

Transport NSW Comment on Law Reform Commission Consultation Paper No 10 – Penalty Notices

1. Summary

In summary, Transport NSW:

- does not consider it necessary to consolidate the administration of penalty notices within a single piece of legislation and supports the current policy regime;
- supports a consistent approach to the amount of penalty notices for like offences and the setting of guidelines to determine the quantum of penalty notices; and
- does not support the establishment of strict criteria to determine whether an offence is enforced by penalty notice.

2. Process of consultation

- In preparing this commentary, the consultation paper has been considered by central divisions of Transport NSW and transport agencies and includes detailed input from the Roads and Traffic Authority ("RTA").
- In subsequent communication between the Commission and Transport NSW, the Commission has sought comment on three particular issues
 - (a) central oversight of the penalty notice regime (below at 3);
 - (b) principles for setting the quantum of penalty notices (below at 4);
 - and
 - (c) criteria for deciding whether an offence should be enforced by penalty notice (below at 5).
- This document addresses these issues and provides general comment on other matters raised in the consultation paper.

3. Central Administration of the penalty notice regime

- Presently, there is no one central agency that administers the legislative enactment, process and enforcement of penalty notices although some of these functions are carried out by the State Debt Recovery Office. In our view the policy behind the enactment of offences as those to which penalty notices will apply, and the quantum of the penalty notice, should remain with agencies under the supervision of the Ministers having the administration of the particular legislation.
- The policies to be considered by these agencies will include whether a particular offence should be a penalty notice offence. It may be useful to

develop all-of-Government guidelines to assist agencies with developing, implementing and administering a penalty notice regime within particular legislation.

4. Principles for setting the quantum of penalty notices

- Transport NSW acknowledges that regulations relating to trains have developed separately to other transport services meaning that similar offences carry different penalties across transport modes. During 2011, Transport NSW will commence a review of the Passenger Transport Act 1990 and its regulations and the relevance and consistency of offence provisions will be considered at that time.
- With two qualifications, Transport NSW would support the introduction of a guideline for the setting of penalty notice amounts and their adjustment over time.
- The first is that all-of-Government guidelines must retain a flexibility to accommodate unique enforcement circumstances across the transport modes. The second is that a set maximum penalty, whether established as a percentage of the maximum court penalty or some other criterion, should not be applied. The amount of the penalty notice should ultimately reflect the objective seriousness of the offence within the regulated environment and the issue of a penalty notice, in itself, acts as a significant deterrent to the contravention.

5. Principles for enforcing an offence by penalty notice

- There will be a number of criteria that may be relevant in determining the nature of a penalty notice offence, including the relative seriousness of the offence in the particular regulatory regime and the quantum of contraventions of a particular offence that may be detected and prosecuted.
- However, no one criterion is in itself determinative. It may be unhelpful to classify penalty notice offences as 'minor' or subject to a 'low penalty' as this may detract from the objective importance of enforcing contraventions of the particular offence in a regulatory scheme.
- Notwithstanding this, Transport NSW does not support the issue of penalty notices for offences which carry a maximum penalty of imprisonment.
- The issue of multiple penalty notices for 'continuing' offences will vary due to the circumstances of the case. The RTA cite as examples parking contraventions where a vehicle is left to stand contrary to a restriction sign. Where the restriction is ongoing (eg, 'No Stopping'), it may not be appropriate to reissue the ticket at a later time if the vehicle has not moved. However, this is different to a time restricted offence (eg 'No Stopping 6am-10am') where the same vehicle, whether moved or not, is identified as contravening the restriction on consecutive days. The later

example may not be strictly a 'continuing' offence as the time restriction commences and expires to make the vehicle legally parked for most of the time.

- Transport NSW does not support a requirement that enforcement officers are to take into account any technical legal defence that may be available to an offender or otherwise expected to apply 'the law' (whatever that may be in a particular case) when issuing a penalty notice. When assessing whether a court attendance notice is to issue, broadly, a prosecutor will look at the evidence to determine if the elements of the offence are made out. In the event that the defence later raised either an evidentiary, statutory or common law defence, it will be for a court to determine if there is sufficient evidence to support the defence and/or whether the prosecution has made out its case to the appropriate standard. It would be impractical for this burden to be placed on an enforcement officer when determining whether a penalty notice should issue.

6. Issue and enforcement of penalty notices

- Transport NSW is satisfied with the State Debt Recovery Office being the central source of enforcement of an unpaid penalty notice. The RTA and Transport NSW do not experience instances where penalty notices are withdrawn in order for an offence to be prosecuted. Transport agencies consider the penalty notice process as an adequate alternative to court action.
- Transport NSW supports the prescription of a time period in which to serve a penalty notice.
- The provisions set out in the Fines Act 1996 for what is to be contained in a penalty notice are sufficient for the penalty notices in general. A discreet requirement in each relevant statute is not required.
- Transport NSW supports the provision of antecedents of issuance of penalty notices to an offender as a relevant matter to be taken into account in sentencing before a Local Court. In many cases, this may be the only record of a person's prior offence history within the regulated environment.

7. Children, vulnerable people and criminal infringement notices

- For Railcorp transit officers in particular, it is difficult to often assess at the time of immediate detection of an offence whether the offender is a vulnerable person or the offender's age. A standardised review of principles for issuing penalty notices to those considered to be a young or vulnerable person is supported.
- This ensures that a while investigation of a matter is dealt with effectively at the time of the offence is detected, other factors pertinent to the person's age or vulnerability may then be considered as part of the issue or review of the penalty notice.

- Transport NSW does not have any comment on the issue of penalty notices for criminal offences.

Transport NSW
30 November 2010