

Fines Amendment Bill 2004

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Fines Act 1996* (the **Principal Act**) for the following purposes:

- (a) to include procedural provisions relating to fine enforcement orders, community service orders and periodic detention orders and other matters that are currently contained in regulations,
- (b) to make it clear that the State Debt Recovery Office has a discretion as to whether it makes a court fine enforcement order on referral of a matter to it by the registrar of a court in certain circumstances,
- (c) to extend the limitation period for taking proceedings to 12 months for offences which currently have a limitation period of less than 12 months, if a penalty notice is issued within the original limitation period and a person elects to have the matter dealt with by a court,
- (d) to specify additional circumstances when a court fine enforcement order or a penalty notice enforcement order may be withdrawn by the State Debt Recovery Office,
- (e) to remove the power of the Minister to apply for annulment of a penalty notice enforcement order in the case of a question or doubt as to liability and to extend the power of the State Debt Recovery Office to annul a penalty on that ground, but only after seeking a review of the matter by the prosecuting authority,
- (f) to make it clear that a fine defaulter may apply to the State Debt Recovery Office to have a fine written off,
- (g) to restrict action taken against the licences of persons who commit offences while under the age of 18 years to cases involving vehicle or parking offences,
- (h) to require the Roads and Traffic Authority to cease enforcement action if a fine defaulter pays 6 instalments in accordance with a first extension of time to pay,
- (i) to constitute a Hardship Review Board and to provide for its function of reviewing decisions of the State Debt Recovery Office relating to applications for further time to pay fines or to have fines written off,
- (j) to require the State Debt Recovery Office to waive enforcement costs for persons who commit offences while under the age of 18 years,
- (k) to authorise the State Debt Recovery Office to disclose personal information in relation to a fine defaulter to a prosecuting authority or government authority that issued a penalty notice,
- (l) to make other amendments of a procedural, consequential and statute law revision nature,
- (m) to make provision of a savings and transitional nature.

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 that gives effect to the amendments to the *Fines Act 1996* set out in Schedule 1.

Schedule 1 Amendments

Procedural provisions relating to fine enforcement orders

Schedule 1 [2] inserts in the Principal Act provisions setting out the means by

which a matter may be referred to the State Debt Recovery Office for the making of a court fine enforcement order.

Schedule 1 [3] makes it clear that the State Debt Recovery Office may, but is not required to, make a court fine enforcement order if an unpaid fine is referred to it by the registrar of a court in the situation where the fine has previously been the subject of an order and enforcement action.

Schedule 1 [4] sets out the matters to be specified in a court fine enforcement order, which were previously contained in regulations.

Schedule 1 [6] omits a provision as a result of procedural matters contained in regulations being inserted in the Principal Act.

Schedule 1 [11] omits, as a consequence of the amendments made by **Schedule 1 [12] and 1 [13]**, the requirement to certify in an application for a penalty notice enforcement order that proceedings may be taken for the offence.

Schedule 1 [12] limits the period within which a penalty notice enforcement order may be made to the applicable limitation period for the offence concerned or the period, as extended by **Schedule 1 [7]**, whichever is applicable.

Schedule 1 [13] makes it clear that an application for a penalty notice enforcement order must certify that the amount payable under the penalty notice has not been paid at the time the application is made and that the relevant limitation period has not expired.

Schedule 1 [14] sets out the matters to be specified in a penalty notice enforcement order, which were previously contained in regulations.

Schedule 1 [16] amends a provision as a result of procedural matters contained in regulations being inserted in the Principal Act.

Schedule 1 [28] inserts a requirement that a notice of a fine enforcement order to a fine defaulter specify the review options available.

Schedule 1 [29] enables a notice of a fine enforcement order to be served on a person at an address provided to the State Debt Recovery Office by police or another government agency, if the State Debt Recovery Office is satisfied that it is the most recent address available for the person.

Withdrawal and annulment of fine enforcement orders

Schedule 1 [5] specifies 2 additional circumstances in which the State Debt Recovery Office may withdraw a court fine enforcement order. They are where the fine has previously been the subject of an order and enforcement action and where the person named in the order is not the same person as the person in respect of whom the fine was imposed.

