



New South Wales

Fines Amendment Bill 1998

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 Principal Act*) to make miscellaneous changes to that Act, including the following:

- (a) to allow the Sheriff to recoup all costs and expenses reasonably incurred in the taking of enforcement action against a fine defaulter (instead of only a single amount prescribed by the regulations),
 - (b) to ensure that a community service order made against a fine defaulter is not suspended under the Principal Act during any period of periodic detention of the fine defaulter,
 - (c) to ensure that when a fine enforcement order that applies to more than one fine is withdrawn only to the extent of some of the fines to which it applies it continues to have effect in respect of the remaining fines to which it applies,
 - (d) to ensure that enforcement action against a fine defaulter (for example, driver's licence suspension or cancellation) may continue until all outstanding fines against the fine defaulter are satisfied,
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- (e) to include within the definition of a *fine* covered by the fine enforcement procedures of the Principal Act, any professional costs ordered by a court in proceedings brought by a law enforcement officer,
- (f) to transfer to the Principal Act provisions currently found in the regulations under that Act.

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

Sheriff's enforcement costs

At present, enforcement costs incurred by the Sheriff in taking enforcement action against a fine defaulter under Division 4 of Part 4 of the Principal Act are prescribed by the regulations as a fixed amount (currently \$50) payable into the Consolidated Fund. It is proposed to insert a new section 76A into the Act so as to allow the Sheriff to recoup any costs and expenses reasonably incurred that are in excess of those prescribed costs (Schedule 1 [28]). Under section 57 (4), such enforcement costs, once approved by the State Debt Recovery Office, form part of the fine. Consequential amendments are made by Schedule 1 [8], [9], [14], [15], [18] and [19].

Non-suspension of community service order upon order for periodic detention

It is proposed to amend section 84 of the Principal Act to ensure that a community service order that is imposed on a fine defaulter under that Act is not suspended during any period of periodic detention served by the fine defaulter for any offence (Schedule 1 [29] and [30]).

Issue of subsequent warrant for imprisonment

It is proposed to amend section 89 of the Principal Act to clarify that a warrant for imprisonment issued after the revocation of an order made under an earlier warrant replaces that earlier warrant (rather than cancelling it) to avoid any doubt being cast on the previous detention of the fine defaulter under the earlier warrant (Schedule 1 [31]).

Information to be given to a fine defaulter

It is proposed to amend sections 9 and 27 of the Principal Act to clarify the information required to be given in a written notice of a court-imposed fine (Schedule 1 [7]) or a penalty reminder notice (Schedule 1 [12]). The proposed amendments require notification of enforcement action that *may* be taken (instead of the action that *will* be taken) under the Principal Act if the amount is not paid by the due date as well as notification of the additional enforcement costs that become payable if such enforcement action is taken.

Withdrawal or annulment of fine enforcement order relating to more than one fine

It is proposed to amend sections 17 and 46 of the Principal Act to ensure that when a court fine enforcement order that applies to more than one fine, or a penalty notice enforcement order that applies to more than one penalty notice, is withdrawn only to the extent of some of the fines or penalty notices to which it applies, it continues to have effect in respect of any remaining fines or penalty notices to which it applies (Schedule 1 [10] and [16]). A similar amendment is proposed for section 52, which relates to the annulment of a penalty notice enforcement order (Schedule 1 [17]). The revised provisions will also enable amounts paid under the withdrawn or annulled order to be applied to the payment of the remaining fines payable under the order.

Enforcement action with respect to fine defaulter liable under more than one fine enforcement order

It is proposed to amend section 66 of the Principal Act to ensure that the State Debt Recovery Office has the power to direct the Roads and Traffic Authority to continue enforcement action against a fine defaulter under Division 3 of Part 4 until every fine payable by the fine defaulter has been paid or satisfied (Schedule 1 [21]). It is also proposed to amend section 65 to ensure that once all fines have been paid or satisfied, the State Debt Recovery Office is *obliged* to direct the Roads and Traffic Authority to cease enforcement action under the Division (Schedule 1 [20]).

Professional costs

It is proposed to amend section 4 of the Principal Act:

- (a) to include within the definition of a *fine* any professional costs and witnesses' expenses payable under an order of a court in proceedings for an offence brought by a law enforcement officer (Schedule 1 [3]), and-
- (b) to clarify that the existing reference to fees and charges payable under a court order being within the definition of a fine applies only to *court* fees and charges payable under such an order (Schedule 1 [2]).

