

First print



New South Wales

Fines Bill 1996

Explanatory note

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

Overview of Bill

The principal object of this Bill is to introduce new procedures for the enforcement of fines.

The Bill repeals existing statutory provisions relating to the imposition and enforcement of fines (including those relating to penalty notices) that are contained in various Acts and consolidates those provisions, with the modifications required by the new enforcement procedures, in a new Act. The Bill also applies the new enforcement procedures to forfeited monetary bail and recognizances.

The main features of the new procedures for the enforcement of fines are as follows:

- (a) A State Debt Recovery Office is established to take charge of and manage the new fine enforcement procedures.
 - (b) The new procedures are applied to fines imposed by any court for any offence and to fines payable under penalty notices for any offence.
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- (c) Fines are to be referred to the State Debt Recovery Office for enforcement action if they are not paid by their due date. The fine defaulter is notified by that Office of the enforcement action that will be taken if the fine is not paid.
- (d) If the fine is not paid, the Roads and Traffic Authority will suspend or cancel any driver's licence or vehicle registration of the fine defaulter (for both traffic and other offences).
- (e) If enforcement action cannot be taken by the Roads and Traffic Authority or it is unsuccessful, the State Debt Recovery Office will authorise civil enforcement of the fine (including the seizure of the fine defaulter's property by the Sheriff).
- (f) If civil enforcement action is not or is unlikely to be successful, a community service order will be served on the fine defaulter.
- (g) If the fine defaulter does not comply with the community service order, a warrant will be issued (except in the case of children) for the imprisonment of the fine defaulter, either full-time or by way of periodic detention.
- (h) The new procedures will be applied to existing fines but an amnesty period will be provided to enable fine defaulters to pay their fines before the new procedures are applied.

Outline of provisions

Part 1 Preliminary

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 defines words and expressions used in the proposed Act.

Clause 4 defines *fine* so as to include a monetary penalty imposed by a court for an offence or an amount payable under a penalty notice following an order of the State Debt Recovery Office for its enforcement. *Fine* does not include costs or any monetary forfeiture or compensation awarded by a court in criminal proceedings (which may be enforced under the proposed Act as a civil debt).

Part 2 Fines imposed by courts

This Part (clauses 5–18) deals with the procedure for payment of court fines and related matters.

- (a) **Means to pay fine.** A court is required to have regard to the means of the accused when it fixes the amount of a fine.
- (b) **Payment details.** A fine imposed by a court is payable within 28 days after it is imposed.
- (c) **Notification of fine.** The person on whom the fine is imposed is to be notified of the fine, the arrangements for payment and the action that may be taken under the proposed Act to enforce the fine.
- (d) **Time to pay.** A court registrar may allow further time to pay the fine on the application of the person.
- (e) **Enforcement order.** If payment of the fine is not made by the due date, a court fine enforcement order may be made against the person by the State Debt Recovery Office. If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by the proposed Act may be taken (see Part 4).
- (f) **Withdrawal of enforcement order.** A court fine enforcement order may be withdrawn if an error has been made.

Part 3 Penalty notices

This Part (clauses 19–56) deals with penalty notice procedures and related matters. The procedure is as follows:

- (a) **Breach of statutory provision.** A person is alleged to have committed an offence under a statutory provision for which a penalty notice may be issued (see Division 2 and Schedule 1).
- (b) **Issue of penalty notice.** A penalty notice is issued under the relevant statutory provision. The notice requires payment of a specified monetary penalty, unless the person alleged to have committed the offence elects to have the matter dealt with by a court (see Division 2 and Schedule 1).
- (c) **Penalty reminder notice.** If the penalty is not paid, a penalty reminder notice is issued. The person who is alleged to have committed the offence may elect to have the matter dealt with by a court (see Division 3).

- (d) **Enforcement order.** If payment of the specified monetary penalty is not made and the person does not elect to have the matter dealt with by a court, a penalty notice enforcement order may be made against the person (see Division 4). If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by this Act may be taken in the same way as action may be taken for the enforcement of a fine imposed on a person after a court hearing for the offence (see Part 4).
- (e) **Withdrawal of enforcement order.** A penalty notice enforcement order may be withdrawn if an error has been made (see Division 4).
- (f) **Annulment of enforcement order.** A penalty notice enforcement order may, on application, be annulled by the State Debt Recovery Office or, if the Office refuses the application, by a Local Court. If the order is annulled, the alleged offence may be heard and determined by the Local Court (see Division 5).

Part 4 Fine enforcement action

This Part (clauses 57–104) deals with the action to be taken for the enforcement of fines. The procedure is as follows:

- (a) **Service of fine enforcement order.** Notice of the fine enforcement order is served on the fine defaulter and the fine defaulter is notified that if payment is not made enforcement action will be taken.
- (b) **Driver's licence or vehicle registration suspension or cancellation.** If the fine is not paid within the period specified, the Roads and Traffic Authority suspends any driver's licence, and may cancel any vehicle registration, of the fine defaulter. If the driver's licence of the fine defaulter is suspended and the fine remains unpaid for 6 months, the Roads and Traffic Authority cancels that driver's licence.
- (c) **Civil enforcement.** If the fine defaulter does not have a driver's licence or a registered vehicle or the fine remains unpaid after 6 months, civil action is taken to enforce the fine, namely, a property seizure order, a garnishee order or the registration of a charge on land owned by the fine defaulter.
- (d) **Community service order.** If civil enforcement action is not successful, a community service order is served on the fine defaulter.

- (e) **Imprisonment if failure to comply with community service order.** If the fine defaulter does not comply with the community service order, a warrant of commitment is issued to a police officer for the imprisonment of the fine defaulter (except in the case of children). The fine defaulter may apply to serve that period of imprisonment by way of periodic detention.
- (f) **Fines payable by corporations.** The procedures for fine enforcement (other than community service orders and imprisonment) apply to fines payable by corporations.

Part 5 Reciprocal enforcement of fines against bodies corporate

This Part (clauses 105–108) transfers from the *Criminal Procedure Act 1986* uniform State and Territory provisions relating to the reciprocal enforcement of fines imposed on bodies corporate.

Part 6 Civil enforcement—costs and other payments

This Part (clauses 109 and 110) deals with the enforcement of costs, forfeiture, compensation and similar orders in connection with criminal proceedings. It applies the same enforcement procedures as those that apply to the enforcement of judgment debts in civil proceedings.

Part 7 Enforcement of monetary bail or recognizances

This Part (clauses 111 and 112) deals with the forfeiture of bail and recognizances. It applies the enforcement procedures for fines to the enforcement of forfeited monetary bail and recognizances.

Part 8 State Debt Recovery Office

This Part (clauses 113–118) deals with the establishment, functions and management of the State Debt Recovery Office. The Office is established as a corporation under the control of a Director. In addition to its functions in connection with the management of the new fine enforcement procedures, the Office has functions in connection with the collection of other Crown debts. Police officers and government agencies and utilities will be required to provide the office with available information about the criminal record, address or assets of a fine defaulter for the purposes of fine enforcement.

Part 9 Miscellaneous

This Part (**clauses 119–132**) contains miscellaneous provisions, including:

- (a) the issue of guidelines by the Minister on the exercise of the functions of the State Debt Recovery Office and other bodies and officials under the proposed Act (clause 120),
- (b) the requirement that fines be paid into the Consolidated Fund unless another Act otherwise provides (clause 121),
- (c) the power of a court to direct that a portion of a fine (not exceeding one-half) be paid to the prosecutor (clause 122),
- (d) the continuation of the power of the Governor to remit fines (clause 123),
- (e) the repeal of legislation being replaced by the proposed Act (clause 129),
- (f) the consequential amendment of other Acts (clause 130 and Schedule 2).

Schedules

Schedule 1 lists the statutory provisions under which penalty notices are issued.

Schedule 2 contains consequential amendments to other Acts.

Schedule 3 contains savings, transitional and other provisions. The Schedule provides that the new procedures for fine enforcement apply to existing fines but provides an amnesty period to enable fine defaulters to pay their fines before the new procedures are applied.



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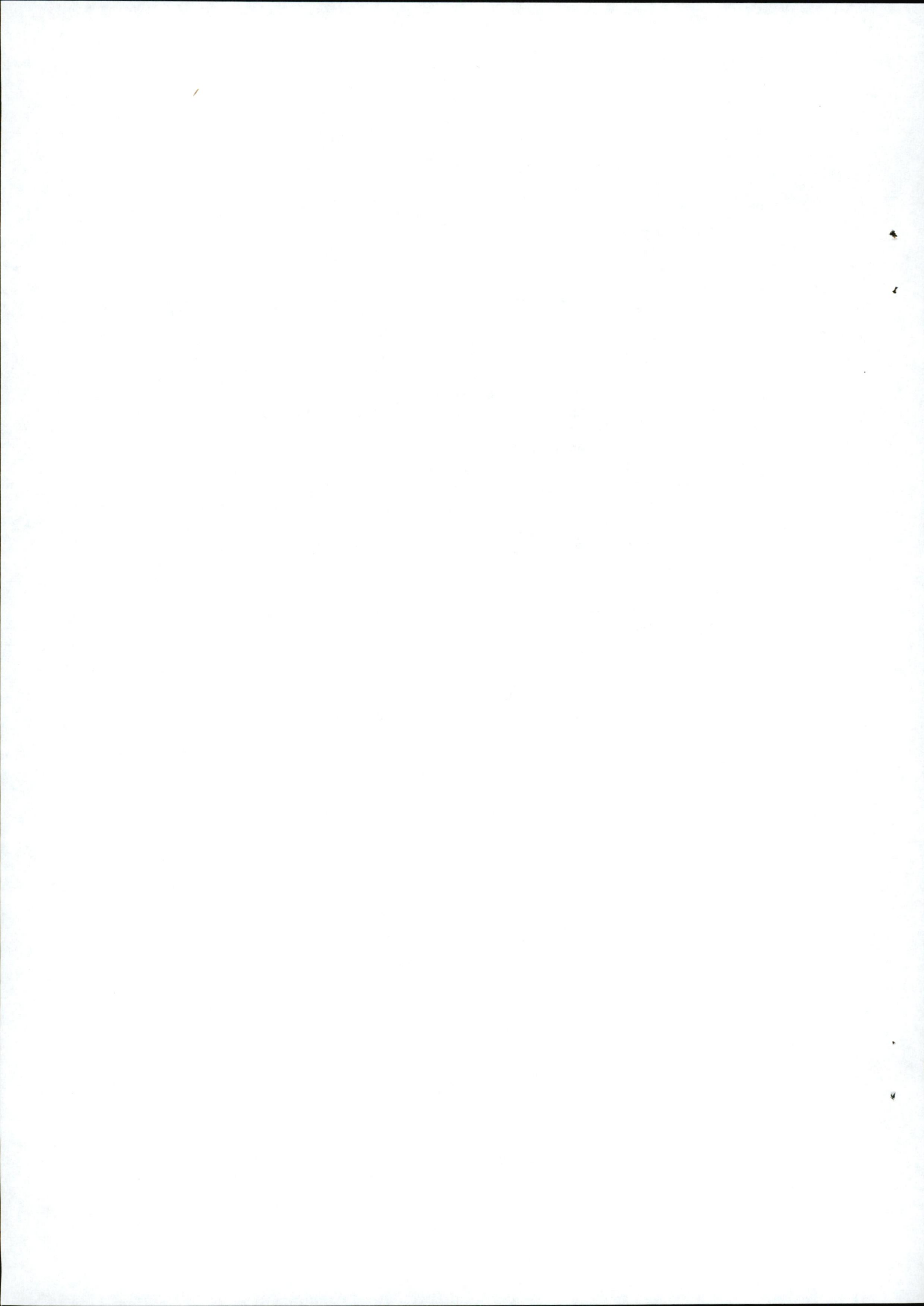
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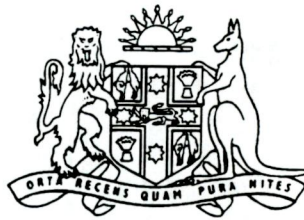
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New South Wales

Fines Bill 1996

No. , 1996

A Bill for

An Act relating to fines and their enforcement, and to other matters.

Clause 1 Fines Bill 1996

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Fines Act 1996*.

2 Commencement

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(1) This Act commences on a day or days to be appointed by proclamation, subject to subsection (2).

(2) The day appointed for the commencement of clause 2 of Schedule 3 is to be a day that is at least 3 months before the day appointed for the commencement of clause 3 of that Schedule.

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Note. Clause 2 of Schedule 3 provides for an amnesty period, before the application of the Act to existing fine defaulters under clause 3 of that Schedule, during which action to commit existing fine defaulters to prison is suspended.

3 Definitions

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(1) In this Act:

Act includes a Code or other statutory provision of another jurisdiction that applies as a law of this State.

appropriate officer for a penalty notice—see section 22.

court means the Supreme Court, the Industrial Relations Commission, the Land and Environment Court, the District Court, a Local Court, the Children's Court or any other court.

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court fine enforcement order—see section 12.

driver's licence means a licence under the *Traffic Act 1909*.

exercise of a function includes the performance of a duty.

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fine—see section 4.

fine defaulter means a person liable to pay a fine under a fine enforcement order.

fine enforcement order means a court fine enforcement order or a penalty notice enforcement order.

function includes a power, authority or duty.

pay a fine or amount means to pay the fine or amount in full by its due date and, if payment by instalments is permitted under this Act, includes to pay each instalment in full by its due date. 5

penalty notice—see section 20.

penalty notice enforcement order—see section 40.

registered, in relation to a vehicle, means registered under the Traffic Act 1909. 10

registrar of a court means a registrar or clerk of that court.

State Debt Recovery Office means the State Debt Recovery Office established under Part 8.

(2) Notes in the text of this Act do not form part of this Act.

4 Meaning of “fine” 15

(1) For the purposes of this Act, a ***fine*** is:

(a) any monetary penalty imposed by a court for an offence, or
(b) any amount payable under a penalty notice enforcement order, or

(c) any fees or charges payable by a person under an order made by a court in proceedings for an offence, or 20

(d) any compensation levy payable under Part 6A of the Victims Compensation Act 1987 or under Part 5 of the Victims Compensation Act 1996, or

(e) any other amount of a kind prescribed by the regulations. 25

(2) However, a ***fine*** does not include:

(a) any amount that is recoverable as a civil debt under Part 6, or

(b) any amount of a kind excluded by the regulations.

Part 2 Fines imposed by courts

Division 1 General

5 Summary of procedure for payment of court fines

- (1) The following is a summary of the procedure under this Part for the payment of fines imposed by any court: 5
- (a) **Payment details**
 A fine imposed by a court is payable within 28 days after it is imposed.
- (b) **Notification of fine** 10
 The person on whom the fine is imposed is to be notified of the fine, the arrangements for payment and the action that may be taken under this Act to enforce the fine.
- (c) **Time to pay**
 A court registrar may allow further time to pay the fine on the application of the person. 15
- (d) **Enforcement order**
 If payment of the fine is not made by the due date, a court fine enforcement order may be made against the person. If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by this Act may be taken (see Part 4). 20
- (e) **Withdrawal of enforcement order**
 A court fine enforcement order may be withdrawn if an error has been made.
- (2) This section does not affect the provisions of this Part that it summarises. 25

6 Consideration of accused's means to pay (cf Crimes Act 1900 sec 440AB and Justices Act 1902 sec 80A)

In the exercise by a court of a discretion to fix the amount of any fine, the court is required to consider: 30

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- (a) such information regarding the means of the accused as is reasonably and practicably available to the court for consideration, and
 - (b) such other matters as, in the opinion of the court, are relevant to the fixing of that amount.

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Division 2 Payment of fines

7 When fine payable

- (1) A fine imposed by any court is payable within 28 days after it is imposed.
- (2) Arrangements for the payment of the fine after that time may be made under this Part. 10
- (3) The court, when imposing a fine:
 - (a) may direct that the fine is payable before that time for the special reasons stated by the court, and
 - (b) may not allow time for payment of the fine after that time. 15

8 To whom fine payable

- (1) A fine imposed by any court is payable to the registrar of the court unless the court otherwise directs.
- (2) The payment may be lodged with the registrar or other officer of any court. 20

9 Fine notification

- (1) Written notice of a fine imposed on a person by a court is to be served on the person by the registrar or other officer of the court as soon as practicable after the fine is imposed.
- (2) The notice may be served personally or by post or by any other means authorised by the regulations. 25
- (3) The notice is to be served personally during or at the completion of the proceedings concerned if the person is present at those proceedings and available to be served.

- (4) The notice is to specify the amount payable, the time for payment and the person to whom it is to be paid. The notice is to inform the person:
 - (a) of the arrangements that may be made for further time to pay the amount, and 5
 - (b) of the enforcement action that will be taken if the amount is not paid by the due date, and
 - (c) of the additional enforcement costs that will be payable if enforcement action is taken.
- (5) The regulations may make provisions for or with respect to the form and service of the notice. 10

10 Application to registrar for further time to pay fine

- (1) A person liable to pay a fine imposed by a court may apply for further time to pay the fine to:
 - (a) the registrar of that court, or 15
 - (b) in the case of a fine imposed by a Local Court—the registrar of any Local Court, or
 - (c) any other registrar of a court specified in the notice of the fine served on the person under this Part as a registrar who may deal with the application. 20
- (2) The registrar may, by order, allow further time to pay the fine if it appears expedient to do so.
- (3) The registrar may, by such an order:
 - (a) extend the time for payment of the whole fine, or
 - (b) allow the fine to be paid by instalments in such amounts, and at such times, as the registrar specifies. 25
- (4) If an instalment of a fine is not paid by the due date, the remaining instalments then become payable.
- (5) An order allowing further time to pay a fine may be amended or revoked by a further order made on the application of the person liable to pay the fine or on the registrar's own initiative. 30

11 Provisions relating to application for further time to pay fine

- (1) This section applies to an application for further time to pay a fine.

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- (2) More than one application may be made in respect of a fine (whether or not the earlier applications were granted).
- (3) The registrar may, for the purposes of dealing with an application, require the applicant to provide information or documents in support of the application (including documents relating to the financial means and identity of the applicant). The registrar may refuse to deal with the application if the information or documents are not provided. 5
- (4) The registrar, when dealing with an application, is to comply with such requirements as are prescribed by the regulations for the purposes of this section. The registrar is also to have due regard to any relevant guidelines under section 120. 10
- (5) The decision of the registrar on an application is final, and may not be appealed against, reviewed, quashed, or called into question by any court or tribunal. 15
- (6) The registrar may not grant an application after a court fine enforcement order is made in respect of the fine.
- Note.** After the making of the enforcement order, an application for further time to pay may be made to the State Debt Recovery Office (see section 100). 20
- (7) The registrar of a court may authorise any officer of the court to deal with an application and to make, amend or revoke an order allowing further time to pay a fine.

Division 3 Court fine enforcement orders

12 What is a court fine enforcement order? 25

- (1) A court fine enforcement order is an order made by the State Debt Recovery Office for the enforcement of a fine imposed by a court.
- (2) A single order may be made for the enforcement of 2 or more fines payable by a person. 30

Note. Part 4 provides for the fine defaulter to be notified by the State Debt Recovery Office of the enforcement order and of the enforcement action that may be taken if the outstanding balance of the fine (and enforcement costs) is not paid within 28 days.

13 Referral for a court fine enforcement order

The registrar of the court that imposed a fine is to refer the matter to the State Debt Recovery Office for the making of a court fine enforcement order if the fine has not been paid by the due date.

14 When an order may be made

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- (1) A court fine enforcement order may be made only if there has been a default in payment of the fine by the due date.
- (2) The State Debt Recovery Office is not required to inquire into whether this section authorises the making of an order in a matter referred to it by the registrar of a court.
- (3) A court fine enforcement order may be made in the absence of, and without notice to, the person liable to pay the fine.

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15 Amount payable under order

- (1) A court fine enforcement order is to set out the amount required to be paid, being the amount of the fine that remains to be paid, together with specified enforcement costs.
- (2) Any amount recovered in consequence of the making of a court fine enforcement order (other than for enforcement costs) is to be dealt with in the same way as if the amount had been paid on the imposition of the fine.

