



New South Wales

Fines Amendment Bill 1997

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* so as:

- (a) to allow the registrar of a court to vary the court to which a fine is to be paid, and
 - (b) to exclude fine enforcement action involving the suspension or cancellation of a fine defaulter's driver's licence, or the refusal to issue or renew a driver's licence, in the case of a fine imposed while the fine defaulter was under the age of 18 years and not the holder of a driver's licence, and
 - (c) to ensure that the maximum number of hours of community service work that a person under the age of 18 years can be required to perform is 100 hours, and that such a person can perform work under several such orders concurrently, and
 - (d) to apply the provisions of Division 2 of Part 2 (which relate to the payment of fines imposed by a court) to the payment of ancillary orders made by a court (such as orders for costs and compensation), and
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- (e) to exclude adults who are serving periods of imprisonment and children who are serving periods of detention from the transitional amnesty period that the Act provides for existing fine defaulters, and
- (f) to allow the regulations to establish a separate fine enforcement regime, for a transitional period of 2 years only, in relation to fines imposed under the laws of the Commonwealth and in relation to fine defaulters who reside outside New South Wales.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Fines Act 1996* set out in Schedule 1.

Schedule 1 Amendment of Fines Act 1996

Variation of court to which fine payable

It is proposed to amend section 8 to allow the registrar of a court to vary the court to which a fine is payable (Schedule 1 [1]). A consequential amendment is proposed for section 13 to allow the fine to be referred for a court fine enforcement order by the registrar of the court to whom the fine becomes payable as a result of such a variation (Schedule 1 [2]).

Payment of fines to the RTA

It is proposed to amend section 65 so as to make it clear that the State Debt Recovery Office must cancel any direction it has given to the Roads and Traffic Authority with respect to enforcement action under Division 3 of Part 4 of the Act (action involving the suspension or cancellation of drivers' licences and vehicle registrations) as soon as practicable after it receives payment of the whole of the amount payable under the fine enforcement order to which the direction relates (Schedule 1 [3]; proposed section 65 (4)). Consequential amendments are proposed for section 66 (3) (Schedule 1 [4]) and section 68 (4) (Schedule 1 [8]).

Enforcement action under Division 3 of Part 4 with respect to unlicensed young offenders

It is proposed to amend section 65 so as to prevent the Roads and Traffic Authority from suspending or cancelling a fine defaulter's driver's licence, or from refusing to issue or renew a driver's licence for a fine defaulter, if the fine defaulter was under the age of 18 years and not the holder of a driver's licence when the fine was imposed or the relevant penalty notice was served (Schedule 1 [3]: proposed section 65 (3)). A consequential amendment is proposed for section 71 to ensure that enforcement action under Division 4 of Part 4 (civil enforcement against the fine defaulter's property) can be taken (Schedule 1 [9]).

Children's community service orders

It is proposed to amend section 81 so as to ensure that the maximum number of hours of community service work that a person under the age of 18 years can be required to perform is 100 hours (Schedule 1 [10]), and that such a person can perform work under several such orders concurrently (Schedule 1 [11]). A consequential amendment is proposed to define *adult* and *child* for the purposes of section 81 (Schedule 1 [12]).

Enforcement of ancillary money orders

It is proposed to insert a new section 109A to apply the provisions of Division 2 of Part 2 (which relate to the payment of fines imposed by a court) to the payment of ancillary orders imposed by a court (such as orders for costs and compensation) (Schedule 1 [14]). Consequential amendments are proposed to be made to section 109 (Schedule 1 [13]) and section 110 (Schedule 1 [15]).

Exclusion of convicted prisoners etc from transitional amnesty period

Clause 2 of Schedule 3 provides for a transitional amnesty period during which existing warrants for the commitment of fine defaulters to prison are not to be executed. It is proposed to amend that clause so as to exclude convicted inmates (within the meaning of the *Correctional Centres Act 1952*) and persons subject to control (within the meaning of the *Children (Detention Centres) Act 1987*) from the amnesty, so allowing them to "cut out" their outstanding fines while serving their current sentences (Schedule 1 [17]).

Fine enforcement regime for fine defaulters under Commonwealth laws and fine defaulters living outside New South Wales

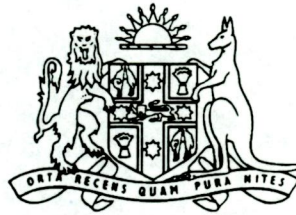
It is proposed to insert a new clause 5A into Schedule 3 (the Schedule of savings and transitional provisions) so as to allow the regulations to establish a separate fine enforcement regime, for a transitional period of 2 years only, in relation to fines imposed under the laws of the Commonwealth and in relation to fine defaulters who reside outside New South Wales (Schedule 1 [19]).

Miscellaneous

The following amendments are also proposed:

- amendments to clarify the operation of section 68 (Schedule 1 [5], [6] and [7]),
- an amendment to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act (Schedule 1 [16]),
- amendments to clarify the operation of certain savings and transitional provisions (Schedule 1 [18]).

First print



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Fines Amendment Bill 1997

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New South Wales

Fines Amendment Bill 1997

No. , 1997

A Bill for

An Act to amend the *Fines Act 1996* in relation to the enforcement of fines and in relation to other matters relating to the administration of that Act; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fines Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Fines Act 1996 No 99

The *Fines Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendment of Fines Act 1996

(Section 3)

[1] Section 8 To whom fine payable

Insert “or the registrar of the court” after “unless the court” in section 8 (1).

