social development program once their licence has already been fine-suspended. As with the instalments option, new section 48A allows the authority to return someone's licence while the person is discharging the fine via community work or a social development program.

An applicant must provide the authority with details of either their financial circumstances or special circumstances (or both). This information is required so that the authority can make a decision on the application.

It should be noted that undertaking community work/social development will only discharge the fine and not any demerit points incurred for the offence (see new Consequential Amendment [1.1] below).

New Section 28D - Waiver of penalty

New section 28D allows a person served with an infringement notice or reminder notice to apply to the administering authority for waiver of the infringement notice penalty, and of any additional charge incurred through a reminder notice. The waiver is only for the fine, not for any demerit points incurred for the offence (see new Consequential Amendment [1.1] below).

A waiver will only be available in limited circumstances, which are set out in the Bill. Essentially, these circumstances describe a person who can never pay the fine, is unsuitable for community work/social development program, and is affected by special circumstances. These will be the most vulnerable people in the community, who are least able to avail themselves of payment options, and who are likely to remain in their difficult situation long term.

It is expected that many of these people will make applications with assistance from a support person. An application must set out both the financial circumstances of the person and their special circumstances. These circumstances are required for the authority to make a decision whether it is appropriate to waive the penalty.

Unlike the other flexible payment options, waiver is not subject to an application time limit. This recognises that the most vulnerable people are also those least likely to engage with the authority within the time limit, and it ensures they still have an option once their licence is suspended.

If a person whose licence is fine-suspended is granted a waiver, their licence will be reinstated as if the fine had been discharged (see clause 7), provided that there is no other reason for it to remain suspended (such as suspension due to a loss of demerit points).

Clause 7 - Revocation of suspension - Section 47 (1) (b)

This clause ensures that a person's licence must be reinstated by the Road Transport Authority once the person has discharged the full amount of the fine by attending community work or social development program, or if the fine has been waived.

Clause 8 - New section 48A - Revocation of suspension by road transport authority

This new section gives the Road Transport Authority the power to reinstate a person's fine-suspended licence. This is permitted where a person has been granted one of the new flexible payment options (instalments or community work) and is complying with the arrangement.

If the applicant does not comply with the requirements of the payment undertaking, the authority may reinstate the suspension after giving notice to the person and waiting at least 10 days. This ensures that the person does not unknowingly drive while their licence is suspended. The ability to reinstate the suspension ensures that people comply with a payment/discharge undertaking and that it can be enforced.

This new power recognises that people in hardship will often need a vehicle in order to earn income, or to attend any community work or social development program. It ensures that the person can use the vehicle while they are complying with their fine payments or community work order or social development program. In this way it also operates as an incentive for people to comply with payments. The ability to reinstate a licence will reduce the number of people who drive while suspended (which then leads to even greater penalties) as well as allowing people to continue to be employed, productive, and self sufficient.

Consequential Amendment [1.1] - Section 13A (1) (c), *Road Transport (Driver Licensing) Act 1999*

This amendment requires the Road Transport Authority to record any relevant demerit points in the demerit points register when a person is granted the option to pay by instalments/discharge/waive the infringement notice penalty. This ensures that anyone seeking to use the new options established in the Bill will still accrue demerit points for the offence. The flexible options are only to assist a person to pay, not to allow them to escape demerit points.

Consequential Amendment [1.2] Reviewable decisions - Schedule 2, new part 2.2 - *Road Transport (General) Act 1999*

This clause makes each of the new decisions established in the Bill decisions that can be reviewed by the ACT Civil and Administrative Tribunal. This also ensures that a person has a right to be given reasons for each of the decisions.