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16 Enforcement costs under order

- (1) The regulations may prescribe the enforcement costs payable under a court fine enforcement order and an amount is not payable for enforcement costs unless it is so prescribed.
- (2) The following applies to any such enforcement costs:
 - (a) an amount may be prescribed as the enforcement costs payable to the State Debt Recovery Office on the making of the order,
 - (b) an amount may be prescribed as the enforcement costs payable to the Roads and Traffic Authority if any enforcement action is taken by that Authority under Division 3 of Part 4 before payment is made under the order,

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- (c) an amount may be prescribed as the enforcement costs payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 before payment is made under the order. 5
- (3) Any amount recovered in consequence of the making of a court fine enforcement order is to be applied firstly towards enforcement costs and the balance towards the amount payable under the fine.
- 17 Withdrawal of order** 10
- (1) The State Debt Recovery Office may, on application or on its own initiative, withdraw a court fine enforcement order if satisfied that the order was made in error.
- (2) A court fine enforcement order must be withdrawn if application for its withdrawal is made by the registrar who referred the matter to the State Debt Recovery Office. 15
- (3) A court fine enforcement order that is withdrawn ceases to have effect and any enforcement action already taken is to be reversed.
- (4) If a court fine enforcement order is withdrawn, enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable. 20
- (5) The withdrawal of a court fine enforcement order does not prevent the making of a further order in respect of the fine.
- 18 Regulations relating to orders**
- The regulations may make provision for or with respect to the making or withdrawal of court fine enforcement orders, including the following: 25
- (a) the manner of referring an unpaid fine for the making of any such order (including electronic transmission),
- (b) the time within which the unpaid fine is to be so referred, 30
- (c) the form of any such order,
- (d) the manner of making any such order.
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Part 3 Penalty notices

Division 1 Summary of penalty notice procedure

19 Summary of penalty notice procedure

- (1) The following is a summary of the penalty notice procedure under this Part: 5
- (a) **Breach of statutory provision**
- A person is alleged to have committed an offence under a statutory provision for which a penalty notice may be issued (see Division 2 and Schedule 1). 10
- (b) **Issue of penalty notice**
- A penalty notice is issued under the relevant statutory provision. The notice requires payment of a specified monetary penalty, unless the person alleged to have committed the offence elects to have the matter dealt with by a court (see Division 2 and Schedule 1). 15
- (c) **Penalty reminder notice**
- If the penalty is not paid, a penalty reminder notice is issued. The person who is alleged to have committed the offence may elect to have the matter dealt with by a court (see Division 3). 20
- (d) **Enforcement order**
- If payment of the specified monetary penalty is not made and the person does not elect to have the matter dealt with by a court, a penalty notice enforcement order may be made against the person (see Division 4). If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by this Act may be taken in the same way as action may be taken for the enforcement of a fine imposed on a person after a court hearing for the offence (see Part 4). 25 30
- (e) **Withdrawal of enforcement order**
- A penalty notice enforcement order may be withdrawn if an error has been made (see Division 4).

(f) Annulment of enforcement order

A penalty notice enforcement order may, on application, be annulled by the State Debt Recovery Office or, if the Office refuses the application, by a Local Court. If the order is annulled, the alleged offence is to be heard and determined by the Local Court (see Division 5).

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- (2) This section does not affect the provisions of this Part that it summarises.

Division 2 Penalty notices**20 What is a penalty notice?**

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- (1) A penalty notice is a notice referred to in subsection (2) to the effect that the person to whom it is directed has committed a specified offence and that, if the person does not wish to have the matter dealt with by a court, the person may pay the specified amount for the offence to a specified person within a specified time.

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- (2) A penalty notice for the purposes of this Act is:

- (a) a notice issued under any of the statutory provisions set out in Schedule 1, or
- (b) any similar notice issued under any statutory provision specified by the regulations for the purposes of this section, or
- (c) a notice issued under a statutory provision previously set out in Schedule 1 or previously specified by those regulations.

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- (3) A notice is not a penalty notice for the purposes of this Act unless it is of a kind referred to in subsection (2).

21 When penalty notices may be issued

A penalty notice may be issued in the circumstances specified in the statutory provision providing for the issue of the notice.

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22 Persons who may issue and deal with penalty notices (appropriate officers)

- (1) A penalty notice may be issued by a person authorised by the statutory provision providing for the issue of the notice.

(2) For the purposes of this Part, the following are *appropriate officers* for a penalty notice:

- (a) a person so authorised to issue that kind of penalty notice,
- (b) the Director of the Infringement Processing Bureau of the Police Service, 5
- (c) a person, or a member of a specified class of persons, specified in the regulations for that kind of penalty notice or for all penalty notices.

23 Payment of amount required by penalty notice

(1) For the purposes of this Part, the amount payable under a penalty notice is the amount specified in the notice, as fixed by or in accordance with law. 10

(2) Payment of that amount results in there being no further liability for further proceedings for the offence to which the notice relates. 15

Note. The statutory provisions under which mechanisms for the issue of penalty notices are provided also provide for the effect of payment in accordance with the notice. The effect of payment in accordance with a penalty notice generally is that no further proceedings will be taken for the alleged offence. Payment generally does not have the effect of an admission of any liability in relation to the events out of which the offence arose. 20

24 Failure to pay amount required by penalty notice

Divisions 3–5 set out the procedure that applies when a person who has been served with a penalty notice fails to pay the amount payable under the notice within the time required by the notice. 25

Division 3 Penalty reminder notices

25 What is a penalty reminder notice?

A penalty reminder notice is a notice served on a person on whom a penalty notice has been served and containing the matters required by this Division. 30

26 When a penalty reminder notice may be sent

An appropriate officer may serve a penalty reminder notice on a person on whom a penalty notice was served if it appears to the officer that the amount payable under the penalty notice has not been paid within the time required by the notice.

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27 What a penalty reminder notice must say

(1) A penalty reminder notice must inform the person on whom it is served:

(a) that the person has until the due date specified in the notice to make the payment for the offence specified in the notice, and

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(b) of the enforcement action that will be taken if the amount is not paid by the due date, and

(c) of the additional enforcement costs that will be payable if enforcement action is taken.

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(2) If the regulations prescribe the form of a penalty reminder notice, a penalty reminder notice must be in that form.

(3) The inclusion in a penalty reminder notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the penalty reminder notice.

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28 Service of penalty reminder notices

(1) A penalty reminder notice may be served on a person:

(a) personally, or

(b) by post, or

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(c) by means of a document exchange, or

(d) by facsimile transmission or other electronic transmission, or

(e) by any other manner prescribed by the regulations.

(2) The address for service of any such penalty reminder notice includes:

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(a) the address of the person shown on the relevant penalty notice or supplied by the person in connection with the service of the relevant penalty notice, or

- (b) if the relevant penalty notice was served on the person in his or her capacity as owner of a vehicle or vessel or was served by being left on a vehicle or vessel—the address shown in the records of the Roads and Traffic Authority or other public agency as the address of the owner of the vehicle or vessel at the time the relevant penalty notice was served, or 5
- (c) if the relevant penalty notice was served on the person in his or her capacity as the person driving or in charge of a vehicle or vessel—the address specified in a statutory declaration under section 38 as the address of the person in charge of the vehicle or vessel at the time of the alleged offence. 10

29 Time for service of penalty reminder notices by post

Despite any other provision of this Act, it is presumed that a penalty reminder notice sent to a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period. 15

30 Due date for payment in penalty reminder notices

- (1) The due date for payment in a penalty reminder notice must be at least 21 days after it is served on the person. 20
- (2) Accordingly, a penalty reminder notice that is posted may specify a date that is at least 28 days after the penalty reminder notice is posted as the due date for making the payment concerned.

31 Extension of due date if notice takes more than 7 days

- (1) If a penalty reminder notice is served on a person more than 7 days after it was posted, the notice is not invalid merely because it specifies as the due date a date that is less than 21 days after it was served on the person. 25
- (2) In such a case however, the due date is extended to a date that is 21 days after the penalty reminder notice was served and the penalty reminder notice is taken to specify that date as the due date. 30

32 Effect of penalty reminder notice on payment time in penalty notice

If a penalty reminder notice is served on a person, the time for payment of the amount payable under the penalty notice for the offence concerned is extended to the due date specified in the penalty reminder notice for payment. 5

33 Payment under penalty reminder notice

Payment of the amount payable under the penalty notice to which a penalty reminder notice relates may be made in accordance with the penalty notice and the relevant provisions of the statutory provision under which the notice was served. 10

34 Effect of payment under penalty reminder notice

Payment of the amount payable under the penalty notice to which a penalty reminder notice relates has the same effect as payment in accordance with the penalty notice. 15

35 Alleged offender's right to elect to have matter dealt with by court

A person alleged to have committed or to be guilty of the offence to which a penalty notice relates has the right to elect to have the matter dealt with by a court instead of under this Part. 20

36 How person may elect to have matter dealt with by court

- (1) A person may elect to have a matter dealt with by a court:
 - (a) by serving on the appropriate officer or other person or body specified in the penalty reminder notice a written statement that the person so elects, or 25
 - (b) by serving on the appropriate officer or other person or body specified in the penalty notice a written statement that the person so elects.
- (2) The statement must be served on or before the due date specified in the penalty reminder notice for payment in relation to the offence concerned or not later than 21 days after the penalty notice was served, whichever is the later. 30

- (3) The statement may be served on a person personally or by post or in any other manner prescribed by the regulations.
- (4) The regulations may make provision for or with respect to the form of written statements under this section.

37 Matter to proceed

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If a person duly elects to have the matter dealt with by a court, proceedings against the person in respect of the offence may be taken as if a penalty notice or penalty reminder notice had not been issued.

38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty

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- (1) A person on whom a penalty reminder notice is served in relation to a vehicle or vessel offence is not liable to make any payment under the penalty notice if the person:

- (a) on or before the due date specified in the penalty reminder notice supplies by statutory declaration to the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the notice), the name and address of some other person who was in charge of the vehicle or vessel concerned at all relevant times relating to the offence, or
- (b) satisfies the appropriate officer (or the specified person or body) that the person did not know and could not with reasonable diligence have ascertained that name and address.

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- (2) A statutory declaration under subsection (1) if produced in any proceedings against the person named in it and in respect of the vehicle or vessel offence concerned is prima facie evidence that the person was in charge of the vehicle or vessel at all relevant times relating to the offence.
- (3) A statutory declaration that relates to more than one vehicle or vessel offence is taken not to be a statutory declaration under, or for the purposes of, subsection (1).

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(4) In this section:

vehicle or vessel offence means any of the following offences:

- (a) an offence of standing or parking a vehicle or of causing or permitting a vehicle to stand, wait or be parked in contravention of any law, 5
- (b) an offence relating to a vehicle or vessel (such as exceeding the speed limit) that is detected by radar or camera (or any other device prescribed by the regulations) and in respect of which the penalty notice is served subsequently on the owner of the vehicle or vessel, 10
- (c) an offence relating to a vehicle or vessel that is of a kind prescribed by the regulations.

39 Withdrawal of penalty reminder notices

- (1) An appropriate officer may withdraw a penalty reminder notice before the due date for payment under the notice. 15
- (2) The following provisions have effect in relation to an alleged offence, if a penalty reminder notice for the alleged offence is withdrawn in accordance with this section:
 - (a) the amount that was payable under the notice ceases to be payable, 20
 - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid,
 - (c) further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had not been issued. 25

Division 4 Penalty notice enforcement orders

40 What is a penalty notice enforcement order?

- (1) A penalty notice enforcement order is an order made by the State Debt Recovery Office for the enforcement of the amount payable under a penalty notice. 30

- (2) A single order may be made for the enforcement of the amounts payable under 2 or more penalty notices.

Note. Part 4 provides for the fine defaulter to be notified by the State Debt Recovery Office of the enforcement order and of the enforcement action that may be taken if the outstanding balance of the amount payable under the penalty notice (and enforcement costs) is not paid within 28 days.

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41 Who may apply for a penalty notice enforcement order?

An appropriate officer for a penalty notice may apply for a penalty notice enforcement order.

42 When a penalty notice enforcement order may be made

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- (1) A penalty notice enforcement order may be made only if:

(a) a penalty notice has been served on a person in relation to a particular offence referred to in the order, and

(b) a penalty reminder notice has been served on the person after the end of the time specified in the penalty notice as the time within which the amount payable under the notice may be paid, and

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(c) the due date specified in the penalty reminder notice has passed, and

(d) the amount payable under the penalty notice had not been paid before the order is made, and

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(e) the person has not, in accordance with this Part, declined to be dealt with under this Part, and

(f) an information in relation to the offence has not been filed, and

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(g) an information may, having regard to the time when the offence was committed or is alleged to have been committed, be filed in relation to the offence, and

(h) the facts as alleged in or referred to in the order constitute the offence.

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- (2) An application for a penalty notice enforcement order must certify whether this section authorises the making of the order. The State Debt Recovery Office may rely on that certificate for the purpose of making the order.

- (3) A penalty notice enforcement order may be made in the absence of, and without notice to, the person concerned.

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43 Amount payable under penalty notice enforcement order

- (1) A penalty notice enforcement order is to set out the amount required to be paid, being the amount that remains to be paid under the penalty notice, together with specified enforcement costs. 5
- (2) Any amount recovered in consequence of the making of a penalty notice enforcement order (other than for enforcement costs) is to be dealt with in the same way as if the amount had been paid on the issue of the penalty notice.

44 Enforcement costs under penalty notice enforcement order 10

- (1) The regulations may prescribe the enforcement costs payable under a penalty notice enforcement order and an amount is not payable for enforcement costs unless it is so prescribed.
- (2) The following applies to any such enforcement costs:
- (a) an amount may be prescribed as the enforcement costs payable to the State Debt Recovery Office on the making of the order, 15
- (b) an amount may be prescribed as the enforcement costs payable to the Roads and Traffic Authority if any enforcement action is taken by that Authority under Division 3 of Part 4 before payment is made under the order, 20
- (c) an amount may be prescribed as the enforcement costs payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 before payment is made under the order. 25
- (3) Any amount recovered in consequence of the making of a penalty notice enforcement order is to be applied firstly towards enforcement costs and the balance towards the amount payable under the penalty notice. 30

45 Effect of making, or of payment under, penalty notice enforcement order

- (1) If a penalty notice enforcement order is made in relation to an offence alleged to have been committed by a person: 35
- (a) the person is not as a result taken to have been convicted of the offence, and

- (b) the making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.
- (2) If the full amount payable under a penalty notice enforcement order is paid or recovered, no person is liable for any further proceedings for the alleged offence concerned. This subsection ceases to apply if the order is duly withdrawn under this Part and the amount paid under the order is repaid. 5
- (3) The payment of any amount payable under a penalty notice enforcement order is not an admission of liability for the purpose of and does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence. 10
- (4) Nothing in this section affects the operation of any provisions of Division 5 relating to the annulment of a penalty notice enforcement order or any provisions of Part 4 relating to the enforcement of a penalty notice enforcement order. 15

46 Withdrawal of order

- (1) The State Debt Recovery Office may, on application or on its own initiative, withdraw a penalty notice enforcement order if satisfied that the order was made in error. 20
- (2) A penalty notice enforcement order must be withdrawn if application for its withdrawal is made by the appropriate officer who applied for the order.
- (3) A penalty notice enforcement order that is withdrawn ceases to have effect and any enforcement action already taken is to be reversed. 25
- (4) If a penalty notice enforcement order is withdrawn, enforcement costs are not payable in respect of the issue of the order.
- (5) If a penalty notice enforcement order is withdrawn, any amount that has been paid under the order is repayable to the person by whom it was paid. 30
- (6) The withdrawal of a penalty notice enforcement order does not prevent the making of a further order in respect of the penalty notice.

47 Regulations relating to orders

The regulations may make provision for or with respect to the making or withdrawal of penalty notice enforcement orders, including the following:

- (a) the manner of applying for any such order (including electronic transmission), 5
- (b) the time within which an application for any such order is to be made,
- (c) the form of any such order,
- (d) the manner of making any such order. 10

Division 5 Annulment of penalty notice enforcement orders**48 Applications for annulment of orders**

- (1) An application may be made by or on behalf of any person for the annulment of a penalty notice enforcement order made against the person under Division 4. 15
- (2) An application for annulment may also be made by the Minister if the Minister is satisfied that a question or doubt has arisen as to the person's liability for the penalty or other amount concerned.
- (3) An application for annulment is to be made in writing to the State Debt Recovery Office. 20
- (4) An application for annulment (other than an application made by the Minister) must be made within one year after the making of the enforcement order.
- (5) A person may not, except with the leave of the State Debt Recovery Office, make more than one application in relation to the same matter. 25
- (6) The regulations may make provision for or with respect to applications under this section (including application fees).

49 Determination of applications by State Debt Recovery Office

- (1) The State Debt Recovery Office, when dealing with an application for annulment made by the Minister, must grant the application and annul the penalty notice enforcement order. 30

- (2) The State Debt Recovery Office, when dealing with an application for annulment made by a person other than the Minister, must grant the application and annul the penalty notice enforcement order if satisfied that:
- (a) the person was not aware that a penalty notice had been issued until the enforcement order was made, or 5
 - (b) the person was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the penalty notice, or
 - (c) having regard to the circumstances of the case, there is other just cause why the application should be granted. 10
- (3) If the State Debt Recovery Office annuls a penalty notice enforcement order, it must refer the matter to a Local Court unless the amount payable under the penalty notice is paid on the annulment of the order. 15
- Note.** Section 51 provides that the Local Court is to hear and determine the alleged offence as if no penalty notice enforcement order had been made.
- (4) Applications for annulment are to be dealt with by the State Debt Recovery Office in the absence of the parties, unless that Office otherwise determines. 20
- (5) The State Debt Recovery Office must give notice of the determination of an application for annulment to all parties interested or concerned.
- (6) The regulations may make provision for or with respect to the practice and procedure of the State Debt Recovery Office when dealing with applications for annulment. 25

50 Appeal against refusal of application by State Debt Recovery Office

- (1) If the State Debt Recovery Office refuses an application for annulment, the applicant may lodge an application in writing with the registrar of a Local Court to have the original application determined by the Local Court. 30
- (2) The registrar must, as soon as possible, refer the matter to the Local Court and notify the applicant and the parties interested as to the date, time and place on or at which the application is to be determined. 35

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- (3) The Local Court before which a matter is brought under this section may determine the application in accordance with this Division and may make any decision about the application that the State Debt Recovery Office may have made.
- (4) The Local Court may proceed to determine an application referred to it by a registrar despite any omission or error in a notice of the referral or its non-service if: 5
- (a) the Local Court is satisfied that the applicant and the parties interested and concerned had knowledge of the date, time and place on or at which the application was to be determined and were not prejudiced by the omission, error or non-service, or 10
- (b) the Local Court is satisfied that the applicant is avoiding service of the notice or cannot, after reasonable search and inquiry, be found. 15
- (5) The regulations may make provision for or with respect to applications under this section (including limiting the time for making applications and application fees).

51 Proceedings for alleged offence if fine enforcement order annulled 20

- (1) If a fine enforcement order is annulled by a Local Court (or is annulled by the State Debt Recovery Office and referred to a Local Court), the Local Court is to hear and determine the matter as if no penalty notice enforcement order had been previously made. 25
- (2) If a Local Court annuls the penalty notice enforcement order, the Local Court may proceed either immediately or at a later sitting of the Court to hear and determine the matter.
- (3) The matter is not to be heard and determined if the amount payable under the penalty notice is paid on the annulment of the order. 30
- (4) For the purposes of hearing and determining the matter, the application for the order (together with any annexure or certificate) is taken:
- (a) to be an information in relation to the alleged offence, and 35
- (b) to have been filed when it was made, and
- (c) to have been filed by the person who made the application.

The person who made the application for the order, or an appropriate officer nominated by that person, is taken to be the informant.

52 Provisions relating to annulment of enforcement orders

- (1) The State Debt Recovery Office or a Local Court dealing with an application for annulment may stay enforcement action under the penalty notice enforcement order subject to such terms and conditions as that Office or Court thinks fit. 5
- (2) An application may be made for the annulment of 2 or more penalty notice enforcement orders, but the order taken under this Division to be an information may only relate to one offence. 10
- (3) An application may be made for the annulment of a penalty notice enforcement order only to the extent of one or more of the penalty notices to which it applies. The order continues to have effect in respect of the remaining penalty notices to which it applies. 15
- (4) A penalty notice enforcement order that is annulled ceases to have any effect as from the making of the order of annulment and any enforcement action already taken is to be reversed.
- (5) If a penalty notice enforcement order is annulled, enforcement costs are not payable in respect of the issue of the order. 20
- (6) If a penalty notice enforcement order is annulled, any amount that has been paid under the order is repayable to the person by whom it was paid.
- (7) If a penalty notice enforcement order is annulled, the period within which proceedings for an offence may be instituted in respect of the matter under section 56 of the *Justices Act 1902* or any other Act commences on the date the order is annulled. 25

Division 6 Application of Part

- 53 Application of penalty notice procedure to children** 30
- (1) This Part applies to a person of any age.
 - (2) However, this Part does not apply to a person who is younger than 10 years or who, although 10 years or older, was younger than 10 years when the person is alleged to have committed the offence to which the relevant penalty notice relates. 35

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- (3) This Part applies despite anything in the *Children (Criminal Proceedings) Act 1987*, except that the provisions of this Part relating to the hearing or determination of an alleged offence on the annulment of a penalty notice enforcement order is subject to that Act.