It is also proposed to amend section 3 of the Principal Act to include a definition of *law enforcement officer* (Schedule 1 [1]). At present, this definition is found in the regulations. Consequential amendments are proposed to sections 4 and 109 to provide that an amount will be recoverable as a civil debt under Part 6 only if it is not prescribed as a fine under section 4 (Schedule 1 [4] and [32]). Consequential amendments are also proposed to those sections to ensure that the term *proceedings for an offence* includes proceedings for an apprehended violence order and proceedings on appeal (Schedule 1 [5] and [32]).

Adjournment of examination of fine defaulter

It is proposed to amend section 75 of the Principal Act to ensure that, where a fine defaulter is summoned to attend an examination before a specified officer of the court (as opposed to the State Debt Recovery Office), the officer may adjourn the examination (Schedule 1 [27]). Currently, only the State Debt Recovery Office has this authority.

Provisions transferred from the regulations

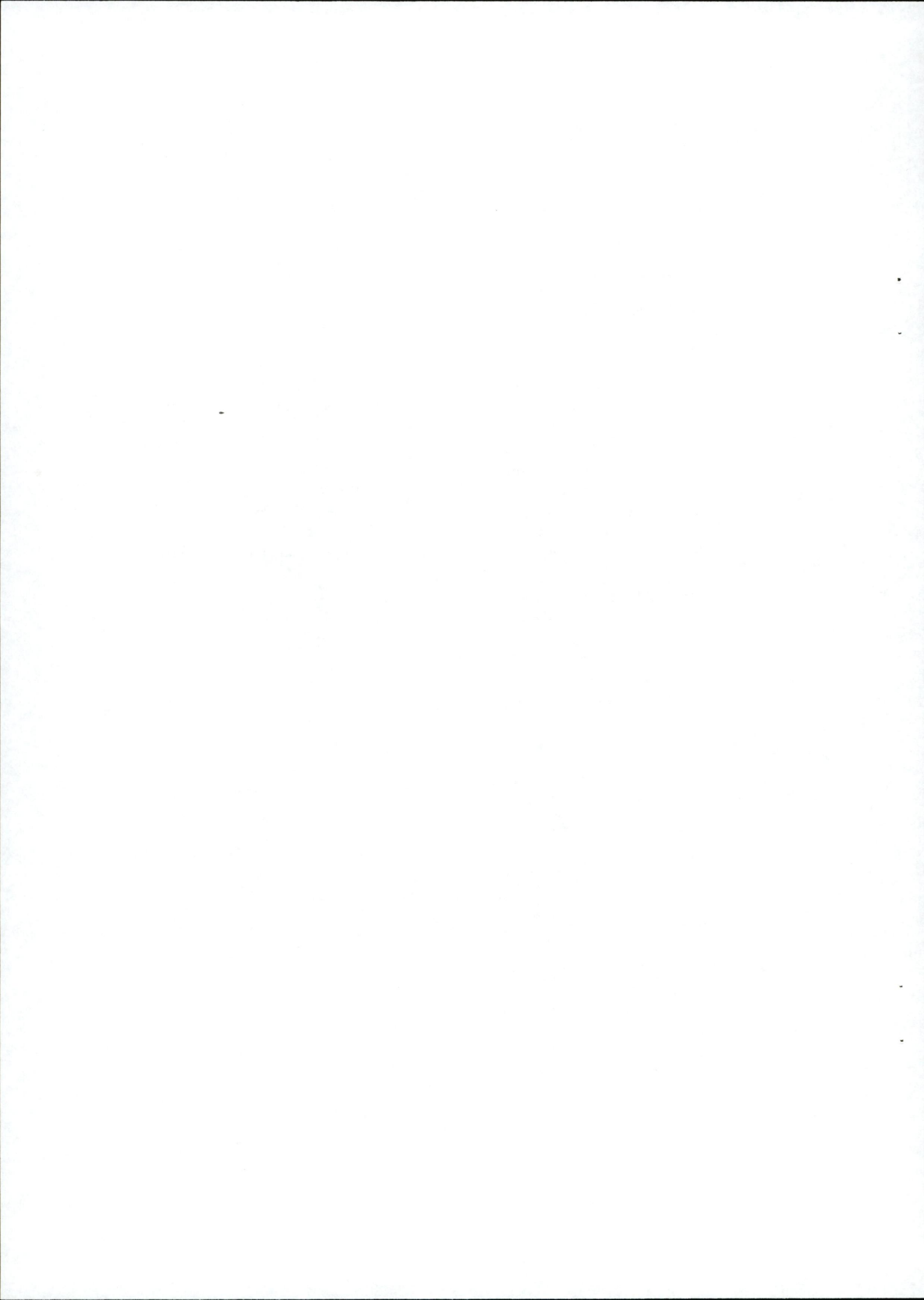
The following provisions currently found in the regulations are proposed to be transferred to the Principal Act:

