



New South Wales

Fines Amendment Bill 2017

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* to allow the Commissioner of Fines Administration:

- (a) to take civil enforcement action against a fine defaulter who is an individual without first suspending or cancelling the fine defaulter's driver licence or vehicle registration, and
- (b) to take enforcement action to recover an amount payable under a confirmed order for restitution made by the Commissioner of Victims Rights against an offender or another person (a *restitution amount*).

The Bill also makes amendments to the *Victims Rights and Support Act 2013* related to the enforcement and recovery of restitution amounts by the Commissioner of Fines Administration.

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.

Schedule 1 Amendment of Fines Act 1996 No 99

Civil enforcement action without prior suspension or cancellation of driver licence or vehicle registration

Schedule 1 [5] allows the Commissioner of Fines Administration to take civil enforcement action against a fine defaulter who is an individual without first suspending or cancelling the fine

defaulter's driver licence or vehicle registration. Civil enforcement action consists of making an order to seize property of the fine defaulter, making an order to garnishee the fine defaulter's debts, wages or salary, or registering a fine enforcement order as a charge on the fine defaulter's land.

At present, the Commissioner of Fines Administration may only take civil enforcement action against a fine defaulter who is an individual after the Commissioner has suspended or cancelled the fine defaulter's driver licence or vehicle registration. Schedule 1 [5] allows civil enforcement action to be taken against an individual without first suspending or cancelling the fine defaulter's driver licence or vehicle registration, but only if the Commissioner is satisfied that suspension or cancellation of the fine defaulter's driver licence or vehicle registration is unlikely to be successful in satisfying the fine or would have an excessively detrimental impact on the fine defaulter.

Schedule 1 [1]–[4] and [6]–[8] make consequential amendments.

Enforcement of restitution amounts

The enforcement of restitution amounts by the Commissioner of Fines Administration was previously conducted on a trial basis for 1 year (see Part 10 of the *Fines Act 1996* as in force between 1 December 2013 and 30 November 2014). (A restitution amount is an amount payable under a confirmed order for restitution, which is generally made by the Commissioner of Victims Rights against a person convicted of an offence related to an act of violence in respect of which an approval for the giving of victims support under the *Victims Rights and Support Act 2013* has been given.) This Bill proposes to re-establish those arrangements, in a modified and extended form, on a permanent basis. Specifically, **Schedule 1 [9]**:

- (a) requires the Commissioner of Victims Rights to refer an unpaid restitution amount to the Commissioner of Fines Administration for the making of a court fine enforcement order, and
- (b) allows the Commissioner of Fines Administration to take enforcement action under the *Fines Act 1996* to recover the restitution amount, and
- (c) re-enacts provisions from the *Victims Rights and Support Act 2013* that enable the enforcement of a restitution amount by attachment of prison earnings, and
- (d) requires enforcement costs to be paid from a restitution amount, or part of a restitution amount, that is recovered before the balance of the restitution amount is paid into the Victims Support Fund under the *Victims Rights and Support Act 2013* (**Schedule 1 [12]** makes a consequential amendment), and
- (e) allows the Commissioner of Fines Administration to enter into arrangements with the Commissioner of Victims Rights with respect to the recovery of restitution amounts, and
- (f) provides for related matters (by, for example, deeming a restitution amount to be a fine imposed by a court for the purposes of the *Fines Act 1996* and modifying that Act in its application to a restitution amount).

Schedule 1 [10] permits the Commissioner of Fines Administration to disclose, to a person engaged in the administration or execution of the *Victims Rights and Support Act 2013*, personal information about a person liable for a restitution amount in connection with a matter that is referred to the Commissioner of Fines Administration. **Schedule 1 [11]** makes a consequential amendment.

Schedule 2 Amendment of Victims Rights and Support Act 2013 No 37

Schedule 2 [26] allows the Commissioner of Victims Rights, following the confirmation of an order for restitution, to serve a debt notice on a person liable to pay the relevant restitution amount. A debt notice informs the person that the restitution amount is a debt payable to the Commissioner of Victims Rights and specifies a due date for payment. The debt notice also advises that, if the person does not pay the amount before the due date for payment, enforcement action for recovery

of the amount may be taken under the *Fines Act 1996* and additional enforcement costs may become payable under that Act if that enforcement action is taken. Schedule 2 [26] also revises and reorders existing provisions relating to confirmation of, and the amount payable under, an order for restitution. **Schedule 2 [25]** makes a consequential amendment.

Schedule 2 [30] provides that, rather than a restitution amount being deemed a judgment debt recoverable by the Commissioner of Victims Rights, the Commissioner of Victims Rights must instead refer an unpaid restitution amount to the Commissioner of Fines Administration for the making of a court fine enforcement order, and the taking of enforcement action, under the *Fines Act 1996* to recover the amount. **Schedule 2 [1], [4], [5], [16], [22], [24], [29] and [33]** make consequential amendments.

Schedule 2 [3] allows the Commissioner of Victims Rights to enter into arrangements with the Commissioner of Fines Administration with respect to the recovery of restitution amounts. **Schedule 2 [2]** allows the expenses payable to the Commissioner of Fines Administration under such an arrangement to be paid from the Victims Support Fund.

Schedule 2 [15] extends the circumstances in which the Commissioner of Victims Rights may confirm an order for restitution to include when the person subject to the order agrees to its confirmation and seeks (and is granted) time to pay the relevant restitution amount under the *Fines Act 1996*.

Schedule 2 [6]–[14], [19], [23], [27], [28], [31] and [32] make related changes to the *Victims Rights and Support Act 2013*, primarily by removing the concept of “provisional order” (which is an order for restitution that has not been confirmed). Instead, the new provisions make it clear that an order for restitution cannot be enforced under the *Fines Act 1996* until it is confirmed.

Schedule 2 [17], [18], [20] and [21] clarify the procedure by which an order for restitution is confirmed.

Schedule 2 [34] makes savings and transitional provisions consequent on enactment of the proposed Act.