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54 Part not to apply to certain forestry penalty notices

This Part does not apply to or in relation to a penalty notice under section 46A (2) of the *Forestry Act 1916* if the amount payable under the notice includes any royalty as defined in section 46A of that Act.

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55 Regulations may exclude penalty notices from operation of Part

The regulations may provide that this Part does not apply to or in relation to any specified class or description of penalty notices.

56 Other provisions not affected

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The provisions of this Part are supplemental to, and do not derogate from, the provisions of any Act that relate to proceedings that may be taken in respect of offences that are or may be the subject of penalty notice enforcement orders.

Part 4 Fine enforcement action

Division 1 Preliminary

57 Application and interpretation

- (1) This Part applies to the enforcement of:
 - (a) a fine imposed by a court following the making of a court fine enforcement order, and 5
 - (b) the amount payable under a penalty notice following the making of a penalty notice enforcement order.
- (2) A court fine enforcement order or a penalty notice enforcement order is referred to in this Act as a *fine enforcement order*. 10
- (3) The person liable to pay the fine under a fine enforcement order is referred to in this Act as the *fine defaulter*.
- (4) In this Part, a reference to a *fine* includes a reference to any enforcement costs payable under the fine enforcement order.

58 Summary of enforcement procedure 15

- (1) The following is a summary of the enforcement procedure under this Part following the making of a fine enforcement order:
 - (a) **Service of fine enforcement order**

Notice of the fine enforcement order is served on the fine defaulter and the fine defaulter is notified that if payment is not made enforcement action will be taken (see Division 2). 20
 - (b) **Driver's licence or vehicle registration suspension or cancellation**

If the fine is not paid within the period specified, the Roads and Traffic Authority suspends any driver's licence, and may cancel any vehicle registration, of the fine defaulter. If the driver's licence of the fine defaulter is suspended and the fine remains unpaid for 6 months, the Roads and Traffic Authority cancels that driver's licence (see Division 3). 25
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(c) Civil enforcement

If the fine defaulter does not have a driver's licence or a registered vehicle or the fine remains unpaid after 6 months, civil action is taken to enforce the fine, namely, a property seizure order, a garnishee order or the registration of a charge on land owned by the fine defaulter (see Division 4).

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(d) Community service order

If civil enforcement action is not successful, a community service order is served on the fine defaulter (see Division 5).

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(e) Imprisonment if failure to comply with community service order

If the fine defaulter does not comply with the community service order, a warrant of commitment is issued to a police officer for the imprisonment of the fine defaulter (except in the case of children). The fine defaulter may apply to serve that period of imprisonment by way of periodic detention (see Division 6).

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(f) Fines payable by corporations

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The procedures for fine enforcement (other than community service orders and imprisonment) apply to fines payable by corporations (see Division 7).

- (2) This section does not affect the provisions of this Part that it summarises.

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Division 2 Service of fine enforcement order**59 Service on fine defaulter of notice of order**

As soon as practicable after a fine enforcement order is made, the State Debt Recovery Office is to serve notice of the order on the fine defaulter.

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60 What notice must say

- (1) The notice of a fine enforcement order must inform the fine defaulter that:
 - (a) the order has been made, and
 - (b) the defaulter has until the final date specified in the notice to pay the fine and enforcement costs specified in the notice, and 5
 - (c) if the payment is not made by that final date, further enforcement action will be taken against the defaulter to enforce the fine in accordance with this Part and, in particular, that the defaulter will be liable without further notice to have any driver's licence or vehicle registration suspended or cancelled or property seized and sold, and 10
 - (d) if the payment is not made by that final date, further enforcement costs will be payable (indicating each amount of those costs and circumstances in which it is payable). 15
- (2) If the regulations prescribe the form of such a notice, the notice must be in that form.
- (3) The inclusion in the notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the notice. 20

61 Service of notice

- (1) Notice of a fine enforcement order may be served on a person:
 - (a) personally, or
 - (b) by post, or 25
 - (c) by means of a document exchange, or
 - (d) by facsimile transmission or other electronic transmission, or
 - (e) by any other manner prescribed by the regulations.
- (2) The address for service of any such notice of a court fine enforcement order includes the address for service of the person in connection with the proceedings in which the fine was imposed. 30

- (3) The address for service of any such notice of a penalty notice enforcement order includes:
- (a) the address of the person shown on the relevant penalty notice or supplied by the person in connection with the service of the relevant penalty notice, or 5
 - (b) if the relevant penalty notice was served on the person in his or her capacity as owner of a vehicle or vessel or was served by being left on a vehicle or vessel—the address shown in the records of the Roads and Traffic Authority or other public agency as the address of the owner of the vehicle or vessel at the time the relevant penalty notice was served, or 10
 - (c) if the relevant penalty notice was served on the person in his or her capacity as the person driving or in charge of a vehicle or vessel—the address specified in a statutory declaration under section 38 as the address of the person in charge of the vehicle or vessel at the time of the alleged offence. 15

62 Time for service of notices by post

Despite any other provision of this Act, it is presumed that a notice of a fine enforcement order sent to a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period. 20

63 Final date for payment in notices

- (1) The final date for payment in a notice of a fine enforcement order must be at least 21 days after it is served on the person. 25
- (2) Accordingly, a notice that is posted may specify a date that is at least 28 days after the penalty reminder notice is posted as the final date for making the payment concerned.

64 Extension of final date if notice takes more than 7 days 30

- (1) If a notice is served on a person more than 7 days after it was posted, the notice is not invalid merely because it specifies as the final date a date that is less than 21 days after it was served on the person.

- (2) In such a case however, the final date is extended to a date that is 21 days after the notice was served and the notice is taken to specify that date as the final date.

**Division 3 Driver's licence or vehicle registration
suspension or cancellation**

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65 When enforcement action taken under this Division

- (1) Enforcement action is to be taken against a fine defaulter under this Division if the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter. 10
- (2) The Roads and Traffic Authority is to take that enforcement action when it is directed by the State Debt Recovery Office to do so.

Note. If the fine defaulter does not hold a driver's licence or is not the registered owner of a vehicle, enforcement action can be taken instead under Division 4 (Civil enforcement). 15

66 Suspension or cancellation of driver's licence

- (1) The Roads and Traffic Authority must, without further notice, suspend any driver's licence of a fine defaulter against whom it is required to take enforcement action for the balance of the period of the licence. 20
- (2) If the driver's licence is suspended and the fine concerned remains unpaid for at least 6 months, the Roads and Traffic Authority must, if the State Debt Recovery Office so directs, cancel the licence. 25
- (3) The Roads and Traffic Authority is to remove the suspension of a driver's licence if the fine defaulter pays the fine or if the State Debt Recovery Office so directs.
- (4) The State Debt Recovery Office (or the Roads and Traffic Authority on its behalf) may notify the fine defaulter of the enforcement action taken under this section, but a failure to notify the fine defaulter does not affect that action. 30

- (5) Despite the suspension or cancellation of a driver's licence under this section, a court or the Roads and Traffic Authority may exercise a function under another Act to suspend or cancel the licence. Any such suspension or cancellation takes effect on the suspension or cancellation under this section ceasing to have effect. 5

67 Cancellation of vehicle registration

- (1) The Roads and Traffic Authority may, without further notice, cancel the registration of all or any motor vehicles of which a fine defaulter is the registered owner (or one of the registered owners) if: 10
- (a) it is required to take enforcement action against the fine defaulter but the fine defaulter does not hold a driver's licence that is in force, and
- (b) the cancellation of the registration of those motor vehicles is in accordance with any guidelines issued under section 120. 15
- (2) The Roads and Traffic Authority must cancel the registration of a vehicle in accordance with this section if the State Debt Recovery Office so directs. 20
- (3) The State Debt Recovery Office (or the Roads and Traffic Authority on its behalf) may notify the fine defaulter of the enforcement action taken under this section, but a failure to notify the fine defaulter does not affect that action.

68 Suspension of dealings with Roads and Traffic Authority 25

- (1) This section applies to a fine defaulter if:
- (a) the driver's licence or vehicle registration of the fine defaulter is suspended or cancelled under this Division, or
- (b) the Roads and Traffic Authority is authorised to suspend or cancel the driver's licence or vehicle registration of the fine defaulter but the fine defaulter does not hold a driver's licence or is not the registered owner of a vehicle. 30

- (2) The Roads and Traffic Authority must, unless the State Debt Recovery Office otherwise directs, refuse to exercise any of the following functions if this section applies to a fine defaulter:
- (a) the issue of a driver's licence to the fine defaulter or the renewal of the driver's licence of the fine defaulter, 5
 - (b) the registration of a vehicle in the name of the fine defaulter or the renewal of the registration of a vehicle of which the fine defaulter is the registered owner (or one of the registered owners),
 - (c) the transfer to another person of the registration of a vehicle of which the fine defaulter is the registered owner (or one of the registered owners), 10
 - (d) the issue of a number plate to the fine defaulter,
 - (e) the testing of the fine defaulter for the purpose of the issue of a driver's licence, 15
 - (f) the exercise of any other function of the Authority requested by the fine defaulter in respect of a vehicle, being a function of a kind prescribed by the regulations for the purposes of this section.
- (3) If the Roads and Traffic Authority refuses to exercise any such function, it must, as soon as practicable, notify the fine defaulter that it has refused to do so because the person is a fine defaulter. 20
- (4) This section ceases to apply to a fine defaulter if the fine defaulter pays the fine or if the State Debt Recovery Office so directs the Roads and Traffic Authority. 25
- (5) This section applies despite any obligation of the Roads and Traffic Authority to exercise a function that is imposed by or under any other Act.
- 69 Interim restoration or reinstatement of licence or registration pending appeal etc 30**
- (1) A person may apply to the Roads and Traffic Authority for restoration or reinstatement of a driver's licence suspended or cancelled, or vehicle registration cancelled, under this Division if:

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- (a) in the case of a penalty notice enforcement order—the person has lodged an application under Division 5 of Part 3 to have an application to annul the fine enforcement order concerned determined by a Local Court, or
- (b) in the case of a court fine enforcement order—the person has lodged an appeal against the conviction or sentence in respect of which the fine concerned was imposed or the person has lodged an application under Part 4A of the *Justices Act 1902* to annul that conviction or sentence, and those proceedings have not been determined.
- (2) The Roads and Traffic Authority must issue the person with a driver's licence or certificate of vehicle registration, as the case requires, by way of restoration or reinstatement of the driver's licence or vehicle registration suspended or cancelled under this Division.
- (3) A driver's licence or vehicle registration so restored or reinstated has effect, subject to this Act and the *Traffic Act 1909*, until the date on which:
- (a) the licence would have expired if the licence had not been suspended or cancelled, or
- (b) the registration would have expired if the registration had not been cancelled.
- (4) Any such restored or reinstated licence or registration may be suspended or cancelled under this Act following the determination of the proceedings referred to in subsection (1) or in connection with a different fine payable by the person.
- (5) A licence or registration cannot be restored or reinstated under this section if the licence or registration was also suspended or cancelled for reasons that do not give rise to a right of restoration or reinstatement under this section.

70 Effect of enforcement action on vehicle insurance

- (1) A vehicle insurance policy is not terminated by the cancellation of the registration of the vehicle under this Division or the suspension or cancellation of the driver's licence of the driver of the vehicle under this Division.

- (2) A claim under a vehicle insurance policy cannot be refused merely because the vehicle's registration is cancelled under this Division or the driver's licence of the driver of the vehicle is suspended or cancelled under this Division.
- (3) This section has effect despite anything to the contrary in a vehicle insurance policy or any other agreement. 5
- (4) In this section, a *vehicle insurance policy* is a policy of insurance in respect of damage or loss caused by or arising out of the use or operation of a vehicle (other than a third-party policy within the meaning of the *Motor Accidents Act 1988*). 10
- Note.** Section 13 of the *Motor Accidents Act 1988* provides that a third-party policy under that Act relating to personal injury is not cancelled by the cancellation of the registration of a motor vehicle under this Division.

Division 4 Civil enforcement

- 71 When enforcement action taken under this Division 15
- (1) Enforcement action is to be taken against a fine defaulter under this Division if the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter and:
- (a) enforcement action cannot be taken under Division 3 to suspend or cancel the driver's licence or vehicle registration of the fine defaulter because the fine defaulter does not hold a driver's licence or is not the registered owner of a vehicle, or 20
- (b) the fine remains unpaid even though enforcement action was taken under Division 3. 25
- (2) Enforcement action may be taken under this Division by means of a property seizure order, a garnishee order or a charge on land, or by all or any combination of those means.
- Note.** If enforcement action under this Division has not been or is unlikely to be successful in satisfying the fine, enforcement action can be taken against the fine defaulter under Division 5 (Community service orders). 30

72 Order to seize property of fine defaulter

- (1) The State Debt Recovery Office may make an order for the seizure of the property of a fine defaulter for the purpose of levying the fine payable by the fine defaulter on that property. The order is called a *property seizure order*. 5
- Note.** The *Interpretation Act 1987* defines property to include land as well as personal property.
- (2) The State Debt Recovery Office may make a property seizure order only if satisfied that enforcement action is authorised against the fine defaulter under this Division. 10
- (3) The order may be made in the absence of, and without notice to, the fine defaulter.
- (4) The order is to be directed to the Sheriff, and provided to the Sheriff by the State Debt Recovery Office for execution.
- (5) The order may be executed by the Sheriff or by the Sheriff's officers or by any court bailiffs authorised by the Sheriff. 15
- (6) A property seizure order operates as a warrant of execution issued by a Local Court under section 58 of the *Local Courts (Civil Claims) Act 1970* and, for that purpose, the State Debt Recovery Office is taken to be the judgment creditor. 20
- (7) If the Sheriff is required to execute a property seizure order and a warrant of execution issued by a court or to execute more than one property seizure order, the priority to be accorded to their execution is as follows:
- (a) a property seizure order is to be executed before a warrant of execution (even if the warrant was issued before the order), 25
- (b) property seizure orders are to be executed in the order in which they were received by the Sheriff (unless the Sheriff is directed by the State Debt Recovery Office to execute them in a different order). 30

Clause 72 Fines Bill 1996

Part 4 Fine enforcement action
Division 4

- (8) The Sheriff is to return a property seizure order to the State Debt Recovery Office if the order has not been executed within 12 months after it was made. The Office is to cancel an order so returned, but nothing in this subsection prevents the issue of a further order in the matter. 5
- (9) The Sheriff or other person executing a property seizure order is to cease executing the order if the order is cancelled under section 77.

73 Order to garnishee debts, wages or salary of fine defaulter

- (1) The State Debt Recovery Office may make an order that all debts due and accruing to a fine defaulter from any person specified in the order are attached for the purposes of satisfying the fine payable by the fine defaulter (including an order expressed to be for the continuous attachment of the wage or salary of the fine defaulter). The order is called a *garnishee order*. 10
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- (2) The State Debt Recovery Office may make a garnishee order only if satisfied that enforcement action is authorised against the fine defaulter under this Division.
- (3) The order may be made in the absence of, and without notice to, the fine defaulter. 20
- (4) The order operates as a garnishee order made by a Local Court under Division 3 of Part 5 of the *Local Courts (Civil Claims) Act 1970* and, for that purpose:
- (a) the State Debt Recovery Office is taken to be the judgment creditor, and 25
- (b) an instalment order under section 48 of that Act includes an order under this Act by the State Debt Recovery Office for the payment of a fine by instalments, and
- (c) such other modifications as are prescribed by the regulations have effect. 30

74 Registration of fine enforcement order as charge on land

- (1) The State Debt Recovery Office may apply to the Registrar-General for registration of a fine enforcement order in relation to any land owned by the fine defaulter (including any land owned jointly with another person). 35

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- (2) An application may not be made under this section unless the amount payable under the order (or the total amount payable under the orders) to which the application relates exceeds \$1,000 or such other amount as is prescribed by the regulations.
- (3) An application under this section must define the land to which it relates. 5
- (4) The Registrar-General must, on application under this section and lodgment of a copy of the fine enforcement order, register the order in relation to the land in such manner as the Registrar-General thinks fit. 10
- (5) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the State Debt Recovery Office of the amount payable under the order.
- (6) Such a charge ceases to have effect in relation to the land: 15
- (a) on registration of the cancellation of the charge under section 77, or
 - (b) on the sale or other disposition of the property with the consent of the State Debt Recovery Office, or
 - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge, 20
- whichever first occurs.
- (7) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act. 25
- (8) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (6). 30
- (9) If:
- (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and 35
 - (b) the charge is so registered,

a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (6), taken to have notice of the charge.

- (10) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act. 5

75 Examination of fine defaulter

- (1) The State Debt Recovery Office may issue an examination summons under this section for the purpose of enabling enforcement action to be taken under this Division. 10
- (2) An examination summons may be directed to:
- (a) if the fine defaulter is a natural person—the fine defaulter, or
 - (b) if the fine defaulter is a corporation—an officer or former officer of the corporation. 15
- (3) An examination summons:
- (a) is to summon the person to whom it is directed to attend before the Director or other specified officer of the State Debt Recovery Office, or before a specified officer of a court, at the place specified in the summons, and 20
 - (b) is to summon the person to so attend on a day and at a time specified in the summons and thereafter as required by the Director or officer to be orally examined as to the fine defaulter's property and other means of satisfying the fine and generally as to the fine defaulter's financial circumstances, and 25
 - (c) may require the person to produce to the Director or officer, at any such examination, any document or other thing in the person's possession or control that tends to show the fine defaulter's true financial circumstances. 30

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- (4) An examination summons is to be served personally on the person to whom it is directed.
- (5) A person is not bound to produce any document or other thing that is not specified or sufficiently described in the examination summons or that the person would not be bound to produce on a subpoena for production in the Supreme Court. 5
- (6) An examination summons may not be issued to a person if that person has previously attended an examination within the previous 3 months pursuant to an examination summons under this section. 10
- (7) If a person who is issued with an examination summons under this section fails to attend in accordance with the summons, the State Debt Recovery Office may issue a warrant for the apprehension of the person and for the person to be brought before the Director or other specified officer of the State Debt Recovery Office, or before a specified officer of a court, for examination in accordance with this section. 15
- (8) Any such warrant of apprehension:
- (a) may not be issued unless the State Debt Recovery Office is satisfied that the examination summons was duly served on the person, and 20
 - (b) may not be issued until at least 14 days after the person was notified (in the manner required for the service of a fine enforcement order) that a warrant will issue if the person does not attend for examination in accordance with this section, and 25
 - (c) is to be directed to the Sheriff and may be executed by the Sheriff or by the Sheriff's officers or by any court bailiffs authorised by the Sheriff, and
 - (d) may be executed with the assistance of any police officer. 30
- (9) If a person who is issued with an examination summons under this section:
- (a) fails to attend in accordance with the summons, or
 - (b) without reasonable excuse, refuses to give evidence on oath after attending for examination, or 35
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- (c) gives false information at an examination, or
- (d) without reasonable excuse, fails to produce any document or thing that the person is required by the summons to produce,

the State Debt Recovery Office may report the matter to the Supreme Court or District Court for determination. The court may deal with the matter as if it were a contempt of that court. 5

- (10) The State Debt Recovery Office may at any time adjourn an examination under this section and notify the person concerned of the time and place for the adjourned examination. 10

- (11) The State Debt Recovery Office may, instead of issuing an examination summons under this section, request the fine defaulter by notice to supply the relevant information for the purpose of enabling enforcement action to be taken under this Division. An examination summons may be issued if the notice is not complied with. 15

76 Power of entry to execute property seizure order

- (1) The person executing a property seizure order may, at any reasonable time of the day or night, enter any premises for the purposes of executing the order. 20
- (2) Subsection (1) does not authorise any such person to enter any part of premises used only for residential purposes without the permission of the occupier of the premises or the authority of a search warrant under this section.
- (3) Any such person may apply to an authorised justice for the issue of a search warrant if the person believes on reasonable grounds that there may be property liable to seizure under the property seizure order in any premises. 25
- (4) An authorised justice to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any person who is executing the 30

property seizure order to enter the premises and seize property in the premises in accordance with that or any other property seizure order.

- (5) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section. 5
- (6) Without affecting the generality of section 18 of the *Search Warrants Act 1985*, a police officer:
- (a) may accompany a person executing a search warrant, and
- (b) may take all reasonable steps to assist the person in the exercise of the person's functions under this section. 10
- (7) This section does not authorise a person to seize property under any warrant of execution or order (other than a property seizure order) while the person is in premises in pursuance only of the authority conferred by this section.
- (8) In this section: 15

authorised justice has the same meaning it has in the *Search Warrants Act 1985*.

premises includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not).