- (a) provisions relating to the means by which written notice of a fine is to be served on a person (Schedule 1 [6]),
- (b) provisions relating to the persons who may issue and deal with penalty notices (Schedule 1 [11]),
- (c) provisions relating to the means by which a written statement stating that a person elects to have a matter dealt with by a court is to be served on the appropriate officer (Schedule 1 [13]),
- (d) provisions relating to the statutory provisions under which a penalty notice is issued (Schedule 1 [33]).

Miscellaneous

The following amendments are also proposed:

- (a) an amendment to clarify the process that occurs when a court or the Roads and Traffic Authority suspends or cancels the driver's licence of a fine defaulter whose driver's licence has already been suspended or cancelled under Division 3 of Part 4 of the Principal Act (Schedule 1 [22]),
- (b) amendments to clarify that civil enforcement action is to be taken under Division 4 of Part 4 of the Principal Act only if enforcement action under Division 3 of that Part is not available or has failed (Schedule 1 [24] and [25]),
- (c) amendments to effect minor law revision (Schedule 1 [23] and [26]),
- (d) an amendment to allow regulations of a savings and transitional nature to be made (Schedule 1 [34]).



First print



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Fines Amendment Bill 1998

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New South Wales

Fines Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Fines Act 1996* in relation to the enforcement of fines and 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 1998*.

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 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

law enforcement officer means a person exercising law enforcement functions in the official capacity of any of the following: 5

- (a) the Director of Public Prosecutions, a Deputy Director of Public Prosecutions or a Solicitor for Public Prosecutions, 10
- (b) a Crown Prosecutor,
- (c) a police officer,
- (d) a public servant,
- (e) an officer or employee of a statutory body representing the Crown, 15
- (f) a member or an employee of a local council,
- (g) an officer or employee of a rural lands protection board,
- (h) an officer within the meaning of the *Prevention of Cruelty to Animals Act 1979*, 20
- (i) an officer or employee of a kind prescribed by the regulations.

[2] Section 4 Meaning of "fine"

Insert "court" after "any" in section 4 (1) (c).

[3] Section 4 (1) (e)–(g) 25

Omit section 4 (1) (e). Insert instead:

- (e) any witnesses' expenses payable by a person under an order made by a court in proceedings for an offence that were brought by a law enforcement officer, or 30

- (f) any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence that were brought by a law enforcement officer, or
 - (g) any other amount of a kind prescribed by the regulations. 5

- [4] Section 4 (2) (a)**
Omit the paragraph.

- [5] Section 4 (3)**
Insert after section 4 (2): 10
 - (3) In this section, *proceedings for an offence* includes:
 - (a) proceedings for an apprehended violence order, and
 - (b) proceedings on appeal in respect of proceedings for an offence. 15

- [6] Section 9 Fine notification**
Insert “, by means of document exchange, by facsimile transmission” after “post” in section 9 (2).

- [7] Section 9 (4) (b) and (c)**
Omit the paragraphs. Insert instead: 20
 - (b) of enforcement action that may be taken under this Act if the amount is not paid by the due date, and
 - (c) of additional enforcement costs that become payable under this Act if enforcement action is taken. 25

- [8] Section 16 Enforcement costs under order**
Insert “, or is payable under section 76A (Sheriff’s additional costs of taking enforcement action under this Division)” after “so prescribed” in section 16 (1).

[9] Section 16 (3)

Insert "payable under this section or section 76A" after "costs".