Schedule 1 [15] specifies 3 additional circumstances in which the State Debt Recovery Office may withdraw a penalty notice enforcement order. They are where the fine has previously been the subject of an order and enforcement action, where the person named in the order is not the same person as the person in respect of whom the fine was imposed and where the offence relates to the owner of a vehicle or vessel and the person concerned was not the owner of the vehicle or vessel at the relevant time.

Schedule 1 [17] removes the right of the Minister to apply for annulment of a penalty notice enforcement order if satisfied that a question or doubt has arisen as to a person's liability for a penalty or other amount. The amendment also removes the 1-year limitation on making an application for an annulment.

Schedule 1 [18] and [19] make consequential amendments.

Schedule 1 [20] permits the State Debt Recovery Office to annul a penalty notice enforcement order if satisfied that a question or doubt has arisen as to a person's liability for a penalty or other amount.

Schedule 1 [21] enables the State Debt Recovery Office to refund an application fee for a successful application to annul a penalty notice enforcement order.

Schedule 1 [22] inserts proposed section 49A. The proposed section requires the

State Debt Recovery Office to refer a matter back to the person or body who issued a penalty notice or on whose behalf a penalty notice was issued (the **prosecuting authority**) before it annuls a penalty notice enforcement order on the ground that a question or doubt has arisen as to liability. The prosecuting authority is to review the matter to determine whether the penalty notice should be withdrawn (which will result in the penalty notice ceasing to have effect and the cessation and reversal of enforcement action). In the event of the prosecuting authority not reviewing the matter or not withdrawing the penalty notice, the State Debt Recovery Office is to proceed to annul the penalty notice enforcement order. The effect of this is that the matter will be dealt with by a Local Court.

Schedule 1 [23] provides that the time for appealing to a Local Court against the refusal of an application for annulment of a penalty notice enforcement order is not later than 28 days after notice of the refusal. This provision was previously contained in regulations. **Schedule 1 [24]** makes a consequential amendment.

Schedule 1 [26] makes the appropriate officer for a penalty notice the prosecutor for the purposes of court proceedings where a penalty notice enforcement order has been annulled.

Matters relating to penalty notices

Schedule 1 [7] extends the limitation period for taking proceedings for offences having a limitation period of less than 12 months, if a penalty notice is issued within that period and a person elects to have the matter dealt with by a court. The extended limitation period is to be 12 months.

Schedule 1 [8] and [9] update the definition of vehicle or vessel offences for which an owner of a vehicle or vessel may, to avoid liability for the offence, provide the name and address of the person in charge of the vehicle or vessel when the offence was committed. The amendments insert matters that were previously specified in regulations.

Fine enforcement action

Schedule 1 [27] inserts an additional matter relating to mitigation of fines in the summary provisions for Part 4 of the Principal Act.

Schedule 1 [30] changes the limitation on the circumstances in which fine enforcement action may be taken by the Roads and Traffic Authority against a person who was under 18 years when the relevant offence was committed. Currently enforcement action may not be taken if the person was not, and never had been, the holder of a driver licence. The amendment will prevent enforcement action from being taken unless the relevant offence was a traffic offence. **Schedule 1 [32]** defines the offences that are traffic offences.

Schedule 1 [31] requires the State Debt Recovery Office to direct the Roads and Traffic Authority to cease enforcement action against a fine defaulter who has been granted a first extension of time to pay a fine and who completes 6 instalments in accordance with the extension of time. If the fine defaulter later defaults, the State Debt Recovery Office may direct the Roads and Traffic Authority to recommence enforcement action. **Schedule 1 [46]** makes a consequential amendment.

Schedule 1 [33] includes actions currently contained in the regulations in the list of actions that the Roads and Traffic Authority is required not to exercise in relation to a fine defaulter against whom it is taking enforcement action.

Schedule 1 [35] provides for regulations relating to community service orders under the *Crimes (Administration of Sentences) Act 1999* to apply to community service orders made by the State Debt Recovery Office under the Principal Act.

Schedule 1 [36] provides for the form of a community service order to be prescribed by regulations.

