



New South Wales

# Fines Amendment Bill 2013

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Fines Act 1996* (*the Act*) as follows:

- (a) to abolish the State Debt Recovery Office (the *SDRO*) and provide for the appointment of a Commissioner of Fines Administration to exercise its functions,
- (b) to provide for the suspension of visitor driver privileges as a means of enforcing payment of fines,
- (c) to establish a trial for the enforcement (as fines) of amounts payable by offenders under restitution orders,
- (d) to establish a scheme for the enforcement in this State of interstate fines that are not subject to the enforcement scheme provided for by that *Service and Execution of Process Act 1992* of the Commonwealth,
- (e) to authorise the Commissioner of Fines Administration to utilise interstate laws and Commonwealth laws to enforce New South Wales fines,
- (f) to make changes related to the interstate fine enforcement scheme established in 2010 by Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth,
- (g) to permit the enforcement of a fine or penalty notice amount, before its due date, where a person agrees to a combined payment arrangement (an arrangement for the payment of the fine or penalty notice amount in conjunction with other fines payable by the person),
- (h) to permit any fine overpayments made by a person to be reallocated towards the payment of other fines payable by the person,
- (i) to make other minor and consequential amendments.

## 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 1 December 2013, or the date of assent to the proposed Act, whichever is later.

## Schedule 1 Amendment of Fines Act 1996 No 99

### Abolition of SDRO

**Schedule 1 [45]** provides for the appointment of a Commissioner of Fines Administration (*the Commissioner*). The functions of the Commissioner are substantially the same as the functions of the SDRO (which is to be abolished).

New provisions will enable the Commissioner to use the name "State Debt Recovery" in the exercise of functions under the Act and to authorise the use of that name for other purposes. It will be an offence to take proceedings under that name, or to carry on any other activity under that name, unless authorised to do so by or under the Act.

The amendments also provide for the following:

- (a) the employment of persons in the Public Service to assist the Commissioner,
- (b) delegation of the Commissioner's functions,
- (c) authorisation to exercise enforcement functions,
- (d) personal liability of the Commissioner.

**Schedule 1 [56] (proposed clause 29 of Schedule 3)** abolishes the SDRO and provides for the transfer of assets, rights and liabilities of the SDRO to the Crown.

**Schedule 1 [1], [3], [5], [8], [10], [12], [13], [16], [26]–[33], [35], [36], [41], [44], [46], [48], [50] and [51]** make consequential amendments.

The amendments to other legislation in **Schedule 2** (other than the amendments specifically mentioned below) are also consequential on the abolition of the SDRO and the appointment of the Commissioner.

### Suspension of visitor driver privileges

**Schedule 1 [20] and [22]** permit the enforcement of a fine by means of suspension of a person's visitor driver privileges.

A visitor driver privilege is any exemption under road transport legislation that confers authority on a visiting driver (such as a resident of another State) to drive a motor vehicle in New South Wales, even though the visiting driver does not hold a New South Wales driver licence.

The amendments require Roads and Maritime Services to suspend visitor driver privileges if directed to do so by the Commissioner.

Such enforcement action is to be taken only if the fine defaulter is liable for 2 or more fines and the fines relate to traffic offences.

**Schedule 1 [24]** permits the interim restoration of visitor driver privileges if a fine, or the conviction or sentence to which it relates, is the subject of a challenge.

**Schedule 1 [21]** makes a consequential amendment.

**Schedule 2.14** contains consequential amendments to the *Road Transport (Driver Licensing) Regulation 2008*.

### Trial for enforcement of restitution orders

**Schedule 1 [53]** establishes a trial for the enforcement under the Act of restitution orders made under the *Victims Rights and Support Act 2013* (or under the former Act, the *Victims Support and Rehabilitation Act 1996*).

At present, a restitution order (an order for the payment of restitution by an offender) is enforceable as if it were an order made in civil proceedings for the payment of a debt to the Commissioner of Victims Rights.

Under the trial, the amount payable under the order will be enforceable under the Act as if it were a fine imposed by a court.

The trial period will run for 12 months (or a longer period prescribed by the regulations). It will apply only to restitution orders confirmed before or during the trial period that the Commissioner of Victims Rights and the Commissioner of Fines Administration agree should be enforced under the trial.

The amendments modify the application of the Act, as it applies to restitution orders, and also suspend the operation of various enforcement provisions under the *Victims Rights and Support Act 2013* (or the former Act, the *Victims Support and Rehabilitation Act 1996*) in relation to restitution orders that are enforced under the trial.

### **Enforcement in NSW of interstate fines**

**Schedule 1 [43]** (see, in particular, Division 2 of proposed Part 5A) establishes a scheme for the enforcement of interstate fines in New South Wales.

Under the scheme, the Commissioner is given power to make an order (an *interstate fine enforcement order*) for the enforcement of an interstate fine in New South Wales. An interstate fine enforcement order may be made at the request of the originating jurisdiction for the fine (the jurisdiction in which the fine was imposed). The interstate fine enforcement order has the same effect, with some modifications, as a fine enforcement order made in respect of a NSW fine (a fine for which New South Wales is the originating jurisdiction). Accordingly, the Commissioner can take enforcement action under the Act in relation to the interstate fine, in the same way as for a NSW fine. Any money recovered in New South Wales under the interstate fine enforcement order is to be applied, firstly, towards payment of New South Wales enforcement costs and fines. The remainder is to be paid to the originating jurisdiction.