[10] Section 17 Withdrawal of order

Omit section 17 (3) and (4). Insert instead:

- (3) A court fine enforcement order may be withdrawn completely or only to the extent of some of the fines to which it applies. 5
- (4) If a court fine enforcement order is withdrawn completely:
 - (a) the order then ceases to have effect, and 10
 - (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another court fine enforcement order or penalty notice enforcement order, and
 - (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable. 15
- (4A) If a court fine enforcement order is withdrawn only to the extent of some of the fines to which it applies:
 - (a) the order continues to have effect in respect of the remaining fines to which it applies, and 20
 - (b) any amount that has been paid under the order is to be applied to payment of the remaining fines to which it applies and any enforcement costs in respect of that order.

[11] Section 22 Persons who may issue and deal with penalty notices (appropriate officers) 25

Insert "or a person employed in that Bureau and authorised by the Director for the purposes of this Part" after "Service" in section 22 (2) (b).

[12] Section 27 What a penalty reminder notice must say

Omit section 27 (1) (b) and (c). Insert instead:

- (b) of enforcement action that may be taken under this Act if the amount is not paid by the due date, and
- (c) of additional enforcement costs that become payable under this Act if enforcement action is taken. 5

[13] Section 36 How person may elect to have matter dealt with by court

Insert “, by means of document exchange, by facsimile transmission” after “post” in section 36 (3). 10

[14] Section 44 Enforcement costs under penalty notice enforcement order

Insert “or is payable under section 76A (Sheriff’s additional costs of taking enforcement action under this Division)” after “so prescribed” in section 44 (1). 15

[15] Section 44 (3)

Insert “payable under this section or section 76A” after “costs”.

[16] Section 46 Withdrawal of order

Omit section 46 (3), (4) and (5). Insert instead: 20

- (3) A penalty notice enforcement order may be withdrawn completely or only to the extent of some of the penalty notices to which it applies.
- (4) If a penalty notice enforcement order is withdrawn completely: 25
 - (a) the order then ceases to have effect, and

-
- (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another penalty notice enforcement order or a court fine enforcement order, and 5
- (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable, and
- (d) any amount that has been paid under the order is repayable to the person by whom it was paid.
- (5) If a penalty notice enforcement order is withdrawn only to the extent of some of the penalty notices to which it applies: 10
- (a) the order continues to have effect in respect of the remaining penalty notices to which it applies, and
- (b) any amount that has been paid under the order is to be applied to payment of the remaining penalty notices to which it applies and any enforcement costs in respect of that order. 15
- [17] Section 52 Provisions relating to annulment of enforcement orders** 20
- Omit section 52 (3), (4), (5) and (6). Insert instead:
- (3) An application may be made for the annulment of a penalty notice enforcement order completely or only to the extent of some of the penalty notices to which it applies. 25
- (4) If a penalty notice enforcement order is annulled completely:
- (a) the order then ceases to have effect, and
- (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another penalty notice enforcement order or a court fine enforcement order, and 30

- (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable, and
 - (d) any amount that has been paid under the order is repayable to the person by whom it was paid.
 - (5) If a penalty notice enforcement order is annulled only to the extent of some of the penalty notices to which it applies:
 - (a) the order continues to have effect in respect of the remaining penalty notices to which it applies, and
 - (b) any amount that has been paid under the order is to be applied to payment of the remaining penalty notices to which it applies and any enforcement costs in respect of that order.
- [18] Section 60 What notice must say**
- Insert “, except as provided in subsection (1A),” after “indicating” in section 60 (1) (d). 15
- [19] Section 60 (1A)**
- Insert after section 60 (1):
- (1A) The notice of a fine enforcement order may (but need not) contain information relating to the enforcement costs payable under section 76A when the Sheriff is required to take enforcement action. 20
- [20] Section 65 When enforcement action taken under this Division**
- Omit section 65 (4). Insert instead:
- (4) As soon as practicable after all outstanding fines payable by a fine defaulter under fine enforcement orders have been satisfied, the State Debt Recovery Office must direct the Roads and Traffic Authority to cease enforcement action under this Division against the fine defaulter. 25
30

[21] Section 66 Suspension or cancellation of driver's licence

Insert after section 66 (3):

- (3A) The obligation to suspend the driver's licence of a fine defaulter under subsection (1) extends to any licence that is already suspended when enforcement action is required to be taken under this Division. Accordingly, if the period of suspension comes to an end before the expiry of the licence, the Roads and Traffic Authority is then to take action under subsection (1) to further suspend the licence if the State Debt Recovery Office so directs. 5
10

[22] Section 66 (5)

Omit the second sentence from the subsection.