Schedule 1 [37] inserts proposed sections 80 and 80A. The proposed sections

set out procedures for the service of, and notice of, community service orders to fine defaulters and the Commissioner of Corrective Services. The proposed sections combine matters currently contained in the Principal Act, the regulations and provisions of the *Crimes (Sentencing Procedure) Act 1999* that are applied by the Principal Act. **Schedule 1 [34] and [38]** make consequential amendments.

Schedule 1 [40] inserts a provision setting out the authority given by a warrant of commitment.

Schedule 1 [42] includes in the Principal Act a limitation on eligibility for a periodic detention order currently contained in the regulations.

Schedule 1 [43] applies requirements for eligibility for periodic detention orders under the *Crimes (Sentencing Procedure) Act 1999* to periodic detention orders under the Principal Act. **Schedule 1 [39] and [41]** make consequential amendments.

Schedule 1 [44] provides for regulations relating to periodic detention orders under the *Crimes (Administration of Sentences) Act 1999* to apply to periodic detention orders made by the State Debt Recovery Office under the Principal Act.

Schedule 1 [45] inserts proposed sections 89A and 89B. The proposed sections set out procedures for the service of, and notice of, periodic detention orders to fine defaulters, the State Debt Recovery Office and the governors of the relevant periodic detention centres. The proposed sections combine matters currently contained in the Principal Act, the regulations and provisions of the *Crimes (Sentencing Procedure) Act 1999* that are applied by the Principal Act. **Schedule 1 [43]** makes a consequential amendment.

Schedule 1 [50] inserts proposed section 102A which requires the State Debt Recovery Office to waive payment of enforcement costs for a fine enforcement order (other than the fee for the issue of the order) if the relevant offence occurred when the fine defaulter was under the age of 18 years.

Schedule 1 [51] extends the kinds of documents related to fine enforcement action that may be transmitted electronically by the State Debt Recovery Office.

Schedule 1 [52] sets out a statement, currently contained in the regulations, that must be endorsed on a written copy of a document that is transmitted electronically.

Review of fines and fine enforcement action

Schedule 1 [47] makes it clear that a fine defaulter may apply to the State Debt Recovery Office to have a fine written off after a fine enforcement order is made and before a community service order is issued in the matter. The amendment also extends the circumstances in which a fine may be written off by the State Debt Recovery Office to include a situation where it is satisfied that, due to any or all of the financial, medical or personal circumstances of the fine defaulter, the fine defaulter cannot and is not likely to be able to pay, enforcement action has not been or is not likely to be successful and the fine defaulter is not suitable for a community service order. The State Debt Recovery Office is also required to write off an unpaid fine if it is directed to do so by the Hardship Review Board.

Schedule 1 [48] enables the State Debt Recovery Office to recommence enforcement action in relation to a fine that has been written off at any time within 5 years after it is written off if a further fine enforcement order is made against the fine defaulter or it is satisfied that the fine defaulter has sufficient means to pay the fine, enforcement action is likely to be successful or the fine defaulter is suitable for a community service order.

Schedule 1 [49] inserts proposed sections 101A–101C. Proposed section 101A establishes the Hardship Review Board, consisting of the Chief Commissioner of State Revenue, the Secretary of the Treasury and the Director-General of the

Attorney General's Department. Proposed section 101B confers on the Board the function of reviewing, on the application of fine defaulters, decisions by the State Debt Recovery Office to refuse applications for time to pay fines or to have fines written off. Proposed section 101C enables the Board or a member of the Board to disclose personal information relating to fine defaulters obtained in the administration of the proposed sections. **Schedule 1 [1]** makes a consequential amendment.

Other amendments

Schedule 1 [54] inserts proposed section 117A which authorises the State Debt Recovery Office, the Director of that Office or a member of staff of that Office to disclose personal information relating to fine defaulters obtained in the administration of the Principal Act to government agencies involved in the prosecution of offences, but only if the disclosure is reasonably necessary to monitor the status of outstanding fines. Information may also be disclosed to the Hardship Review Board.

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

Schedule 1 [56] inserts savings and transitional provisions.

Statute law revision amendments

Schedule 1 [10], [25] and [53] replace outdated references.