The scheme will not apply to fines that fall within the enforcement scheme provided for by Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth (the *SEP Act*). The SEP Act permits a fine that is imposed by a court of one State to be registered, in certain circumstances, in another State. The fine then becomes enforceable in the registering State as if it had been imposed by a court of the registering State. Accordingly, an enforcement scheme for interstate fines that are court imposed already exists under that Act.

As the new enforcement scheme provided for by the amendments will not apply to SEP Act fines, it will principally apply to administrative type fines, such as fines payable under penalty notices.

**Schedule 1 [47]** permits the disclosure of information obtained under the Act in connection with a request for the enforcement of, or the enforcement of, an interstate fine enforcement order.

**Schedule 1 [49]** permits guidelines to be made under the Act with respect to the issue of interstate fine enforcement orders.

**Schedule 2.7 [1]** makes a consequential amendment to the *Fines Regulation 2010*.

### **Enforcement of NSW fines in other jurisdictions**

**Schedule 1 [43]** (see, in particular, Division 3 of proposed Part 5A) makes further provision for the enforcement of NSW fines in other jurisdictions.

The amendments permit the Commissioner to request enforcement action or to exercise other functions under the legislation of other jurisdictions (including the SEP Act) for the purpose of enforcing the payment of NSW fines.

The Commissioner can enter into arrangements with other jurisdictions for the payment of amounts recovered in those jurisdictions in the enforcement of NSW fines.

Enforcement action in NSW is not permitted if the Commissioner has requested enforcement action in another jurisdiction.

**Schedule 1 [47]** permits the disclosure of information obtained under the Act in connection with a request for the enforcement of, or the enforcement of, a fine enforcement order in another jurisdiction.

#### **Further amendments relating to SEP Act**

**Schedule 1 [4]** makes it clear that a fine includes any fine to which Part 7 of the SEP Act applies.

**Schedule 1 [7] (proposed section 14 (1))** permits the Commissioner to make a court fine enforcement order in respect of an interstate fine that is registered in New South Wales under Part 7 of the SEP Act, without the need for the fine to be referred by the court to the Commissioner for enforcement. Under the SEP Act, once an interstate fine is registered in New South Wales it is enforceable in New South Wales as if it had been imposed by a court of New South Wales.

**Schedule 1 [19]** makes it clear that imprisonment cannot be used as an enforcement mechanism in respect of a fine registered in New South Wales under the SEP Act. This is consistent with section 114 of the SEP Act.

#### **Combined payment arrangements**

**Schedule 1 [6], [7] and [14]** permit a fine enforcement order to be made, before the due date for the fine or penalty notice amount, if the person liable to pay the fine or penalty notice amount seeks from the Commissioner a time to pay order that provides for a combined payment arrangement. A time to pay order is an order that extends the time for payment of a fine or allows a fine to be paid by instalments. A time to pay order may be made only after a fine enforcement order has been made. Accordingly, the amendments will permit a time to pay order that provides for a combined payment arrangement to be made in respect of a fine or penalty notice amount before the amount is due. **Schedule 1 [9]** is a consequential amendment.

**Schedule 1 [34], [37] and [38]** provide for combined payment arrangements. A combined payment arrangement is an arrangement for the payment of a fine or penalty notice amount in conjunction with another fine payable by the same person. For example, a time to pay order could permit the payment by instalment of all the relevant fines or penalty notice amounts payable by the person.

**Schedule 2.7 [3]** makes a consequential amendment to the *Fines Regulation 2010*.

#### **Allocation of overpayments**

**Schedule 1 [52]** permits the Commissioner to reallocate any overpayment made by a person under a fine enforcement order towards payment of amounts payable under other fine enforcement orders that are in force in relation to the person, instead of refunding the overpayment. At present, the Act permits such a reallocation only if the overpayment is made as a result of the withdrawal or annulment of the fine enforcement order. The amendment will permit inadvertent overpayments (an overpayment otherwise than as a result of the withdrawal or annulment of a fine enforcement order) to be reallocated. However, the Commissioner is required to refund an inadvertent overpayment if the person who made the overpayment applies for a refund.

**Schedule 1 [11], [15], [17] and [18]** are consequential amendments.

#### **Other amendments**

**Schedule 1 [39]** makes the Director-General of the Department of Finance and Services a member of the Hardship Review Board, instead of the Chief Commissioner of State Revenue.

**Schedule 1 [23]** updates a reference to the title of an Act.

**Schedule 1 [2]** inserts new definitions that are related to the above amendments. **Schedule 1 [40]** is a consequential amendment.

**Schedule 1 [25]** updates a provision that confers power to issue an examination summons, so that it instead confers power to issue an order for examination. The new terminology is consistent with the terminology used in the *Uniform Civil Procedure Rules 2005*. **Schedules 1 [42] and 2.7 [4]** are consequential amendments.

**Schedule 1 [54]** updates a Schedule to the Act that lists the penalty notice provisions in other Acts that are enforceable under the *Fines Act 1996* to include various recently enacted Acts.

**Schedule 1 [55]** enables savings and transitional regulations to be made as a consequence of any amendment to the Act.

**Schedule 1 [56]** provides for savings and transitional matters.