77 Cancellation of property seizure, garnishee order or charge on land 20

- (1) A property seizure order, garnishee order or charge on land under this Division is cancelled on the service of a community service order on the fine defaulter under Division 5 for the enforcement of the fine concerned. 25
- (2) A property seizure order, garnishee order or charge on land under this Division is cancelled on the payment of the fine concerned.

Note. The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123. 30

- (3) The State Debt Recovery Office may cancel a property seizure order, garnishee order or charge on land at any time for any good reason.
- (4) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge. 5

Division 5 Community service orders

78 When orders may be made

Enforcement action may be taken against a fine defaulter under this Division if:

- (a) the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter, and 10
- (b) enforcement action under Division 4 has not been or is unlikely to be successful in satisfying the fine.

79 Making of community service order against fine defaulter 15

- (1) The State Debt Recovery Office may make a community service order requiring a fine defaulter to perform community service work in order to work off the amount of the fine that remains unpaid.
- (2) The State Debt Recovery Office may make the order only if satisfied that enforcement action is authorised against the fine defaulter under this Division. 20
- (3) The State Debt Recovery Office is not to make an order if satisfied that the person is not capable of performing work under an order or is otherwise not suitable to be engaged in such work. 25
- (4) The order may be made in the absence of, and without notice to, the fine defaulter.
- (5) The order may be made before the execution of a warrant under Division 4 and in anticipation that enforcement action may not be successful under that Division in satisfying the fine. The order is not to be served if that enforcement action is successful. 30

80 Service of order

- (1) A community service order under this Division is to be served by being given to the fine defaulter in accordance with the regulations.
- (2) The order may only be served on the fine defaulter in accordance with the directions of the State Debt Recovery Office. 5
- (3) The order may be so served on the fine defaulter by the Sheriff or the Sheriff's officers or by a court bailiff authorised by the Sheriff.

81 Number of hours of community service work 10

- (1) The number of hours of community service work, specified in a community service order made under this Division, to be served by the fine defaulter is to be calculated at the rate of 1 hour for each \$15 of the amount of the fine that remains unpaid.
- (2) The number of hours specified in any one order must not exceed 300 hours. The fine defaulter may be subject to more than one order under this Division at any one time. 15
- (3) The number of hours specified in any one order is additional to any number of hours of community service work required to be performed by any other order under this Division or otherwise than under this Division. Accordingly, the total number of hours that a person may be required to perform at any one time under another Act does not apply to any hours required to be worked by an order under this Division. 20
- (4) The regulations may increase the amount of \$15 mentioned in this section and section 83. If the regulations do so, the reference to the amount of \$15 in those sections is to be construed as a reference to that increased amount. 25

82 Satisfaction of orders by payment

- If a fine defaulter who is subject to a community service order under this Division duly pays the fine (or the unsatisfied balance 30

of the fine having regard to the number of hours of community service work already performed) the order is taken to be satisfied.

Note. The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123. The amount of the fine includes enforcement costs—see section 57 (4). 5

83 Satisfaction of fine by community service

- (1) When a fine defaulter who is subject to a community service order under this Division duly complies with the order, the fine concerned is taken to be satisfied. 10
- (2) When a fine defaulter who is subject to a community service order under this Division duly serves part of the number of hours of community service work to be served under the order, the fine concerned is taken to be satisfied by the amount calculated at the rate of \$15 for each hour of community service work actually served. 15

84 Suspension of orders during imprisonment or detention

- (1) If a fine defaulter who is subject to a community service order under this Division is imprisoned while the order is in force, the order is suspended during that period of imprisonment. The period that the order is to be in force is extended, and not reduced, by the period that the order is suspended. 20
- (2) A fine defaulter is imprisoned for the purposes of this section if the fine defaulter is: 25
 - (a) in prison on remand or pursuant to a sentence of imprisonment (including periodic detention), or
 - (b) in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*) on remand or pursuant to a detention order. 30

85 Provisions relating to orders

- (1) An appeal does not lie in respect of the making of a community service order under this Division or the failure to make such an order.

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- (2) The person who serves a community service order under this Division is required, in accordance with the regulations, to explain the order to the fine defaulter on whom it is served.
- (3) The person who serves a community service order under this Division is required to send a copy of the order to the head of Department of Corrective Services or the Department of Juvenile Justice, whichever is applicable. A failure to do so does not invalidate the order. 5

Note. Provisions of the *Children (Community Service Orders) Act 1987* apply to the order if the fine defaulter is a person to whom that Act applies. In any other case, provisions of the *Community Service Orders Act 1979* apply to the order. 10

86 Revocation of community service order

- (1) The State Debt Recovery Office may revoke a community service order made under this Division if it is satisfied that the fine defaulter who is subject to the order has failed, without reasonable excuse, to comply with the order or the requirements imposed with respect to the order by or under the *Community Service Orders Act 1979* or the *Children (Community Service Orders) Act 1987* as the case requires. 15 20
- (2) The State Debt Recovery Office is not to revoke an order under subsection (1) unless the relevant assigned officer (within the meaning of that Act) has reported the breach to the Office. The Office may decide not to revoke an order following the report of a breach of the order to the Office. 25
- (3) The State Debt Recovery Office may revoke a community service order made under this Division if it is satisfied, following a report by the assigned officer, that the fine defaulter is not capable of performing work under the order or is otherwise not suitable to be engaged in such work. 30
- (4) The State Debt Recovery Office may, when revoking an order, also revoke other community service orders that have been made against the fine defaulter.

- (5) Notice of the revocation is to be served on the fine defaulter. The notice may be served in the same way as notice of a fine enforcement order may be served.
- (6) The fine defaulter may, within the time specified in the notice, apply in writing to the State Debt Recovery Office for a review of the revocation. The Office may, if satisfied that the order was not breached or that the breach should be excused, reverse its decision to revoke the community service order. 5
- (7) The revocation of a community service order does not take effect: 10
 - (a) until the expiry of the period during which an application for review of the revocation may be made, or
 - (b) if an application for review is duly made—unless and until the application is refused.
- (8) The revocation of an order (or the review of any such revocation) may be made or held in the absence of, and without notice to, the fine defaulter. 15
- (9) A decision of the State Debt Recovery Office under this section is (subject to this section) final and is not subject to appeal.

Division 6 Imprisonment 20

87 Imprisonment following breach of community service order

- (1) After a community service order is revoked under Division 5, the State Debt Recovery Office may by warrant commit the fine defaulter to prison to be kept there according to the terms of the warrant for the period of imprisonment calculated in accordance with this Division, unless the fine defaulter sooner pays the relevant outstanding fine. 25
- (2) A single warrant may commit the fine defaulter to prison for 2 or more periods of imprisonment if 2 or more community service orders made against the fine defaulter have been revoked. 30
- (3) This section is subject to the other provisions of this Division.

88 The “relevant outstanding fine”

- (1) For the purposes of this Division, the *relevant outstanding fine* at any time is the amount of the fine under the relevant fine enforcement order that remains unpaid at that time.

Note. The amount of the fine includes enforcement costs—see section 57 (4). 5

- (2) In calculating the amount remaining unpaid, account is to be taken of any satisfaction of the fine by service under a community service order under Division 5 or by service of any part of the period of imprisonment under this Division. 10

Note. The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123.

89 Periodic detention

- (1) A fine defaulter who is committed to prison by warrant under this Division may apply to the Commissioner of Corrective Services for an order that the fine defaulter’s period of imprisonment be served by way of periodic detention. An application may be made in anticipation of the issue of a warrant. 15

- (2) The Commissioner of Corrective Services may, on an application under this section, order that the fine defaulter serve the period of imprisonment under a warrant under this Division by way of periodic detention. 20

- (3) A fine defaulter is not eligible to serve a period of imprisonment by way of periodic detention: 25

(a) if the period of imprisonment is less than the minimum period determined in the guidelines under section 120 as appropriate to be served by way of periodic detention, or

(b) if the Commissioner of Corrective Services is of the opinion that accommodation is not available at a prison for the person to serve the period of imprisonment by way of periodic detention, or 30

(c) if the fine defaulter is remanded to or imprisoned in a prison (except as a periodic detainee), or

- (d) if the fine payable by the fine defaulter is for an offence committed while serving a period of imprisonment by way of periodic detention, or
- (e) in any other circumstances prescribed by the regulations.
- (4) On making an order under this section, the warrant committing the fine defaulter to prison is subject to the terms of the order. 5
- (5) The decision whether or not to grant an application under this section is at the discretion of the Commissioner of Corrective Services, and no appeal lies against a decision not to grant an application in a particular case. 10
- (6) The Commissioner of Corrective Services is to serve notice on the State Debt Recovery Office of the making or revocation of an order under this section.
- (7) If an order is revoked, the State Debt Recovery Office may cancel the original warrant in respect of which the order was made and issue a fresh warrant in connection with the relevant outstanding fine at that time. 15

Note. The *Periodic Detention of Prisoners Act 1981* applies to an order under this section.

90 Calculation of period of imprisonment under warrant 20

- (1) The period of imprisonment for the purposes of a warrant under this Division is to be calculated on the basis of the amount of the relevant outstanding fine, as follows:
 - (a) the period is to be 1 day for each \$120 (or part of \$120) of the relevant outstanding fine, 25
 - (b) the period is not to be less than 1 day,
 - (c) the period is not to exceed 3 months.
- (2) The period of imprisonment for the purposes of a warrant under this Division that is to be served by way of periodic detention is to contain detention periods (within the meaning of the *Periodic Detention of Prisoners Act 1981*), as follows: 30
 - (a) the period is to contain the number of detention periods calculated at the rate of 1 detention period for each 2 days of imprisonment calculated under subsection (1),

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- (b) the period is not to contain less than 1 detention period,
- (c) the period is not to contain more than 45 detention periods,
- (d) if orders are made at the same time for the periods of imprisonment under 2 or more warrants under this Division to be served by way of periodic detention—the total number of detention periods under those orders is to be calculated at the rate of 1 detention period for each 2 days of the total periods of imprisonment under those warrants. 5
- (3) The regulations may increase the amount of \$120 mentioned in this section and section 91. If the regulations do so, the references to the amount of \$120 in this section and section 91 are to be construed as references to that increased amount. 10
- 91 Satisfaction of fine by imprisonment**
- (1) When a fine defaulter duly serves the total period of imprisonment under a warrant under this Division, the fine concerned is taken to be satisfied. 15
- (2) When a fine defaulter duly serves part of the period of imprisonment under a warrant under this Division, the fine concerned is then taken to be satisfied by the amount calculated at the rate of \$120 for each day actually served or twice that amount for each detention period served by way of periodic detention, as the case requires. 20
- 92 Special provision relating to children**
- (1) A fine defaulter cannot be committed to prison or a detention centre by a warrant under this Division if the person: 25
- (a) was under 18 years of age when the offence concerned was committed, and
- (b) was under 21 years of age at the time the person was charged with the offence or issued with a penalty notice (as the case requires). 30
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- (2) If a further fine enforcement order is made against the fine defaulter and the person was 18 years of age or older at the time the offence concerned was committed, the fine defaulter may be committed to prison in respect of the earlier fine enforcement order despite subsection (1) if the fine defaulter is committed to prison in respect of that further fine enforcement order. 5

93 Terms under warrants to be served consecutively

- (1) If a fine defaulter is committed to 2 or more terms of imprisonment by one or more warrants of commitment under this Division, the terms are to be served consecutively, not concurrently. 10
- (2) This section extends to imprisonment served by way of periodic detention.

94 Terms under warrants to be served concurrently with other non-fine default imprisonment 15

- (1) A term of imprisonment (or consecutive terms) for which a fine defaulter has been committed by a warrant under this Division may be served concurrently with any imprisonment of the fine defaulter arising otherwise than by any such warrant.
- (2) This section extends to imprisonment served by way of periodic detention. 20

95 Execution of warrant

- (1) If the fine defaulter who is committed to prison by a warrant under this Division is already in prison, the warrant may be executed by the officer in charge of the prison or a person authorised by that officer. The warrant is executed by serving a copy of the warrant on the fine defaulter. 25
- (2) Notice is not required to be given to a fine defaulter of the proposed execution of a warrant under this Division.
- (3) However, a police officer executing a warrant under this Division may, in accordance with guidelines issued under section 120 or (subject to any such guidelines) issued by the Commissioner of 30

Police, delay the execution of the warrant to enable the fine defaulter to pay the relevant outstanding fine or seek the cancellation of the warrant.

- (4) A police officer is to cease executing a warrant under this Division if the fine defaulter pays the relevant outstanding fine (whether to the police officer or in any other manner authorised by this Act). 5
- (5) The State Debt Recovery Office may cancel a warrant issued under this Division if it considers that it is appropriate to do so.

96 Discharge from prison 10

A fine defaulter is to be discharged from the prison to which the fine defaulter has been committed by a warrant under this Division if the fine defaulter duly pays the relevant outstanding fine, unless in prison in respect of another matter.

Note. The relevant outstanding fine is progressively reduced by service of part of the period of imprisonment—see section 88. 15

97 Regulations as to warrants

The regulations may make provision for or with respect to warrants under this Division, including:

- (a) the form of any such warrants, or 20
- (b) the execution of any such warrants.

Division 7 Bodies corporate

98 Application of civil and other enforcement procedures

Enforcement action under this Part extends to a fine enforcement order in respect of a fine defaulter that is a body corporate, other than enforcement action under Division 5 (Community service orders) and Division 6 (Imprisonment). 25

99 Modification of enforcement procedures

If the fine defaulter is a body corporate, enforcement action may be taken under Division 4 (Civil enforcement) before or without taking enforcement action under Division 3 (Driver's licence or vehicle registration suspension or cancellation).

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Division 8 Miscellaneous

100 Time to pay

- (1) After a fine enforcement order is made and before a community service order is issued in the matter, an application for time to pay the fine may be made to the State Debt Recovery Office by the fine defaulter. 10
- (2) The State Debt Recovery Office may, by order, allow further time to pay the fine if satisfied the application is genuine and it appears expedient to do so.
- (3) The State Debt Recovery Office may: 15
 - (a) extend the time for payment of the whole fine, or
 - (b) allow the fine to be paid by instalments of such amounts, and at such times, as the Office specifies.
- (4) If an instalment of a fine is not paid by the due date, the remaining instalments then become due and payable unless the State Debt Recovery Office otherwise orders. 20
- (5) Further enforcement action under this Part is suspended if an application for time to pay is granted and payment of the fine is made in accordance with the order of the State Debt Recovery Office. 25
- (6) However, the Sheriff is not required to return any property seized under a property seizure order under Division 4, and a charge on land created under that Division need not be cancelled, until the fine is paid.

101 Unpaid fines may be written off

- (1) The State Debt Recovery Office may write off unpaid fines in accordance with guidelines issued under section 120.
- (2) Any such guidelines are to extend to fine defaulters who do not have the means to pay the fine or sufficient property for civil enforcement and who are not suitable to undertake work under a community service order. 5
- (3) An unpaid fine that is written off is taken to have been paid for the purpose of cancelling enforcement action under this Act.

102 Disposition of money paid by or recovered from fine defaulters 10

- (1) Any fine paid by a fine defaulter after the making of a fine enforcement order is payable to the State Debt Recovery Office.
- (2) However, with the approval of that Office, any fine paid to another person or body may be directly credited to the Consolidated Fund or other account, or retained, in accordance with this or any other Act or law. 15

Note. Fines include enforcement costs—see section 57 (4).

103 Electronic transmission of orders and warrants

- (1) The following directions, orders and warrants under this Part may be transmitted electronically to the persons to whom they are given or directed: 20
 - (a) a direction of the State Debt Recovery Office to the Roads and Traffic Authority under Division 3,
 - (b) a property seizure order directed to the Sheriff under Division 4, 25
 - (c) a community service order given to the Sheriff for service under Division 5,
 - (d) a warrant of commitment to prison directed to a police officer or other officer under Division 6.

Clause 103 Fines Bill 1996

Part 4 Fine enforcement action
Division 8

- (2) For the purpose of executing any such order or warrant, the Sheriff or other officer to whom the order or warrant is so transmitted is to cause a copy of the order or warrant to be converted into written form and to be endorsed in the manner required by the regulations. 5

104 Power of person executing order or warrant to demand name and address

- (1) The Sheriff or other person executing an order or warrant under this Part may require a person whom the Sheriff or other person suspects on reasonable grounds to be the fine defaulter to state his or her full name and residential address and to produce evidence of his or her identity. 10
- (2) A person is not required to comply with such a requirement unless the person was warned on that occasion that a failure to comply is an offence. 15
- (3) A person who, without reasonable excuse, fails to comply with such a requirement is guilty of an offence.

Maximum penalty: 10 penalty units.

Part 5 Reciprocal enforcement of fines against bodies corporate

105 Definitions

In this Part:

conviction means a conviction or order entered or made (before or after the commencement of this Part) in proceedings for an offence, including a penalty notice enforcement order or similar order. 5

fine includes:

- (a) a pecuniary penalty, pecuniary forfeiture and pecuniary compensation, and 10
- (b) fees, charges and costs payable by a body corporate under an order made in proceedings in which the conviction was entered in respect of the body corporate.

New South Wales fine means a fine payable under a conviction of a New South Wales court (including a fine payable under a penalty notice enforcement order under this Act). 15

reciprocating court means a court, or a court included in a class of court, declared under section 106 to be a reciprocating court or a class of reciprocating courts. 20

relevant officer of a reciprocating court means the registrar or other corresponding officer of the court.

State includes a Territory.

106 Declaration of reciprocating court

Where another State has laws providing for enforcement in that State of a New South Wales fine against a body corporate, the regulations may: 25

- (a) declare a court that exercises criminal jurisdiction in that State to be a reciprocating court, or

- (b) declare a class of courts that exercise criminal jurisdiction in that State to be a class of reciprocating courts.

107 Enforcement of fine imposed by reciprocating court

- (1) Where, under a conviction of a reciprocating court, a fine is payable by a body corporate having or appearing to have property in New South Wales and the State Debt Recovery Office receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the fine, accompanied by:
 - (a) a copy, certified by the relevant officer to be correct, of the conviction, and
 - (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid, the Office is required:
 - (c) to register the certified copy of the conviction, and
 - (d) to note, on the certified copy, the date of registration.
- (2) On registration of a conviction:
 - (a) the conviction is, for the purposes of this Part, taken to be a conviction of a New South Wales court, and
 - (b) the State Debt Recovery Office is required to make a fine enforcement order under this Act for the purpose of recovering the amount specified as unpaid in the certificate relating to conviction.
- (3) Where a request is made under this section in respect of a fine payable under a conviction of a reciprocating court and the State Debt Recovery Office, after the request, receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or in part of the amount of the fine:
 - (a) the Office must record particulars of the payment, and
 - (b) the payment is, for the purposes of enforcement action under this Act, taken to be payment in pursuance of the fine enforcement order made under this section.

-
- (4) The State Debt Recovery Office is required to remit to the relevant officer of the reciprocating court concerned the amount of any fine recovered in pursuance of a fine enforcement order made under this section.
- (5) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court is taken to have been so signed unless the contrary is proved. 5

108 Enforcement of New South Wales fine by reciprocating court

- (1) Where another State has laws providing for enforcement in that State of a New South Wales fine against a body corporate, the State Debt Recovery Office may (on its own behalf or on behalf of the registrar of a New South Wales court) send a request in writing to the relevant officer of the reciprocating court for the enforcement of the New South Wales fine. 10
- (2) Any amount received from a reciprocating court by the State Debt Recovery Office or the registrar of a court in satisfaction of the whole or part of a New South Wales fine is to be applied as if the amount had been paid to the Office or registrar by the body corporate by which the fine was payable in satisfaction of the whole or part of the fine. 15
20
- (3) If:
- (a) a request has been made under subsection (1), and
- (b) an amount is received by the State Debt Recovery Office (otherwise than from the relevant officer of the reciprocating court to whom the request was made) in satisfaction of the whole or part of the fine, 25

the Office is required, as soon as practicable, to notify that relevant officer of the amount of the payment.

Part 6 Civil enforcement—costs and other payments

109 Application

This Part applies to the enforcement of payment of the following:

- (a) costs awarded by a court in proceedings for an offence (including proceedings on appeal), 5
- (b) any monetary forfeiture or monetary compensation made or awarded by a court in proceedings for an offence,
- (c) any other amounts payable under an order of a court of a kind prescribed by the regulations. 10

Note. Amounts whose payment may be enforced under this Part are not *finis* for the purposes of this Act (see section 4 (2)).