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[2] Section 13 Referral for a court fine enforcement order

Insert “(or, if the fine is payable to the registrar of some other court, the registrar of the court to whom the fine is payable)” after “imposed a fine”.

[3] Section 65 When enforcement action taken under this Division

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Insert after section 65 (2):

(3) Despite subsections (1) and (2), enforcement action with respect to a fine defaulter’s driver’s licence is not to be taken under this Division if:

(a) the offence:

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(i) in respect of which the fine concerned was imposed on the fine defaulter by a court, or

(ii) in respect of which the penalty notice from which the fine concerned arises was served on the fine defaulter,

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occurred while the fine defaulter was under the age of 18 years, and

(b) at the time that offence occurred, the fine defaulter was not, and had never been, the holder of a driver’s licence.

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(4) As soon as practicable after it receives payment of the whole of the fine as required by the notice of the fine enforcement order served on the fine defaulter, the State Debt Recovery Office must notify the Roads and Traffic Authority that its direction with respect to that order is cancelled.

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- [4] Section 66 Suspension or cancellation of driver's licence**
Omit "if the fine defaulter pays the fine or" from section 66 (3).
- [5] Section 68 Suspension of dealings with Roads and Traffic Authority**
Insert "is aware that it" after "Roads and Traffic Authority" in section 68 (1) (b). 5
- [6] Section 68 (2) (f)**
Omit "in respect of a vehicle".
- [7] Section 68 (3A)**
Insert after section 68 (3): 10
(3A) The Roads and Traffic Authority is not obliged to notify the fine defaulter of a refusal under subsection (3) if it has previously notified the fine defaulter of an earlier refusal under that subsection.
- [8] Section 68 (4)** 15
Omit "if the fine defaulter pays the fine or".
- [9] Section 71 When enforcement action taken under this Division**
Insert "of section 65 (3) or because" after "because" in section 71 (1) (a).
- [10] Section 81 Number of hours of community service work** 20
Insert "(in the case of an adult) or 100 hours (in the case of a child)" after "300 hours" in section 81 (2).

[11] Section 81 (3A)

Insert after section 81 (3):

(3A) In the case of a person who is a child at the time a community service order is made under this Division, community service work may be performed concurrently for the purposes of that order and for the purposes of any other community service order made under this Division or otherwise than under this Division.

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[12] Section 81 (5)

Insert after section 81 (4):

(5) In this section:

adult means a person who is of or above the age of 18 years.

child means a person who is under the age of 18 years.

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[13] Section 109 Application

Insert "(referred to in this Part as *ancillary money orders*)" after "following".

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[14] Section 109A

Insert after section 109:

109A Payment of ancillary money orders

Division 2 of Part 2 applies to the payment of ancillary money orders in the same way as it applies to the payment of fines.

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[15] Section 110 Enforcement as civil judgments

Omit "An order of a court for the payment of an amount that is enforceable under this Part" from section 110 (1).

Insert instead "Subject to section 109A, an ancillary money order".

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[16] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[17] Schedule 3, clause 2 (1A)

Insert after clause 2 (1):

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- (1A) This clause does not apply to the issue or execution of any such warrant of commitment in relation to a person who, at the time the warrant is issued or executed, is a convicted inmate within the meaning of the *Correctional Centres Act 1952* or a person subject to control within the meaning of the *Children (Detention Centres) Act 1987*.

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[18] Schedule 3, clause 5 (4) and (5)

Insert after clause 5 (3):

- (4) For the purpose only of enabling a penalty notice enforcement order to be made under Division 4 of Part 3 in relation to an existing fine, the offence referred to in section 42 (1) (g) is taken to have been committed, or alleged to have been committed, when that Division commenced.

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- (5) A penalty notice served on a person in accordance with section 18B of the *Traffic Act 1909*, being a penalty notice in respect of which, as at the commencement of this clause:

(a) the amount payable under the notice has not been paid, and

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(b) a courtesy letter has been sent to the person in accordance with section 100J of the *Justices Act 1902* and the person has not, as referred to in that section, declined to be dealt with under Division 2 of Part 4B of that Act, and

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- (c) no notice has been served under section 18C of the *Traffic Act 1909*,

is taken to be a penalty notice enforcement order under this Act and may, subject to Division 5 of Part 3 of this Act, be enforced accordingly.

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[19] Schedule 3, clause 5A

Insert after clause 5:

5A Transitional provisions concerning the enforcement of certain fines

- (1) The regulations may make provision: 10
- (a) for the enforcement of any fine imposed on a person for an offence arising under the laws of the Commonwealth, and
- (b) for the enforcement of any fine imposed on a person for an offence arising under the laws of New South Wales, in the case of a person who does not reside in New South Wales. 15
- (2) Without limiting subclause (1), regulations under that subclause:
- (a) may apply the provisions of this or any other Act, including the provisions of any other Act as in force before the commencement of this Act, and 20
- (b) may apply any such provisions subject to such modifications as the regulations may prescribe, and 25
- (c) without limiting paragraph (b), may apply any such provisions subject to modifications permitting or requiring the functions of the State Debt Recovery Office to be exercised:
- (i) by a court (including a Local Court constituted by a justice of the peace), or 30

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Schedule 1 Amendment of Fines Act 1996

- (ii) by a registrar of a court,
instead of by that Office, and
 - (d) may apply any such provisions either by reference
or by setting out the text of the applied provisions
(together with any modifications). 5
- (3) This Act does not apply to the enforcement of any fine
with respect to which regulations under subclause (1)
make provision except to the extent to which those
regulations so provide.
- (4) This clause ceases to have effect at the expiry of 2 years 10
after its commencement.