[23] Section 68 Suspension of dealings with Roads and Traffic Authority

15

Omit section 68 (1) (b). Insert instead:

- (b) the Roads and Traffic Authority is required to take enforcement action against the fine defaulter under this Division, but any such action to suspend or cancel the driver's licence or vehicle registration of the fine defaulter is not available. 20

[24] Section 71 When enforcement action taken under this Division

Omit section 71 (1) (a). Insert instead:

- (a) enforcement action is not available under Division 3 to suspend or cancel the driver's licence or vehicle registration of the fine defaulter, or 25

[25] Section 71 (1) (b)

Insert "any available" after "though".

[26] Section 72 Order to seize property of fine defaulter

Omit "warrant" wherever occurring in section 72 (6) and (7). 30
Insert instead "writ".

[27] Section 75 Examination of fine defaulter

Omit section 75 (10). Insert instead:

- (10) An examination under this section may be adjourned:
 - (a) by the State Debt Recovery Office, in the case where a person is summoned to attend before the Director or other specified officer of the State Debt Recovery Office, or 5
 - (b) by a specified officer of a court, in the case where a person is summoned to attend before the specified officer, 10
- and the State Debt Recovery Office or the specified officer, respectively, must notify the person concerned of the time and place for the adjourned examination.

[28] Section 76A

Insert after section 76: 15

76A Sheriff's additional costs of taking enforcement action under this Division

- (1) The costs and expenses reasonably incurred by the Sheriff in taking enforcement action under this Division and approved by the State Debt Recovery Office are enforcement costs payable by the fine defaulter under the fine enforcement order. 20
- (2) The amount of those costs and expenses is to be determined in accordance with the scale applicable to the enforcement of judgment debts under the *Local Courts (Civil Claims) Act 1970*, but is to be reduced by any amount prescribed under section 16 (2) (c) or 44 (2) (c) as payable to the Consolidated Fund. 25
- (3) For the purposes of this section, the State Debt Recovery Office has the functions of the registrar of the relevant court with respect to the approval of those costs and expenses. 30

-
- (4) Enforcement costs recoverable under this section are payable to the Sheriff and not to the Consolidated Fund.
- (5) The power of a Local Court to review a decision of a registrar of the court in respect of any such enforcement costs applies to a decision of the State Debt Recovery Office under this section. 5
- Note.** Enforcement costs payable under a fine enforcement order form part of the fine—see section 57 (4).
- [29] Section 84 Suspension of orders during imprisonment or detention** 10
- Omit “(including periodic detention)” from section 84 (2) (a).
- [30] Section 84 (2) (b)**
- Omit “order.”. Insert instead:
- order,
- but not if the fine defaulter is serving a sentence of periodic detention. 15
- [31] Section 89 Periodic detention**
- Omit section 89 (7). Insert instead:
- (7) The State Debt Recovery Office may replace the original warrant in respect of which the order was made with a fresh warrant in connection with the outstanding fine at the time. 20
- [32] Section 109**
- Omit the section. Insert instead:
- 109 Application** 25
- (1) This Part applies to the enforcement of payment of the following (referred to in this Part as *ancillary money orders*):

-
- (a) any witnesses' expenses payable by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer,
 - (b) any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer, 5
 - (c) any monetary forfeiture or monetary compensation made or awarded by a court in proceedings for an offence, 10
 - (d) any other amounts payable under an order of a court of a kind prescribed by the regulations,
- but does not apply to the enforcement of payment of any amount that is a fine within the meaning of section 4. 15
- (2) In this section, *proceedings for an offence* includes:
 - (a) proceedings for an apprehended violence order, and
 - (b) proceedings on appeal in respect of proceedings for an offence. 20

[33] Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

- Jury Act 1977, section 66 25
- Pawnbrokers and Second-hand Dealers Act 1996, section 26
- Royal Botanic Gardens and Domain Trust Act 1980, section 22B
- Sydney Cricket and Sports Ground Act 1978, section 30A 30

Fines Amendment Bill 1998

Amendments

Schedule 1

[34] Schedule 3 Savings, transitional and other provisions

Insert at the end of the list of Acts in clause 1 (1):

Fines Amendment Act 1998