110 Enforcement as civil judgments

- (1) An order of a court for the payment of an amount that is enforceable under this Part is enforceable as if it were a judgment for the payment of that amount under the *Local Courts (Civil Claims) Act 1970*. 15
- (2) The order may be entered in the records of any Local Court on which jurisdiction is conferred by that Act as a judgment given in that Local Court for a debt due to the person to whom the payment is required to be made by that order. 20
- (3) The order may be so entered even though the order was made by a court that is not a Local Court or the amount ordered to be paid exceeds the jurisdictional limit of a Local Court.
- (4) The method of enforcement provided by this section does not affect any other remedy for enforcement provided by any other Act or law. 25

Part 7 Enforcement of monetary bail or recognizances

111 Definition

In this Part, *forfeited bail undertaking or recognizance* means a bail undertaking or recognizance that is transmitted to the State Debt Recovery Office under the *Forfeited Recognizances and Bail Act 1954* to be dealt with according to law. 5

112 Enforcement as fines

- (1) Part 4 (Fine enforcement action) applies to a forfeited bail undertaking or recognizance as if the amount payable were a fine imposed by a court for an offence. 10
- (2) The application of that Part is subject to the following:
 - (a) the State Debt Recovery Office is to make a court fine enforcement order for the purposes of taking enforcement action (being a form of order that is appropriate to the circumstances of the case), 15
 - (b) enforcement costs are not payable on the making of the order,
 - (c) all other necessary or prescribed modifications to the application of that Part apply. 20

Part 8 State Debt Recovery Office

113 Establishment of State Debt Recovery Office

- (1) There is established by this Act a body corporate with the corporate name of the State Debt Recovery Office.
- (2) The Office is a statutory body representing the Crown. 5
- (3) The Office is, for the purposes of the *Public Finance and Audit Act 1983*, the *Annual Reports (Departments) Act 1985* or any other prescribed Act, taken to be part of the Attorney General's Department.

114 Functions of Office 10

- (1) The State Debt Recovery Office has the functions conferred or imposed on it by or under this or any other Act.
- (2) The Office has the function of administering the following:
 - (a) the making of fine enforcement orders,
 - (b) the taking of enforcement action against fine defaulters under this Act, 15
 - (c) the write-off policy for outstanding fines,
 - (d) the receipt and collection of fines.
- (3) The Office may act for the State for the purpose of recovering debts or other amounts due to the State. In this subsection, *State* includes the Crown or any authority of the State. 20

115 Director and other staff of Office

A Director and other staff of the State Debt Recovery Office are to be employed under Part 2 of the *Public Sector Management Act 1988*. 25

116 Management of Office

- (1) The affairs of the State Debt Recovery Office are to be managed and controlled by the Director of the Office in accordance with this Act and the regulations and the guidelines in force under section 120. Any act, matter or thing done in the name of, or on behalf of, the Office by the Director is taken to have been done by the Office. 30

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- (2) The functions of the Office of making or issuing orders or warrants under this Act are to be exercised by the Director of the Office or other staff of the Office who are justices of the peace. Any such functions exercised by other staff may be exercised in their own names or in the name of the Director. 5
- (3) The Director and other staff have, in connection with the making or issue of an order or warrant under this Act, the same immunities and protections as officers of a court.

117 Access to information by Office

- (1) Police officers or other members of the Police Service and government agencies are authorised and required to provide the State Debt Recovery Office, on request, with available information about the criminal record, address or assets of a fine defaulter for the purposes of the Office taking action against the person to enforce payment of a fine. 10
15
- (2) In this section, *government agency* includes:
- (a) the Roads and Traffic Authority, and
 - (b) a State owned corporation.

118 Registration of fine enforcement orders

The State Debt Recovery Office is to register each fine enforcement order made by it, and to record details of payment of the fine and the taking of enforcement action. 20

Part 9 Miscellaneous

119 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5

120 Guidelines on exercise of functions under this Act

- (1) The Minister may issue guidelines (not inconsistent with this Act or the regulations) with respect to the following:
 - (a) the exercise by the State Debt Recovery Office of its functions under this Act (including writing off unpaid fines, the issue of fine enforcement orders or community service orders and the taking of other enforcement action under this Act), 10
 - (b) the exercise by registrars of courts of their functions under this Act (including the determination of time for payment of fines imposed by courts), 15
 - (c) the exercise by the Roads and Traffic Authority, the Sheriff and other persons of their functions under this Act in connection with the taking of enforcement action,
 - (d) the exercise by the Commissioner of Corrective Services of the function under this Act of making an order that a fine defaulter serve a period of imprisonment by way of periodic detention. 20
- (2) The Minister is required to make the guidelines public. However, the Minister is not required to make public the guidelines on writing off unpaid fines. 25
- (3) The guidelines are required to be complied with. However, a failure to comply with a guideline does not affect the validity of any proceedings, decision, order or warrant.
- (4) The regulations may make provision for or with respect to the issue and publication of the guidelines. 30

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- 121 Fines payable into Consolidated Fund** (cf Fines and Penalties Act 1901 sec 5 (1))
- (1) A fine or other penalty imposed or authorised to be imposed by or under any Act is, when recovered, payable into the Consolidated Fund. 5
- (2) This section is subject to the provisions of any other Act (whether enacted before or after this Act).
- Note.** *Penalty* is defined in the *Interpretation Act 1987* to include forfeiture or punishment.
- 122 Payment of share of fine to prosecutor** (cf Fines and Penalties Act 1901 sec 5 (3)) 10
- (1) This section applies where:
- (a) the Act imposing or authorising the imposition of a fine or other penalty does not make any provisions for its application when recovered, and 15
- (b) the prosecutor is not a police officer.
- (2) The court before which proceedings are taken to recover any such fine or other penalty may direct that such portion of it (not exceeding one-half) is to be paid to the prosecutor.
- 123 Remission of fines or other penalties** 20
- (1) The Governor may remit, in whole or in part, any fine or other penalty imposed on a convicted offender under any Act.
- (2) Without limiting subsection (1), the Royal prerogative of mercy may be extended to a person imprisoned for the non-payment of a pecuniary fine or other penalty even though it was payable in whole or in part to a person other than the Crown. 25
- (3) A fine that is remitted is taken to have been paid for the purpose of cancelling enforcement action under this Act.
- (4) This section extends to all fines and other penalties (including an order for the payment of compensation by a person found guilty of an offence). 30
- Note.** *Penalty* is defined in the *Interpretation Act 1987* to include forfeiture and punishment and accordingly is not limited to the payment of money.
-

124 Royal prerogative preserved

Nothing in this Act limits or affects in any manner the Royal prerogative of mercy or any entitlement of a prisoner to be discharged or released from prison under any other Act.

125 Abolition of imprisonment as primary enforcement action for fine default 5

- (1) A person is not liable to be committed to prison for a failure to pay a fine or other penalty by the due date.
- (2) However, a fine defaulter is liable to be committed to prison in accordance with this Act for a failure to comply with a community service order served on the fine defaulter under this Act. 10

126 Abolition of recovery by distress (cf *Justices Act 1902* sec 82)

- (1) A fine, or any other order for the payment of money made by a Justice or Justices under the *Justices Act 1902* or any other Act, is not to be levied by distress. 15
- (2) This section does not affect civil enforcement action authorised by this Act or any other Act.

127 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone. 20

128 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 25
- (2) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.

129 Repeals

The following Acts are repealed:

Fines and Penalties Act 1901 No 16

*Community Service Orders (Fine Default) Amendment Act 1987
No 264*

5

130 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

131 Savings, transitional and other provisions

Schedule 3 has effect.

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132 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

15

**Schedule 1 Statutory provisions under which
penalty notices issued**

(Section 20)

Bicentennial Park Trust Act 1987, section 23	
Business Names Act 1962, section 28A	5
Centennial Park and Moore Park Trust Act 1983, section 24	
Crown Lands Act 1989, section 162	
Dog Act 1966, section 22A	
Employment Agents Act 1996, section 29	
Environmental Offences and Penalties Act 1989, section 8G	10
Fair Trading Act 1987, section 64	
Fisheries Management Act 1994, section 276	
Forestry Act 1916, section 46A	
Futures Industry (New South Wales) Code, section 149	
Impounding Act 1993, section 36	15
Industrial Relations Act 1996, section 396	
Jury Act 1977, section 64	
Liquor Act 1982, section 145A	
Local Government Act 1993, section 314, 647 or 679	
Maritime Services Act 1935, section 30D	20
Motor Dealers Act 1974, section 53E	
National Parks and Wildlife Act 1974, section 160	
Noxious Weeds Act 1993, section 63	
Occupational Health and Safety Act 1983, section 51B	
Ozone Protection Act 1989, section 20	25
Parliamentary Electorates and Elections Act 1912, section 120C	

Passenger Transport Act 1990, section 59	
Periodic Detention of Prisoners Act 1981, section 33B	
Plant Diseases Act 1924, section 19	
Ports Corporatisation and Waterways Management Act 1995, section 100	5
Rail Safety Act 1993, section 88	
Registered Clubs Act 1976, section 66	
Roads Act 1993, section 243	
Rural Lands Protection Act 1989, section 205	
State Sports Centre Trust Act 1984, section 20B	10
Stock Diseases Act 1923, section 200	
Summary Offences Act 1988, section 29	
Swimming Pools Act 1992, section 35	
Sydney Market Authority Act 1968, section 18	
Trade Measurement Administration Act 1989, section 23	15
Traffic Act 1909, section 18B	
Transport Administration Act 1988, section 117	
Water Board (Corporatisation) Act 1994, section 50	
Water Supply Authorities Act 1987, section 51	
Wool, Hide and Skin Dealers Act 1935, section 12A	20
Workers Compensation Act 1987, section 278A	

Schedule 2 Amendment of other Acts

(Section 130)

2.1 Bail Act 1978 No 161

Section 54 Notices

Omit "*Fines and Forfeited Recognizances Act 1954*" from section 54 (1) (c). 5

Insert instead "*Forfeited Recognizances and Bail Act 1954* and the *Fines Act 1996*".

2.2 Children (Community Service Orders) Act 1987 No 56

[1] Section 3 Definitions 10

Omit the definition of *children's community service order*.
Insert instead:

children's community service order means a community service order made under section 5 or a community service order made under section 79 of the *Fines Act 1996* in respect of a person to which this Act applies. 15

[2] Section 3 (2)

Omit the subsection.

[3] Part 2, heading

Insert "by courts" after "orders". 20

[4] Section 5A Community service work in default of payment of fine

Omit the section.

-
- [5] **Section 10 Children's community service orders may run concurrently**
Omit "or authorised justices".
- [6] **Section 11 Conditions that may be attached to children's community service order** 5
Omit "or authorised justice".
- [7] **Section 11 (2)**
Insert at the end of the section:
(2) This section extends to children's community service orders made under the *Fines Act 1996*. 10
- [8] **Section 12 Preparation and service of copies of children's community service order**
Omit section 12 (3).
- [9] **Section 12 (4)**
Omit "or an authorised justice". 15
- [10] **Section 13 Number of hours of community service work**
Omit "or authorised justice" from section 13 (1).
- [11] **Section 13 (2A) and (4)**
Omit the subsections.
- [12] **Section 14 Place etc and time for presentation for work** 20
Omit "or an authorised justice".

- [13] Section 14 (2)**
Insert at the end of the section:
(2) This section extends to children's community service orders made under the *Fines Act 1996*.
- [14] Section 16 Assignment of officer by Director-General** 5
Omit "or (3)".
Insert instead "of this Act or section 85 (3) of the *Fines Act 1996*".
- [15] Section 17 Obligations of persons subject to children's community service orders**
Omit "or 5A (1AA)" from section 17 (2). 10
- [16] Section 19 Duration of children's community service orders**
Insert "or the *Fines Act 1996*" after "Act" in section 19 (c).
- [17] Section 21 Revocation etc of children's community service orders on application**
Omit section 21 (3) and (4). 15
- [18] Section 22 Revocation of children's community service orders on being dealt with for other offences**
Omit section 22 (3) and (4).
- [19] Section 22A Satisfaction of certain orders by payment**
Omit the section. 20
- [20] Section 22B Satisfaction of certain orders by detention**
Omit the section.

-
- [21] Section 26A Breach of fine default community service order**
Omit the section.
- 2.3 Children (Criminal Proceedings) Act 1987 No 55**
- [1] Section 37 Term of control order**
Omit section 37 (1). Insert instead: 5
- (1) An order under section 33 (1) (g) takes effect when it is made.
- [2] Section 41A Enforcement of fines etc**
Omit the section.
- 2.4 Community Service Orders Act 1979 No 192** 10
- [1] Section 3 Definitions**
Omit “or 26F” from the definition of *assigned officer*.
- [2] Section 3**
Omit the definition of *authorised Justice*.
- [3] Section 3** 15
Omit the definition of *community service order*. Insert instead:
- community service order* means a community service order made under section 4 (1) and, except in Part 2, includes a community service order made under section 79 of the *Fines Act 1996* in respect of a person who is not a person to whom the *Children (Community Service Orders) Act 1987* applies. 20

[4] Section 14 Obligations of persons in respect of whom orders are in force

Omit “or section 26A (1AA)” from section 14 (2).

[5] Part 3 Fine default (sections 26A–26K)

Omit the Part. Insert instead:

5

Part 3 Fine default

26A Application of Part

- (1) Sections 9, 10 (1), 13, 14, 15, 16 (except subsection (1) (c)) and 17 apply to a community service order under section 79 of the *Fines Act 1996* in the same way they apply to a community service order under Part 2 of this Act. 10

- (2) In the application of those provisions:
 - (a) a reference to a court in section 9 or 10 (1) is to be read as a reference to the State Debt Recovery Office, and 15

 - (b) a reference to section 12 (2) in section 13 is to be read as a reference to section 85 (3) of the *Fines Act 1996*, and

 - (c) a reference to a court in section 17 is to be read as a reference to the Director-General or State Debt Recovery Office, and 20

 - (d) the circumstances in which an order ceases to be in force under section 16 include that the order is revoked or satisfied under the *Fines Act 1996*. 25

[6] Section 27 Regulations

Omit “, under section 13 or 26F,” from section 27 (1) (a) (iii).

2.5 Crimes Act 1900 No 40

[1] Section 440AA Power to fine

Omit "(other than section 440B)" from section 440AA (2) (a).

[2] Section 440AA (3) and (4)

Omit the subsections.

5

[3] Section 440AB Consideration of accused's means to pay

Omit the section.

[4] Section 440AC Instalments and time for payment

Omit the section.

[5] Section 440B Imposition of fine or sentence being deferred or suspended

10

Omit the section.

[6] Section 558 Deferring sentence

Omit section 558 (5).

2.6 Criminal Procedure Act 1986 No 209

15

[1] Section 18

Insert after section 17:

18 Common informer (cf Fines and Penalties Act 1901 sec 4)

A prosecution or proceeding in respect of any offence under an Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons.

20

- [2] **Part 8 Reciprocal enforcement of fines against bodies corporate (sections 25–29)**
Omit the Part.
- 2.7 Fines and Forfeited Recognizances Act 1954 No 25**
- [1] **Section 1 Name of Act and commencement** 5
Omit section 1 (1). Insert instead:
 (1) This Act is the *Forfeited Recognizances and Bail Act 1954*.
- [2] **Section 3 Definitions** 10
Omit the definition of *appropriate registrar*.
- [3] **Section 3A Application of Act to bail money**
Omit the section.
- [4] **Section 4 Forfeiture of certain recognizances** 15
Omit “appropriate registrar” from section 4 (2).
Insert instead “State Debt Recovery Office”.
- [5] **Section 4A Forfeiture of bail money**
Omit “appropriate registrar” from section 4A (1).
Insert instead “State Debt Recovery Office”.
- [6] **Section 5 Procedure after forfeiture of certain recognizances** 20
Omit “to a registrar of the District Court” and “to the appropriate registrar”.
Insert instead “to the State Debt Recovery Office”.

[7] Section 6 Enforcement of certain recognizances where amount has been deposited

Omit "to a registrar of the District Court and shall not be entered on any Estreat Roll" from section 6 (1) (a) and (1A) (c) wherever occurring.

5

Insert instead "to the State Debt Recovery Office".

[8] Section 6A

Insert after section 6:

6A Enforcement under Fines Act 1996

Part 7 of the *Fines Act 1996* applies to the enforcement of a bail undertaking or recognizance transmitted to the State Debt Recovery Office in accordance with this Act.

10

[9] Sections 7-15

Omit the sections.

[10] Second, Third and Fourth Schedules

15

Omit the Schedules.

2.8 Freedom of Information Act 1989 No 5

Schedule 1 Exempt documents

Insert at the end of clause 20:

, or

20

(e) a write-off policy referred to in section 101 of the *Fines Act 1996*.

2.9 Justices Act 1902 No 27

[1] Section 41A Payment of costs by informant

Omit section 41A (3).

[2] Section 49 Discharge on recognizance

Omit "*Fines and Forfeited Recognizances Act 1954*" wherever occurring from section 49 (4). 5

Insert instead "*Forfeited Recognizances and Bail Act 1954*".

[3] Section 50 Procedure on non-appearance of persons discharged on recognizances

Omit "to the registrar of the District Court for the nearest proclaimed place" wherever occurring. 10

Insert instead "to the State Debt Recovery Office".

[4] Section 51B Application of Division 2 to indictable offences

Omit "sections 80A-95". Insert instead "sections 80AA-86".

[5] Section 75B Ex parte procedure for certain offences

15

Omit section 75B (2B) (a). Insert instead:

- (a) a penalty notice enforcement order is annulled under Division 5 of Part 3 of the *Fines Act 1996* and the order (together with any annexure) is taken to be an information in relation to the alleged offence, and 20

[6] Section 75B (2B)

Omit "the certificate" wherever occurring.

Insert instead "the order".

-
- [7] **Section 75B (10)**
Omit the subsection.
- [8] **Section 80A Consideration of defendant's means to pay**
Omit the section.
- [9] **Section 82 Abolition in all cases of recovery of fine etc by levy and distress** 5
Omit the section.
- [10] **Section 83 Payment by instalments of or security taken for payment of money**
Omit the section. 10
- [11] **Part 4, Division 2, Subdivision 8 (sections 86A–95)**
Omit the Subdivision.
- [12] **Section 96 Recognizances generally**
Omit "*Fines and Forfeited Recognizances Act 1954*" wherever occurring from section 96 (4). 15
Insert instead "*Forfeited Recognizances and Bail Act 1954*".
- [13] **Part 4B Penalty notices (sections 100I–100ZG)**
Omit the Part.
- [14] **Section 131 Recovery of costs of appeal**
Omit section 131 (1) (c) and (d), (2), (3) and (4). 20

[15] Section 154 Regulations

Omit "*Fines and Forfeited Recognizances Act 1954*" from section 154 (1) (f).

Insert instead "*Forfeited Recognizances and Bail Act 1954*".

[16] Section 154 (1E)

5

Omit the subsection.

2.10 Land and Environment Court Act 1979 No 204

[1] Section 53

Omit the section. Insert instead:

53 Enforcement of fines or orders

10

The payment of any money ordered by a Judge exercising summary jurisdiction under this Act to be paid as a penalty or for costs may be enforced in accordance with the *Fines Act 1996*.

[2] Section 54 Payment by instalments or security taken for payment of money

15

Omit the section.

2.11 Marketing of Primary Products Act 1983 No 176

[1] Section 156 Proceedings

Omit "Subject to subsection (5), all" from section 156 (1).

20

Insert instead "All".

[2] Section 156 (5) and (6)

Omit the subsections.

2.12 Motor Accidents Act 1988 No 102

[1] Section 13 Cancellation of third-party policies

Omit "section 18C of the *Traffic Act 1909*" from section 13 (3). 5
Insert instead "Division 3 of Part 4 of the *Fines Act 1996*".

[2] Section 13 (7)

Omit "section 18C of the *Traffic Act 1909*".
Insert instead "Division 3 of Part 4 of the *Fines Act 1996*".

2.13 Periodic Detention of Prisoners Act 1981 No 18 10

[1] Section 4 Definitions

Omit "or 5C" from the definition of *order for periodic detention*.
Insert instead "or an order under section 89 of the *Fines Act 1996*".

[2] Section 5C

Omit the section. Insert instead: 15

5C Periodic detention orders for fine defaulters

- (1) This section applies to an order for periodic detention made under section 89 of the *Fines Act 1996*.
- (2) In the application of this Act to such an order:

- (a) a reference to a court having made an order is to be read as a reference to the Commissioner,
 - (b) a reference to a sentence of imprisonment to be served by way of periodic detention or to which an order for periodic detention relates is to be read as a reference to the committal of the person to prison as referred to in section 87 of the *Fines Act 1996*, and a reference to the court that imposed the sentence is to be read as a reference to the Commissioner,
 - (c) the powers of a court under section 25 or 27 may be exercised by the Commissioner.

- [3] Section 5D Conversion of fine default warrants for periodic detainees**
Omit the section.

- [4] Section 25 Cancellation of orders for periodic detention otherwise than on subsequent conviction**
Omit section 25 (3E).

- [5] Section 26 Issue of warrant on cancellation of an order for periodic detention**
Omit "under section 5C" from section 26 (2).
Insert instead "under section 89 of the *Fines Act 1996*".

- 2.14 Poisons and Therapeutic Goods Act 1966 No 31**

Section 26 Penalties
Omit section 26 (5).

2.15 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert in the definition of *search warrant* in alphabetical order of Acts:

section 76 of the *Fines Act 1996*

5

2.16 Supreme Court (Summary Jurisdiction) Act 1967 No 72

[1] Section 15

Omit the section. Insert instead:

15 Enforcement of fines or orders

The payment of any money ordered by a Judge exercising summary jurisdiction under this Act to be paid as a penalty or for costs may be enforced in accordance with the *Fines Act 1996*.

10

[2] Section 16 Payment by instalments or security taken for payment of money

15

Omit the section.

2.17 Traffic Act 1909 No 5

[1] Section 5A Detention of vehicle in certain cases

Omit “, and in default of payment may impose a penalty of imprisonment for a period not exceeding seven days”.

20

- [2] Section 18C Cancellation of licence or registration in default of payment of penalty**
Omit the section.
- [3] Section 21 Authority to notify certain decisions**
Insert at the end of the section: 5
- (8) This section does not apply to the suspension or cancellation of a driver's licence or registration of a vehicle, or the refusal to exercise a function, under Part 4 of the *Fines Act 1996*.
- [4] Section 22 Appeals** 10
Insert at the end of the section:
- (9) This section does not apply to the suspension or cancellation of a driver's licence or registration of a vehicle, or the refusal to exercise a function, under Part 4 of the *Fines Act 1996*. 15
- [5] Schedule 1 Savings, transitional and other provisions**
Omit Part 1A.
- 2.18 Victims Compensation Act 1987 No 237**
Section 65D Payment and enforcement of compensation levy
Omit the section. 20
- 2.19 Victims Compensation Act 1996**
Section 80 Payment and enforcement of compensation levy
Omit the section.

Schedule 3 Savings, transitional and other provisions

(Section 131)

Part 1 Preliminary

- 1 Regulations** 5
- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day. 10
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

Part 2 Provisions consequent on enactment of this Act

- 2 Amnesty period for existing fine defaulters**
- (1) During the amnesty period:
- (a) a warrant of commitment may not be issued under the *Justices Act 1902* for non-payment of an amount of money, and 25
- (b) any such warrant that has been issued but not executed before the commencement of the amnesty period is not to be executed. 30

- (2) This clause does not prevent the making of a community service order in respect of any such warrant of commitment.
- (3) Nothing in this clause prevents arrangements being made by the registrar of a court or the State Debt Recovery Office in accordance with this Act for time to pay an existing fine. Any such arrangements made do not affect any suspension or cancellation of a driver's licence or vehicle registration. 5
- (4) This clause has effect despite anything to the contrary in the *Justices Act 1902* or any other Act.
- (5) In this clause: 10
- amnesty period* means the period after the commencement of this clause and before the commencement of clause 3.
- Note.** See section 2 of this Act for provisions relating to the commencement of this clause and clause 3.
- 3 Act applies to existing fines** 15
- (1) This Act extends, subject to this Schedule, to a fine imposed by a court before the commencement of this clause or an amount payable under a penalty notice issued before the commencement of this clause.
- (2) For the purposes of this Schedule, any such fine or amount is called an *existing fine*. 20
- 4 Court fine provisions**
- (1) The time for payment of an existing fine imposed by a court is not affected by section 7 and a notice of such an existing fine need not be given under section 9. 25
- (2) However, sections 10 and 11 apply to any such existing fine. The registrar of a court may allow further time to pay such a fine under those sections even though the time for payment of the fine has been fixed by the court.
- (3) A court fine enforcement order may be made by the State Debt Recovery Office for an existing fine, whether or not an application is made under this Act for the order. 30

5 Penalty notice provisions

- (1) A penalty notice for the purposes of this Act includes a penalty notice within the meaning of Part 4B of the *Justices Act 1902* immediately before its repeal by this Act.
- (2) A courtesy letter issued under the *Justices Act 1902* in respect of an existing fine is taken to be a penalty reminder notice issued under this Act. 5
- (3) An enforcement order issued under section 100L of the *Justices Act 1902* in respect of an existing fine and in force immediately before the commencement of this clause is taken to be a penalty notice enforcement order under this Act. 10

6 Existing warrants of commitment

- (1) The State Debt Recovery Office may cancel a warrant of commitment issued under the *Justices Act 1902* for non-payment of an amount of money (being a warrant that was not executed immediately before the commencement of this clause) and may make a fine enforcement order under this Act in respect of the fine concerned. 15
- (2) The State Debt Recovery Office is not required to serve a copy of any such fine enforcement order on the fine defaulter or to give the fine defaulter any further time to pay the fine before enforcement action is taken under Part 4 of this Act. 20
- (3) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made. 25
- (4) A person who is, on the commencement of this clause, serving a period of imprisonment under a warrant of commitment issued under the *Justices Act 1902* for non-payment of an amount of money is taken to be serving that period of imprisonment under a warrant issued under this Act. 30

7 Existing suspension or cancellation of drivers' licences or vehicle registration

Any driver's licence or vehicle registration that has been suspended or cancelled under section 18C of the *Traffic Act 1909* before the repeal of that section by this Act is taken to be a driver's licence or vehicle registration suspended or cancelled under Division 3 of Part 4 of this Act. 5

8 Existing community service orders and orders for periodic detention

(1) A community service order made on application under section 89C of the *Justices Act 1902* and in force immediately before the commencement of this clause is taken to be a community service order made under section 79 of this Act. 10

(2) An order for periodic detention made on application under section 89D of the *Justices Act 1902* and in force immediately before the commencement of this clause is taken to be an order for periodic detention made under section 89 of this Act. 15

(3) If any such community service order or order for periodic detention is revoked, the State Debt Recovery Office may make a fine enforcement order under this Act in respect of the fine concerned. 20

(4) The State Debt Recovery Office is not required to serve a copy of any such fine enforcement order on the fine defaulter or to give the fine defaulter any further time to pay the fine before enforcement action is taken under Part 4 of this Act. 25

(5) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made.

9 Existing forfeited recognizances and bail

(1) The Sheriff is to transmit to the State Debt Recovery Office particulars of all forfeited recognizances and bail that are entered on a copy of an Estreat Roll on the commencement of this clause and that have not been recovered before that commencement. 30

-
- (2) Part 7 of this Act applies to those forfeited recognizances and bail as if they had been transmitted to the State Debt Recovery Office under the *Forfeited Recognizances and Bail Act 1954*.
- (3) The State Debt Recovery Office is not required to serve a copy of any fine enforcement order made in respect any such forfeited recognizance or bail on the fine defaulter or to give the fine defaulter any further time to pay the amount due before enforcement action is taken under Part 4 of this Act. 5
- (4) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made. 10

10 Reciprocal enforcement of fines against bodies corporate

- (1) A conviction registered, a notification received or a writ of execution issued, under Part 8 of the *Criminal Procedure Act 1986*, before the commencement of this clause is taken to be registered, received or issued under Part 5 of this Act. 15
- (2) Until regulations are made under section 106 of this Act, courts or classes of courts declared by order in the Gazette under section 26 of the *Criminal Procedure Act 1986* immediately before the repeal of that section by this Act are taken to be declared by the regulations under section 106 of this Act. 20



New South Wales

Fines Act 1996 No 99

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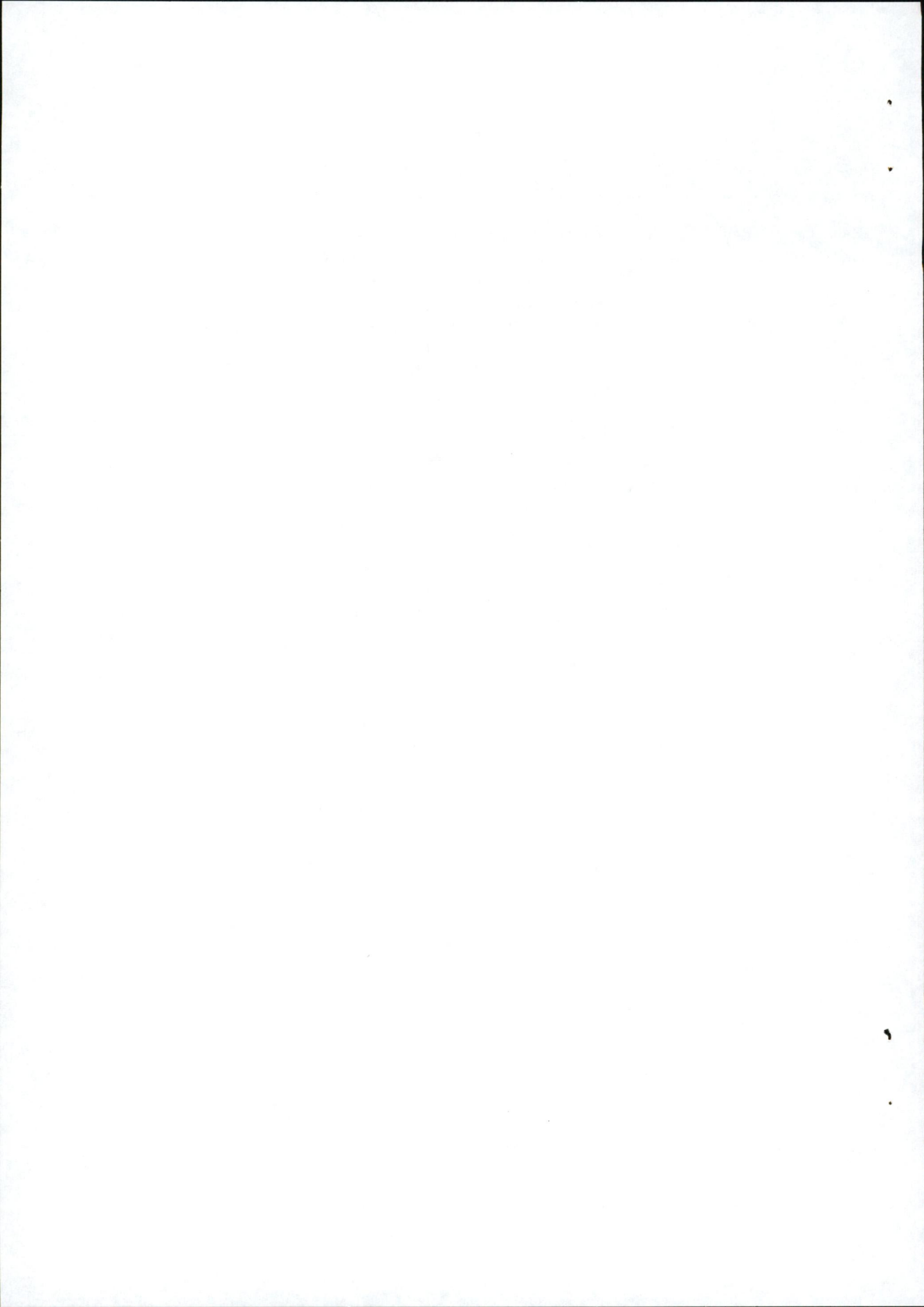
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New South Wales

Fines Act 1996 No 99

Act No 99, 1996

An Act relating to fines and their enforcement, and to other matters.
[Assented to 26 November 1996]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Fines Act 1996*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, subject to subsection (2).
- (2) The day appointed for the commencement of clause 2 of Schedule 3 is to be a day that is at least 3 months before the day appointed for the commencement of clause 3 of that Schedule.

Note. Clause 2 of Schedule 3 provides for an amnesty period, before the application of the Act to existing fine defaulters under clause 3 of that Schedule, during which action to commit existing fine defaulters to prison is suspended.

3 Definitions

- (1) In this Act:

Act includes a Code or other statutory provision of another jurisdiction that applies as a law of this State.

appropriate officer for a penalty notice—see section 22.

court means the Supreme Court, the Industrial Relations Commission, the Land and Environment Court, the District Court, a Local Court, the Children's Court or any other court.

court fine enforcement order—see section 12.

driver's licence means a licence under the *Traffic Act 1909*.

exercise of a function includes the performance of a duty.

fine—see section 4.

fine defaulter means a person liable to pay a fine under a fine enforcement order.

fine enforcement order means a court fine enforcement order or a penalty notice enforcement order.

function includes a power, authority or duty.

pay a fine or amount means to pay the fine or amount in full by its due date and, if payment by instalments is permitted under this Act, includes to pay each instalment in full by its due date.

penalty notice—see section 20.

penalty notice enforcement order—see section 40.

registered, in relation to a vehicle, means registered under the *Traffic Act 1909*.

registrar of a court means a registrar or clerk of that court.

State Debt Recovery Office means the State Debt Recovery Office established under Part 8.

- (2) Notes in the text of this Act do not form part of this Act.

4 Meaning of “fine”

- (1) For the purposes of this Act, a ***fine*** is:
- (a) any monetary penalty imposed by a court for an offence, or
 - (b) any amount payable under a penalty notice enforcement order, or
 - (c) any fees or charges payable by a person under an order made by a court in proceedings for an offence, or
 - (d) any compensation levy payable under Part 6A of the *Victims Compensation Act 1987* or under Part 5 of the *Victims Compensation Act 1996*, or
 - (e) any other amount of a kind prescribed by the regulations.
- (2) However, a ***fine*** does not include:
- (a) any amount that is recoverable as a civil debt under Part 6, or
 - (b) any amount of a kind excluded by the regulations.

Part 2 Fines imposed by courts

Division 1 General

5 Summary of procedure for payment of court fines

(1) The following is a summary of the procedure under this Part for the payment of fines imposed by any court:

(a) **Payment details**

A fine imposed by a court is payable within 28 days after it is imposed.

(b) **Notification of fine**

The person on whom the fine is imposed is to be notified of the fine, the arrangements for payment and the action that may be taken under this Act to enforce the fine.

(c) **Time to pay**

A court registrar may allow further time to pay the fine on the application of the person.

(d) **Enforcement order**

If payment of the fine is not made by the due date, a court fine enforcement order may be made against the person. If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by this Act may be taken (see Part 4).

(e) **Withdrawal of enforcement order**

A court fine enforcement order may be withdrawn if an error has been made.

(2) This section does not affect the provisions of this Part that it summarises.

6 Consideration of accused's means to pay (cf Crimes Act 1900 sec 440AB and Justices Act 1902 sec 80A)

In the exercise by a court of a discretion to fix the amount of any fine, the court is required to consider:

- (a) such information regarding the means of the accused as is reasonably and practicably available to the court for consideration, and
- (b) such other matters as, in the opinion of the court, are relevant to the fixing of that amount.

Division 2 Payment of fines

7 When fine payable

- (1) A fine imposed by any court is payable within 28 days after it is imposed.
- (2) Arrangements for the payment of the fine after that time may be made under this Part.
- (3) The court, when imposing a fine:
 - (a) may direct that the fine is payable before that time for the special reasons stated by the court, and
 - (b) may not allow time for payment of the fine after that time.

8 To whom fine payable

- (1) A fine imposed by any court is payable to the registrar of the court unless the court otherwise directs.
- (2) The payment may be lodged with the registrar or other officer of any court.

9 Fine notification

- (1) Written notice of a fine imposed on a person by a court is to be served on the person by the registrar or other officer of the court as soon as practicable after the fine is imposed.
- (2) The notice may be served personally or by post or by any other means authorised by the regulations.
- (3) The notice is to be served personally during or at the completion of the proceedings concerned if the person is present at those proceedings and available to be served.

- (4) The notice is to specify the amount payable, the time for payment and the person to whom it is to be paid. The notice is to inform the person:
 - (a) of the arrangements that may be made for further time to pay the amount, and
 - (b) of the enforcement action that will be taken if the amount is not paid by the due date, and
 - (c) of the additional enforcement costs that will be payable if enforcement action is taken.
- (5) The regulations may make provisions for or with respect to the form and service of the notice.

10 Application to registrar for further time to pay fine

- (1) A person liable to pay a fine imposed by a court may apply for further time to pay the fine to:
 - (a) the registrar of that court, or
 - (b) in the case of a fine imposed by a Local Court—the registrar of any Local Court, or
 - (c) any other registrar of a court specified in the notice of the fine served on the person under this Part as a registrar who may deal with the application.
- (2) The registrar may, by order, allow further time to pay the fine if it appears expedient to do so.
- (3) The registrar may, by such an order:
 - (a) extend the time for payment of the whole fine, or
 - (b) allow the fine to be paid by instalments in such amounts, and at such times, as the registrar specifies.
- (4) If an instalment of a fine is not paid by the due date, the remaining instalments then become payable.
- (5) An order allowing further time to pay a fine may be amended or revoked by a further order made on the application of the person liable to pay the fine or on the registrar's own initiative.

11 Provisions relating to application for further time to pay fine

- (1) This section applies to an application for further time to pay a fine.

-
- (2) More than one application may be made in respect of a fine (whether or not the earlier applications were granted).
 - (3) The registrar may, for the purposes of dealing with an application, require the applicant to provide information or documents in support of the application (including documents relating to the financial means and identity of the applicant). The registrar may refuse to deal with the application if the information or documents are not provided.
 - (4) The registrar, when dealing with an application, is to comply with such requirements as are prescribed by the regulations for the purposes of this section. The registrar is also to have due regard to any relevant guidelines under section 120.
 - (5) The decision of the registrar on an application is final, and may not be appealed against, reviewed, quashed, or called into question by any court or tribunal.
 - (6) The registrar may not grant an application after a court fine enforcement order is made in respect of the fine.
Note. After the making of the enforcement order, an application for further time to pay may be made to the State Debt Recovery Office (see section 100).
 - (7) The registrar of a court may authorise any officer of the court to deal with an application and to make, amend or revoke an order allowing further time to pay a fine.

Division 3 Court fine enforcement orders

12 What is a court fine enforcement order?

- (1) A court fine enforcement order is an order made by the State Debt Recovery Office for the enforcement of a fine imposed by a court.
- (2) A single order may be made for the enforcement of 2 or more fines payable by a person.

Note. Part 4 provides for the fine defaulter to be notified by the State Debt Recovery Office of the enforcement order and of the enforcement action that may be taken if the outstanding balance of the fine (and enforcement costs) is not paid within 28 days.

13 Referral for a court fine enforcement order

The registrar of the court that imposed a fine is to refer the matter to the State Debt Recovery Office for the making of a court fine enforcement order if the fine has not been paid by the due date.

14 When an order may be made

- (1) A court fine enforcement order may be made only if there has been a default in payment of the fine by the due date.
- (2) The State Debt Recovery Office is not required to inquire into whether this section authorises the making of an order in a matter referred to it by the registrar of a court.
- (3) A court fine enforcement order may be made in the absence of, and without notice to, the person liable to pay the fine.

15 Amount payable under order

- (1) A court fine enforcement order is to set out the amount required to be paid, being the amount of the fine that remains to be paid, together with specified enforcement costs.
- (2) Any amount recovered in consequence of the making of a court fine enforcement order (other than for enforcement costs) is to be dealt with in the same way as if the amount had been paid on the imposition of the fine.

16 Enforcement costs under order

- (1) The regulations may prescribe the enforcement costs payable under a court fine enforcement order and an amount is not payable for enforcement costs unless it is so prescribed.
- (2) The following applies to any such enforcement costs:
 - (a) an amount may be prescribed as the enforcement costs payable to the State Debt Recovery Office on the making of the order,
 - (b) an amount may be prescribed as the enforcement costs payable to the Roads and Traffic Authority if any enforcement action is taken by that Authority under Division 3 of Part 4 before payment is made under the order,

- (c) an amount may be prescribed as the enforcement costs payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 before payment is made under the order.
- (3) Any amount recovered in consequence of the making of a court fine enforcement order is to be applied firstly towards enforcement costs and the balance towards the amount payable under the fine.

17 Withdrawal of order

- (1) The State Debt Recovery Office may, on application or on its own initiative, withdraw a court fine enforcement order if satisfied that the order was made in error.
- (2) A court fine enforcement order must be withdrawn if application for its withdrawal is made by the registrar who referred the matter to the State Debt Recovery Office.
- (3) A court fine enforcement order that is withdrawn ceases to have effect and any enforcement action already taken is to be reversed.
- (4) If a court fine enforcement order is withdrawn, enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable.
- (5) The withdrawal of a court fine enforcement order does not prevent the making of a further order in respect of the fine.

18 Regulations relating to orders

The regulations may make provision for or with respect to the making or withdrawal of court fine enforcement orders, including the following:

- (a) the manner of referring an unpaid fine for the making of any such order (including electronic transmission),
- (b) the time within which the unpaid fine is to be so referred,
- (c) the form of any such order,
- (d) the manner of making any such order.

Part 3 Penalty notices

Division 1 Summary of penalty notice procedure

19 Summary of penalty notice procedure

(1) The following is a summary of the penalty notice procedure under this Part:

(a) **Breach of statutory provision**

A person is alleged to have committed an offence under a statutory provision for which a penalty notice may be issued (see Division 2 and Schedule 1).

(b) **Issue of penalty notice**

A penalty notice is issued under the relevant statutory provision. The notice requires payment of a specified monetary penalty, unless the person alleged to have committed the offence elects to have the matter dealt with by a court (see Division 2 and Schedule 1).

(c) **Penalty reminder notice**

If the penalty is not paid, a penalty reminder notice is issued. The person who is alleged to have committed the offence may elect to have the matter dealt with by a court (see Division 3).

(d) **Enforcement order**

If payment of the specified monetary penalty is not made and the person does not elect to have the matter dealt with by a court, a penalty notice enforcement order may be made against the person (see Division 4). If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by this Act may be taken in the same way as action may be taken for the enforcement of a fine imposed on a person after a court hearing for the offence (see Part 4).

(e) **Withdrawal of enforcement order**

A penalty notice enforcement order may be withdrawn if an error has been made (see Division 4).

(f) **Annulment of enforcement order**

A penalty notice enforcement order may, on application, be annulled by the State Debt Recovery Office or, if the Office refuses the application, by a Local Court. If the order is annulled, the alleged offence is to be heard and determined by the Local Court (see Division 5).

- (2) This section does not affect the provisions of this Part that it summarises.

Division 2 Penalty notices

20 What is a penalty notice?

- (1) A penalty notice is a notice referred to in subsection (2) to the effect that the person to whom it is directed has committed a specified offence and that, if the person does not wish to have the matter dealt with by a court, the person may pay the specified amount for the offence to a specified person within a specified time.
- (2) A penalty notice for the purposes of this Act is:
- (a) a notice issued under any of the statutory provisions set out in Schedule 1, or
 - (b) any similar notice issued under any statutory provision specified by the regulations for the purposes of this section, or
 - (c) a notice issued under a statutory provision previously set out in Schedule 1 or previously specified by those regulations.
- (3) A notice is not a penalty notice for the purposes of this Act unless it is of a kind referred to in subsection (2).

21 When penalty notices may be issued

A penalty notice may be issued in the circumstances specified in the statutory provision providing for the issue of the notice.

22 Persons who may issue and deal with penalty notices (appropriate officers)

- (1) A penalty notice may be issued by a person authorised by the statutory provision providing for the issue of the notice.

- (2) For the purposes of this Part, the following are *appropriate officers* for a penalty notice:
- (a) a person so authorised to issue that kind of penalty notice,
 - (b) the Director of the Infringement Processing Bureau of the Police Service,
 - (c) a person, or a member of a specified class of persons, specified in the regulations for that kind of penalty notice or for all penalty notices.

23 Payment of amount required by penalty notice

- (1) For the purposes of this Part, the amount payable under a penalty notice is the amount specified in the notice, as fixed by or in accordance with law.
- (2) Payment of that amount results in there being no further liability for further proceedings for the offence to which the notice relates.

Note. The statutory provisions under which mechanisms for the issue of penalty notices are provided also provide for the effect of payment in accordance with the notice. The effect of payment in accordance with a penalty notice generally is that no further proceedings will be taken for the alleged offence. Payment generally does not have the effect of an admission of any liability in relation to the events out of which the offence arose.

24 Failure to pay amount required by penalty notice

Divisions 3–5 set out the procedure that applies when a person who has been served with a penalty notice fails to pay the amount payable under the notice within the time required by the notice.

Division 3 Penalty reminder notices

25 What is a penalty reminder notice?

A penalty reminder notice is a notice served on a person on whom a penalty notice has been served and containing the matters required by this Division.

26 When a penalty reminder notice may be sent

An appropriate officer may serve a penalty reminder notice on a person on whom a penalty notice was served if it appears to the officer that the amount payable under the penalty notice has not been paid within the time required by the notice.

27 What a penalty reminder notice must say

- (1) A penalty reminder notice must inform the person on whom it is served:
 - (a) that the person has until the due date specified in the notice to make the payment for the offence specified in the notice, and
 - (b) of the enforcement action that will be taken if the amount is not paid by the due date, and
 - (c) of the additional enforcement costs that will be payable if enforcement action is taken.
- (2) If the regulations prescribe the form of a penalty reminder notice, a penalty reminder notice must be in that form.
- (3) The inclusion in a penalty reminder notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the penalty reminder notice.

28 Service of penalty reminder notices

- (1) A penalty reminder notice may be served on a person:
 - (a) personally, or
 - (b) by post, or
 - (c) by means of a document exchange, or
 - (d) by facsimile transmission or other electronic transmission, or
 - (e) by any other manner prescribed by the regulations.
- (2) The address for service of any such penalty reminder notice includes:
 - (a) the address of the person shown on the relevant penalty notice or supplied by the person in connection with the service of the relevant penalty notice, or

- (b) if the relevant penalty notice was served on the person in his or her capacity as owner of a vehicle or vessel or was served by being left on a vehicle or vessel—the address shown in the records of the Roads and Traffic Authority or other public agency as the address of the owner of the vehicle or vessel at the time the relevant penalty notice was served, or
- (c) if the relevant penalty notice was served on the person in his or her capacity as the person driving or in charge of a vehicle or vessel—the address specified in a statutory declaration under section 38 as the address of the person in charge of the vehicle or vessel at the time of the alleged offence.

29 Time for service of penalty reminder notices by post

Despite any other provision of this Act, it is presumed that a penalty reminder notice sent to a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period.

30 Due date for payment in penalty reminder notices

- (1) The due date for payment in a penalty reminder notice must be at least 21 days after it is served on the person.
- (2) Accordingly, a penalty reminder notice that is posted may specify a date that is at least 28 days after the penalty reminder notice is posted as the due date for making the payment concerned.

31 Extension of due date if notice takes more than 7 days

- (1) If a penalty reminder notice is served on a person more than 7 days after it was posted, the notice is not invalid merely because it specifies as the due date a date that is less than 21 days after it was served on the person.
- (2) In such a case however, the due date is extended to a date that is 21 days after the penalty reminder notice was served and the penalty reminder notice is taken to specify that date as the due date.

32 Effect of penalty reminder notice on payment time in penalty notice

If a penalty reminder notice is served on a person, the time for payment of the amount payable under the penalty notice for the offence concerned is extended to the due date specified in the penalty reminder notice for payment.

33 Payment under penalty reminder notice

Payment of the amount payable under the penalty notice to which a penalty reminder notice relates may be made in accordance with the penalty notice and the relevant provisions of the statutory provision under which the notice was served.

34 Effect of payment under penalty reminder notice

Payment of the amount payable under the penalty notice to which a penalty reminder notice relates has the same effect as payment in accordance with the penalty notice.

35 Alleged offender's right to elect to have matter dealt with by court

A person alleged to have committed or to be guilty of the offence to which a penalty notice relates has the right to elect to have the matter dealt with by a court instead of under this Part.

36 How person may elect to have matter dealt with by court

- (1) A person may elect to have a matter dealt with by a court:
 - (a) by serving on the appropriate officer or other person or body specified in the penalty reminder notice a written statement that the person so elects, or
 - (b) by serving on the appropriate officer or other person or body specified in the penalty notice a written statement that the person so elects.
- (2) The statement must be served on or before the due date specified in the penalty reminder notice for payment in relation to the offence concerned or not later than 21 days after the penalty notice was served, whichever is the later.

- (3) The statement may be served on a person personally or by post or in any other manner prescribed by the regulations.
- (4) The regulations may make provision for or with respect to the form of written statements under this section.

37 Matter to proceed

If a person duly elects to have the matter dealt with by a court, proceedings against the person in respect of the offence may be taken as if a penalty notice or penalty reminder notice had not been issued.

38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty

- (1) A person on whom a penalty reminder notice is served in relation to a vehicle or vessel offence is not liable to make any payment under the penalty notice if the person:
 - (a) on or before the due date specified in the penalty reminder notice supplies by statutory declaration to the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the notice), the name and address of some other person who was in charge of the vehicle or vessel concerned at all relevant times relating to the offence, or
 - (b) satisfies the appropriate officer (or the specified person or body) that the person did not know and could not with reasonable diligence have ascertained that name and address.
- (2) A statutory declaration under subsection (1) if produced in any proceedings against the person named in it and in respect of the vehicle or vessel offence concerned is prima facie evidence that the person was in charge of the vehicle or vessel at all relevant times relating to the offence.
- (3) A statutory declaration that relates to more than one vehicle or vessel offence is taken not to be a statutory declaration under, or for the purposes of, subsection (1).

(4) In this section:

vehicle or vessel offence means any of the following offences:

- (a) an offence of standing or parking a vehicle or of causing or permitting a vehicle to stand, wait or be parked in contravention of any law,
- (b) an offence relating to a vehicle or vessel (such as exceeding the speed limit) that is detected by radar or camera (or any other device prescribed by the regulations) and in respect of which the penalty notice is served subsequently on the owner of the vehicle or vessel,
- (c) an offence relating to a vehicle or vessel that is of a kind prescribed by the regulations.

39 Withdrawal of penalty reminder notices

- (1) An appropriate officer may withdraw a penalty reminder notice before the due date for payment under the notice.
- (2) The following provisions have effect in relation to an alleged offence, if a penalty reminder notice for the alleged offence is withdrawn in accordance with this section:
 - (a) the amount that was payable under the notice ceases to be payable,
 - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid,
 - (c) further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had not been issued.

Division 4 Penalty notice enforcement orders

40 What is a penalty notice enforcement order?

- (1) A penalty notice enforcement order is an order made by the State Debt Recovery Office for the enforcement of the amount payable under a penalty notice.

- (2) A single order may be made for the enforcement of the amounts payable under 2 or more penalty notices.

Note. Part 4 provides for the fine defaulter to be notified by the State Debt Recovery Office of the enforcement order and of the enforcement action that may be taken if the outstanding balance of the amount payable under the penalty notice (and enforcement costs) is not paid within 28 days.

41 Who may apply for a penalty notice enforcement order?

An appropriate officer for a penalty notice may apply for a penalty notice enforcement order.

42 When a penalty notice enforcement order may be made

- (1) A penalty notice enforcement order may be made only if:
- (a) a penalty notice has been served on a person in relation to a particular offence referred to in the order, and
 - (b) a penalty reminder notice has been served on the person after the end of the time specified in the penalty notice as the time within which the amount payable under the notice may be paid, and
 - (c) the due date specified in the penalty reminder notice has passed, and
 - (d) the amount payable under the penalty notice had not been paid before the order is made, and
 - (e) the person has not, in accordance with this Part, declined to be dealt with under this Part, and
 - (f) an information in relation to the offence has not been filed, and
 - (g) an information may, having regard to the time when the offence was committed or is alleged to have been committed, be filed in relation to the offence, and
 - (h) the facts as alleged in or referred to in the order constitute the offence.
- (2) An application for a penalty notice enforcement order must certify whether this section authorises the making of the order. The State Debt Recovery Office may rely on that certificate for the purpose of making the order.
- (3) A penalty notice enforcement order may be made in the absence of, and without notice to, the person concerned.

43 Amount payable under penalty notice enforcement order

- (1) A penalty notice enforcement order is to set out the amount required to be paid, being the amount that remains to be paid under the penalty notice, together with specified enforcement costs.
- (2) Any amount recovered in consequence of the making of a penalty notice enforcement order (other than for enforcement costs) is to be dealt with in the same way as if the amount had been paid on the issue of the penalty notice.

44 Enforcement costs under penalty notice enforcement order

- (1) The regulations may prescribe the enforcement costs payable under a penalty notice enforcement order and an amount is not payable for enforcement costs unless it is so prescribed.
- (2) The following applies to any such enforcement costs:
 - (a) an amount may be prescribed as the enforcement costs payable to the State Debt Recovery Office on the making of the order,
 - (b) an amount may be prescribed as the enforcement costs payable to the Roads and Traffic Authority if any enforcement action is taken by that Authority under Division 3 of Part 4 before payment is made under the order,
 - (c) an amount may be prescribed as the enforcement costs payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 before payment is made under the order.
- (3) Any amount recovered in consequence of the making of a penalty notice enforcement order is to be applied firstly towards enforcement costs and the balance towards the amount payable under the penalty notice.

45 Effect of making, or of payment under, penalty notice enforcement order

- (1) If a penalty notice enforcement order is made in relation to an offence alleged to have been committed by a person:
 - (a) the person is not as a result taken to have been convicted of the offence, and

- (b) the making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.
- (2) If the full amount payable under a penalty notice enforcement order is paid or recovered, no person is liable for any further proceedings for the alleged offence concerned. This subsection ceases to apply if the order is duly withdrawn under this Part and the amount paid under the order is repaid.
- (3) The payment of any amount payable under a penalty notice enforcement order is not an admission of liability for the purpose of and does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.
- (4) Nothing in this section affects the operation of any provisions of Division 5 relating to the annulment of a penalty notice enforcement order or any provisions of Part 4 relating to the enforcement of a penalty notice enforcement order.

46 Withdrawal of order

- (1) The State Debt Recovery Office may, on application or on its own initiative, withdraw a penalty notice enforcement order if satisfied that the order was made in error.
- (2) A penalty notice enforcement order must be withdrawn if application for its withdrawal is made by the appropriate officer who applied for the order.
- (3) A penalty notice enforcement order that is withdrawn ceases to have effect and any enforcement action already taken is to be reversed.
- (4) If a penalty notice enforcement order is withdrawn, enforcement costs are not payable in respect of the issue of the order.
- (5) If a penalty notice enforcement order is withdrawn, any amount that has been paid under the order is repayable to the person by whom it was paid.
- (6) The withdrawal of a penalty notice enforcement order does not prevent the making of a further order in respect of the penalty notice.

47 Regulations relating to orders

The regulations may make provision for or with respect to the making or withdrawal of penalty notice enforcement orders, including the following:

- (a) the manner of applying for any such order (including electronic transmission),
- (b) the time within which an application for any such order is to be made,
- (c) the form of any such order,
- (d) the manner of making any such order.

Division 5 Annulment of penalty notice enforcement orders**48 Applications for annulment of orders**

- (1) An application may be made by or on behalf of any person for the annulment of a penalty notice enforcement order made against the person under Division 4.
- (2) An application for annulment may also be made by the Minister if the Minister is satisfied that a question or doubt has arisen as to the person's liability for the penalty or other amount concerned.
- (3) An application for annulment is to be made in writing to the State Debt Recovery Office.
- (4) An application for annulment (other than an application made by the Minister) must be made within one year after the making of the enforcement order.
- (5) A person may not, except with the leave of the State Debt Recovery Office, make more than one application in relation to the same matter.
- (6) The regulations may make provision for or with respect to applications under this section (including application fees).

49 Determination of applications by State Debt Recovery Office

- (1) The State Debt Recovery Office, when dealing with an application for annulment made by the Minister, must grant the application and annul the penalty notice enforcement order.

- (2) The State Debt Recovery Office, when dealing with an application for annulment made by a person other than the Minister, must grant the application and annul the penalty notice enforcement order if satisfied that:
 - (a) the person was not aware that a penalty notice had been issued until the enforcement order was made, or
 - (b) the person was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the penalty notice, or
 - (c) having regard to the circumstances of the case, there is other just cause why the application should be granted.
- (3) If the State Debt Recovery Office annuls a penalty notice enforcement order, it must refer the matter to a Local Court unless the amount payable under the penalty notice is paid on the annulment of the order.

Note. Section 51 provides that the Local Court is to hear and determine the alleged offence as if no penalty notice enforcement order had been made.

- (4) Applications for annulment are to be dealt with by the State Debt Recovery Office in the absence of the parties, unless that Office otherwise determines.
- (5) The State Debt Recovery Office must give notice of the determination of an application for annulment to all parties interested or concerned.
- (6) The regulations may make provision for or with respect to the practice and procedure of the State Debt Recovery Office when dealing with applications for annulment.

50 Appeal against refusal of application by State Debt Recovery Office

- (1) If the State Debt Recovery Office refuses an application for annulment, the applicant may lodge an application in writing with the registrar of a Local Court to have the original application determined by the Local Court.
- (2) The registrar must, as soon as possible, refer the matter to the Local Court and notify the applicant and the parties interested as to the date, time and place on or at which the application is to be determined.

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- (3) The Local Court before which a matter is brought under this section may determine the application in accordance with this Division and may make any decision about the application that the State Debt Recovery Office may have made.
 - (4) The Local Court may proceed to determine an application referred to it by a registrar despite any omission or error in a notice of the referral or its non-service if:
 - (a) the Local Court is satisfied that the applicant and the parties interested and concerned had knowledge of the date, time and place on or at which the application was to be determined and were not prejudiced by the omission, error or non-service, or
 - (b) the Local Court is satisfied that the applicant is avoiding service of the notice or cannot, after reasonable search and inquiry, be found.
 - (5) The regulations may make provision for or with respect to applications under this section (including limiting the time for making applications and application fees).

51 Proceedings for alleged offence if fine enforcement order annulled

- (1) If a fine enforcement order is annulled by a Local Court (or is annulled by the State Debt Recovery Office and referred to a Local Court), the Local Court is to hear and determine the matter as if no penalty notice enforcement order had been previously made.
- (2) If a Local Court annuls the penalty notice enforcement order, the Local Court may proceed either immediately or at a later sitting of the Court to hear and determine the matter.
- (3) The matter is not to be heard and determined if the amount payable under the penalty notice is paid on the annulment of the order.
- (4) For the purposes of hearing and determining the matter, the application for the order (together with any annexure or certificate) is taken:
 - (a) to be an information in relation to the alleged offence, and
 - (b) to have been filed when it was made, and
 - (c) to have been filed by the person who made the application.

The person who made the application for the order, or an appropriate officer nominated by that person, is taken to be the informant.

52 Provisions relating to annulment of enforcement orders

- (1) The State Debt Recovery Office or a Local Court dealing with an application for annulment may stay enforcement action under the penalty notice enforcement order subject to such terms and conditions as that Office or Court thinks fit.
- (2) An application may be made for the annulment of 2 or more penalty notice enforcement orders, but the order taken under this Division to be an information may only relate to one offence.
- (3) An application may be made for the annulment of a penalty notice enforcement order only to the extent of one or more of the penalty notices to which it applies. The order continues to have effect in respect of the remaining penalty notices to which it applies.
- (4) A penalty notice enforcement order that is annulled ceases to have any effect as from the making of the order of annulment and any enforcement action already taken is to be reversed.
- (5) If a penalty notice enforcement order is annulled, enforcement costs are not payable in respect of the issue of the order.
- (6) If a penalty notice enforcement order is annulled, any amount that has been paid under the order is repayable to the person by whom it was paid.
- (7) If a penalty notice enforcement order is annulled, the period within which proceedings for an offence may be instituted in respect of the matter under section 56 of the *Justices Act 1902* or any other Act commences on the date the order is annulled.

Division 6 Application of Part

53 Application of penalty notice procedure to children

- (1) This Part applies to a person of any age.
- (2) However, this Part does not apply to a person who is younger than 10 years or who, although 10 years or older, was younger than 10 years when the person is alleged to have committed the offence to which the relevant penalty notice relates.

- (3) This Part applies despite anything in the *Children (Criminal Proceedings) Act 1987*, except that the provisions of this Part relating to the hearing or determination of an alleged offence on the annulment of a penalty notice enforcement order is subject to that Act.

54 Part not to apply to certain forestry penalty notices

This Part does not apply to or in relation to a penalty notice under section 46A (2) of the *Forestry Act 1916* if the amount payable under the notice includes any royalty as defined in section 46A of that Act.

55 Regulations may exclude penalty notices from operation of Part

The regulations may provide that this Part does not apply to or in relation to any specified class or description of penalty notices.

56 Other provisions not affected

The provisions of this Part are supplemental to, and do not derogate from, the provisions of any Act that relate to proceedings that may be taken in respect of offences that are or may be the subject of penalty notice enforcement orders.

Part 4 Fine enforcement action

Division 1 Preliminary

57 Application and interpretation

- (1) This Part applies to the enforcement of:
 - (a) a fine imposed by a court following the making of a court fine enforcement order, and
 - (b) the amount payable under a penalty notice following the making of a penalty notice enforcement order.
- (2) A court fine enforcement order or a penalty notice enforcement order is referred to in this Act as a ***fine enforcement order***.
- (3) The person liable to pay the fine under a fine enforcement order is referred to in this Act as the ***fine defaulter***.
- (4) In this Part, a reference to a ***fine*** includes a reference to any enforcement costs payable under the fine enforcement order.

58 Summary of enforcement procedure

- (1) The following is a summary of the enforcement procedure under this Part following the making of a fine enforcement order:
 - (a) **Service of fine enforcement order**

Notice of the fine enforcement order is served on the fine defaulter and the fine defaulter is notified that if payment is not made enforcement action will be taken (see Division 2).
 - (b) **Driver's licence or vehicle registration suspension or cancellation**

If the fine is not paid within the period specified, the Roads and Traffic Authority suspends any driver's licence, and may cancel any vehicle registration, of the fine defaulter. If the driver's licence of the fine defaulter is suspended and the fine remains unpaid for 6 months, the Roads and Traffic Authority cancels that driver's licence (see Division 3).

(c) **Civil enforcement**

If the fine defaulter does not have a driver's licence or a registered vehicle or the fine remains unpaid after 6 months, civil action is taken to enforce the fine, namely, a property seizure order, a garnishee order or the registration of a charge on land owned by the fine defaulter (see Division 4).

(d) **Community service order**

If civil enforcement action is not successful, a community service order is served on the fine defaulter (see Division 5).

(e) **Imprisonment if failure to comply with community service order**

If the fine defaulter does not comply with the community service order, a warrant of commitment is issued to a police officer for the imprisonment of the fine defaulter (except in the case of children). The fine defaulter may apply to serve that period of imprisonment by way of periodic detention (see Division 6).

(f) **Fines payable by corporations**

The procedures for fine enforcement (other than community service orders and imprisonment) apply to fines payable by corporations (see Division 7).

- (2) This section does not affect the provisions of this Part that it summarises.

Division 2 Service of fine enforcement order

59 Service on fine defaulter of notice of order

As soon as practicable after a fine enforcement order is made, the State Debt Recovery Office is to serve notice of the order on the fine defaulter.

60 What notice must say

- (1) The notice of a fine enforcement order must inform the fine defaulter that:
 - (a) the order has been made, and
 - (b) the defaulter has until the final date specified in the notice to pay the fine and enforcement costs specified in the notice, and
 - (c) if the payment is not made by that final date, further enforcement action will be taken against the defaulter to enforce the fine in accordance with this Part and, in particular, that the defaulter will be liable without further notice to have any driver's licence or vehicle registration suspended or cancelled or property seized and sold, and
 - (d) if the payment is not made by that final date, further enforcement costs will be payable (indicating each amount of those costs and circumstances in which it is payable).
- (2) If the regulations prescribe the form of such a notice, the notice must be in that form.
- (3) The inclusion in the notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the notice.

61 Service of notice

- (1) Notice of a fine enforcement order may be served on a person:
 - (a) personally, or
 - (b) by post, or
 - (c) by means of a document exchange, or
 - (d) by facsimile transmission or other electronic transmission, or
 - (e) by any other manner prescribed by the regulations.
- (2) The address for service of any such notice of a court fine enforcement order includes the address for service of the person in connection with the proceedings in which the fine was imposed.

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- (3) The address for service of any such notice of a penalty notice enforcement order includes:
- (a) the address of the person shown on the relevant penalty notice or supplied by the person in connection with the service of the relevant penalty notice, or
 - (b) if the relevant penalty notice was served on the person in his or her capacity as owner of a vehicle or vessel or was served by being left on a vehicle or vessel—the address shown in the records of the Roads and Traffic Authority or other public agency as the address of the owner of the vehicle or vessel at the time the relevant penalty notice was served, or
 - (c) if the relevant penalty notice was served on the person in his or her capacity as the person driving or in charge of a vehicle or vessel—the address specified in a statutory declaration under section 38 as the address of the person in charge of the vehicle or vessel at the time of the alleged offence.

62 Time for service of notices by post

Despite any other provision of this Act, it is presumed that a notice of a fine enforcement order sent to a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period.

63 Final date for payment in notices

- (1) The final date for payment in a notice of a fine enforcement order must be at least 21 days after it is served on the person.
- (2) Accordingly, a notice that is posted may specify a date that is at least 28 days after the penalty reminder notice is posted as the final date for making the payment concerned.

64 Extension of final date if notice takes more than 7 days

- (1) If a notice is served on a person more than 7 days after it was posted, the notice is not invalid merely because it specifies as the final date a date that is less than 21 days after it was served on the person.

- (2) In such a case however, the final date is extended to a date that is 21 days after the notice was served and the notice is taken to specify that date as the final date.

Division 3 Driver's licence or vehicle registration suspension or cancellation

65 When enforcement action taken under this Division

- (1) Enforcement action is to be taken against a fine defaulter under this Division if the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter.
- (2) The Roads and Traffic Authority is to take that enforcement action when it is directed by the State Debt Recovery Office to do so.

Note. If the fine defaulter does not hold a driver's licence or is not the registered owner of a vehicle, enforcement action can be taken instead under Division 4 (Civil enforcement).

66 Suspension or cancellation of driver's licence

- (1) The Roads and Traffic Authority must, without further notice, suspend any driver's licence of a fine defaulter against whom it is required to take enforcement action for the balance of the period of the licence.
- (2) If the driver's licence is suspended and the fine concerned remains unpaid for at least 6 months, the Roads and Traffic Authority must, if the State Debt Recovery Office so directs, cancel the licence.
- (3) The Roads and Traffic Authority is to remove the suspension of a driver's licence if the fine defaulter pays the fine or if the State Debt Recovery Office so directs.
- (4) The State Debt Recovery Office (or the Roads and Traffic Authority on its behalf) may notify the fine defaulter of the enforcement action taken under this section, but a failure to notify the fine defaulter does not affect that action.

- (5) Despite the suspension or cancellation of a driver's licence under this section, a court or the Roads and Traffic Authority may exercise a function under another Act to suspend or cancel the licence. Any such suspension or cancellation takes effect on the suspension or cancellation under this section ceasing to have effect.

67 Cancellation of vehicle registration

- (1) The Roads and Traffic Authority may, without further notice, cancel the registration of all or any motor vehicles of which a fine defaulter is the registered owner (or one of the registered owners) if:
- (a) it is required to take enforcement action against the fine defaulter but the fine defaulter does not hold a driver's licence that is in force, and
 - (b) the cancellation of the registration of those motor vehicles is in accordance with any guidelines issued under section 120.
- (2) The Roads and Traffic Authority must cancel the registration of a vehicle in accordance with this section if the State Debt Recovery Office so directs.
- (3) The State Debt Recovery Office (or the Roads and Traffic Authority on its behalf) may notify the fine defaulter of the enforcement action taken under this section, but a failure to notify the fine defaulter does not affect that action.

68 Suspension of dealings with Roads and Traffic Authority

- (1) This section applies to a fine defaulter if:
- (a) the driver's licence or vehicle registration of the fine defaulter is suspended or cancelled under this Division, or
 - (b) the Roads and Traffic Authority is authorised to suspend or cancel the driver's licence or vehicle registration of the fine defaulter but the fine defaulter does not hold a driver's licence or is not the registered owner of a vehicle.

- (2) The Roads and Traffic Authority must, unless the State Debt Recovery Office otherwise directs, refuse to exercise any of the following functions if this section applies to a fine defaulter:
- (a) the issue of a driver's licence to the fine defaulter or the renewal of the driver's licence of the fine defaulter,
 - (b) the registration of a vehicle in the name of the fine defaulter or the renewal of the registration of a vehicle of which the fine defaulter is the registered owner (or one of the registered owners),
 - (c) the transfer to another person of the registration of a vehicle of which the fine defaulter is the registered owner (or one of the registered owners),
 - (d) the issue of a number plate to the fine defaulter,
 - (e) the testing of the fine defaulter for the purpose of the issue of a driver's licence,
 - (f) the exercise of any other function of the Authority requested by the fine defaulter in respect of a vehicle, being a function of a kind prescribed by the regulations for the purposes of this section.
- (3) If the Roads and Traffic Authority refuses to exercise any such function, it must, as soon as practicable, notify the fine defaulter that it has refused to do so because the person is a fine defaulter.
- (4) This section ceases to apply to a fine defaulter if the fine defaulter pays the fine or if the State Debt Recovery Office so directs the Roads and Traffic Authority.
- (5) This section applies despite any obligation of the Roads and Traffic Authority to exercise a function that is imposed by or under any other Act.

69 Interim restoration or reinstatement of licence or registration pending appeal etc

- (1) A person may apply to the Roads and Traffic Authority for restoration or reinstatement of a driver's licence suspended or cancelled, or vehicle registration cancelled, under this Division if:

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- (a) in the case of a penalty notice enforcement order—the person has lodged an application under Division 5 of Part 3 to have an application to annul the fine enforcement order concerned determined by a Local Court, or
- (b) in the case of a court fine enforcement order—the person has lodged an appeal against the conviction or sentence in respect of which the fine concerned was imposed or the person has lodged an application under Part 4A of the *Justices Act 1902* to annul that conviction or sentence,
- and those proceedings have not been determined.
- (2) The Roads and Traffic Authority must issue the person with a driver's licence or certificate of vehicle registration, as the case requires, by way of restoration or reinstatement of the driver's licence or vehicle registration suspended or cancelled under this Division.
- (3) A driver's licence or vehicle registration so restored or reinstated has effect, subject to this Act and the *Traffic Act 1909*, until the date on which:
- (a) the licence would have expired if the licence had not been suspended or cancelled, or
- (b) the registration would have expired if the registration had not been cancelled.
- (4) Any such restored or reinstated licence or registration may be suspended or cancelled under this Act following the determination of the proceedings referred to in subsection (1) or in connection with a different fine payable by the person.
- (5) A licence or registration cannot be restored or reinstated under this section if the licence or registration was also suspended or cancelled for reasons that do not give rise to a right of restoration or reinstatement under this section.

70 Effect of enforcement action on vehicle insurance

- (1) A vehicle insurance policy is not terminated by the cancellation of the registration of the vehicle under this Division or the suspension or cancellation of the driver's licence of the driver of the vehicle under this Division.

- (2) A claim under a vehicle insurance policy cannot be refused merely because the vehicle's registration is cancelled under this Division or the driver's licence of the driver of the vehicle is suspended or cancelled under this Division.
- (3) This section has effect despite anything to the contrary in a vehicle insurance policy or any other agreement.
- (4) In this section, a **vehicle insurance policy** is a policy of insurance in respect of damage or loss caused by or arising out of the use or operation of a vehicle (other than a third-party policy within the meaning of the *Motor Accidents Act 1988*).

Note. Section 13 of the *Motor Accidents Act 1988* provides that a third-party policy under that Act relating to personal injury is not cancelled by the cancellation of the registration of a motor vehicle under this Division.

Division 4 Civil enforcement

71 When enforcement action taken under this Division

- (1) Enforcement action is to be taken against a fine defaulter under this Division if the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter and:
 - (a) enforcement action cannot be taken under Division 3 to suspend or cancel the driver's licence or vehicle registration of the fine defaulter because the fine defaulter does not hold a driver's licence or is not the registered owner of a vehicle, or
 - (b) the fine remains unpaid even though enforcement action was taken under Division 3.
- (2) Enforcement action may be taken under this Division by means of a property seizure order, a garnishee order or a charge on land, or by all or any combination of those means.

Note. If enforcement action under this Division has not been or is unlikely to be successful in satisfying the fine, enforcement action can be taken against the fine defaulter under Division 5 (Community service orders).

72 Order to seize property of fine defaulter

- (1) The State Debt Recovery Office may make an order for the seizure of the property of a fine defaulter for the purpose of levying the fine payable by the fine defaulter on that property. The order is called a *property seizure order*.

Note. The *Interpretation Act 1987* defines property to include land as well as personal property.

- (2) The State Debt Recovery Office may make a property seizure order only if satisfied that enforcement action is authorised against the fine defaulter under this Division.
- (3) The order may be made in the absence of, and without notice to, the fine defaulter.
- (4) The order is to be directed to the Sheriff, and provided to the Sheriff by the State Debt Recovery Office for execution.
- (5) The order may be executed by the Sheriff or by the Sheriff's officers or by any court bailiffs authorised by the Sheriff.
- (6) A property seizure order operates as a warrant of execution issued by a Local Court under section 58 of the *Local Courts (Civil Claims) Act 1970* and, for that purpose, the State Debt Recovery Office is taken to be the judgment creditor.
- (7) If the Sheriff is required to execute a property seizure order and a warrant of execution issued by a court or to execute more than one property seizure order, the priority to be accorded to their execution is as follows:
- (a) a property seizure order is to be executed before a warrant of execution (even if the warrant was issued before the order),
- (b) property seizure orders are to be executed in the order in which they were received by the Sheriff (unless the Sheriff is directed by the State Debt Recovery Office to execute them in a different order).

- (8) The Sheriff is to return a property seizure order to the State Debt Recovery Office if the order has not been executed within 12 months after it was made. The Office is to cancel an order so returned, but nothing in this subsection prevents the issue of a further order in the matter.
- (9) The Sheriff or other person executing a property seizure order is to cease executing the order if the order is cancelled under section 77.

73 Order to garnishee debts, wages or salary of fine defaulter

- (1) The State Debt Recovery Office may make an order that all debts due and accruing to a fine defaulter from any person specified in the order are attached for the purposes of satisfying the fine payable by the fine defaulter (including an order expressed to be for the continuous attachment of the wage or salary of the fine defaulter). The order is called a ***garnishee order***.
- (2) The State Debt Recovery Office may make a garnishee order only if satisfied that enforcement action is authorised against the fine defaulter under this Division.
- (3) The order may be made in the absence of, and without notice to, the fine defaulter.
- (4) The order operates as a garnishee order made by a Local Court under Division 3 of Part 5 of the *Local Courts (Civil Claims) Act 1970* and, for that purpose:
 - (a) the State Debt Recovery Office is taken to be the judgment creditor, and
 - (b) an instalment order under section 48 of that Act includes an order under this Act by the State Debt Recovery Office for the payment of a fine by instalments, and
 - (c) such other modifications as are prescribed by the regulations have effect.

74 Registration of fine enforcement order as charge on land

- (1) The State Debt Recovery Office may apply to the Registrar-General for registration of a fine enforcement order in relation to any land owned by the fine defaulter (including any land owned jointly with another person).

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- (2) An application may not be made under this section unless the amount payable under the order (or the total amount payable under the orders) to which the application relates exceeds \$1,000 or such other amount as is prescribed by the regulations.
 - (3) An application under this section must define the land to which it relates.
 - (4) The Registrar-General must, on application under this section and lodgment of a copy of the fine enforcement order, register the order in relation to the land in such manner as the Registrar-General thinks fit.
 - (5) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the State Debt Recovery Office of the amount payable under the order.
 - (6) Such a charge ceases to have effect in relation to the land:
 - (a) on registration of the cancellation of the charge under section 77, or
 - (b) on the sale or other disposition of the property with the consent of the State Debt Recovery Office, or
 - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.
 - (7) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act.
 - (8) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (6).
 - (9) If:
 - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
 - (b) the charge is so registered,

a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (6), taken to have notice of the charge.

- (10) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

75 Examination of fine defaulter

- (1) The State Debt Recovery Office may issue an examination summons under this section for the purpose of enabling enforcement action to be taken under this Division.
- (2) An examination summons may be directed to:
- (a) if the fine defaulter is a natural person—the fine defaulter, or
 - (b) if the fine defaulter is a corporation—an officer or former officer of the corporation.
- (3) An examination summons:
- (a) is to summon the person to whom it is directed to attend before the Director or other specified officer of the State Debt Recovery Office, or before a specified officer of a court, at the place specified in the summons, and
 - (b) is to summon the person to so attend on a day and at a time specified in the summons and thereafter as required by the Director or officer to be orally examined as to the fine defaulter's property and other means of satisfying the fine and generally as to the fine defaulter's financial circumstances, and
 - (c) may require the person to produce to the Director or officer, at any such examination, any document or other thing in the person's possession or control that tends to show the fine defaulter's true financial circumstances.

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- (4) An examination summons is to be served personally on the person to whom it is directed.
 - (5) A person is not bound to produce any document or other thing that is not specified or sufficiently described in the examination summons or that the person would not be bound to produce on a subpoena for production in the Supreme Court.
 - (6) An examination summons may not be issued to a person if that person has previously attended an examination within the previous 3 months pursuant to an examination summons under this section.
 - (7) If a person who is issued with an examination summons under this section fails to attend in accordance with the summons, the State Debt Recovery Office may issue a warrant for the apprehension of the person and for the person to be brought before the Director or other specified officer of the State Debt Recovery Office, or before a specified officer of a court, for examination in accordance with this section.
 - (8) Any such warrant of apprehension:
 - (a) may not be issued unless the State Debt Recovery Office is satisfied that the examination summons was duly served on the person, and
 - (b) may not be issued until at least 14 days after the person was notified (in the manner required for the service of a fine enforcement order) that a warrant will issue if the person does not attend for examination in accordance with this section, and
 - (c) is to be directed to the Sheriff and may be executed by the Sheriff or by the Sheriff's officers or by any court bailiffs authorised by the Sheriff, and
 - (d) may be executed with the assistance of any police officer.
 - (9) If a person who is issued with an examination summons under this section:
 - (a) fails to attend in accordance with the summons, or
 - (b) without reasonable excuse, refuses to give evidence on oath after attending for examination, or
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- (c) gives false information at an examination, or
- (d) without reasonable excuse, fails to produce any document or thing that the person is required by the summons to produce,

the State Debt Recovery Office may report the matter to the Supreme Court or District Court for determination. The court may deal with the matter as if it were a contempt of that court.

- (10) The State Debt Recovery Office may at any time adjourn an examination under this section and notify the person concerned of the time and place for the adjourned examination.
- (11) The State Debt Recovery Office may, instead of issuing an examination summons under this section, request the fine defaulter by notice to supply the relevant information for the purpose of enabling enforcement action to be taken under this Division. An examination summons may be issued if the notice is not complied with.

76 Power of entry to execute property seizure order

- (1) The person executing a property seizure order may, at any reasonable time of the day or night, enter any premises for the purposes of executing the order.
- (2) Subsection (1) does not authorise any such person to enter any part of premises used only for residential purposes without the permission of the occupier of the premises or the authority of a search warrant under this section.
- (3) Any such person may apply to an authorised justice for the issue of a search warrant if the person believes on reasonable grounds that there may be property liable to seizure under the property seizure order in any premises.
- (4) An authorised justice to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any person who is executing the

property seizure order to enter the premises and seize property in the premises in accordance with that or any other property seizure order.

- (5) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (6) Without affecting the generality of section 18 of the *Search Warrants Act 1985*, a police officer:
 - (a) may accompany a person executing a search warrant, and
 - (b) may take all reasonable steps to assist the person in the exercise of the person's functions under this section.
- (7) This section does not authorise a person to seize property under any warrant of execution or order (other than a property seizure order) while the person is in premises in pursuance only of the authority conferred by this section.
- (8) In this section:

authorised justice has the same meaning it has in the *Search Warrants Act 1985*.

premises includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not).

77 Cancellation of property seizure, garnishee order or charge on land

- (1) A property seizure order, garnishee order or charge on land under this Division is cancelled on the service of a community service order on the fine defaulter under Division 5 for the enforcement of the fine concerned.
- (2) A property seizure order, garnishee order or charge on land under this Division is cancelled on the payment of the fine concerned.

Note. The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123.

- (3) The State Debt Recovery Office may cancel a property seizure order, garnishee order or charge on land at any time for any good reason.
- (4) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge.

Division 5 Community service orders

78 When orders may be made

Enforcement action may be taken against a fine defaulter under this Division if:

- (a) the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter, and
- (b) enforcement action under Division 4 has not been or is unlikely to be successful in satisfying the fine.

79 Making of community service order against fine defaulter

- (1) The State Debt Recovery Office may make a community service order requiring a fine defaulter to perform community service work in order to work off the amount of the fine that remains unpaid.
- (2) The State Debt Recovery Office may make the order only if satisfied that enforcement action is authorised against the fine defaulter under this Division.
- (3) The State Debt Recovery Office is not to make an order if satisfied that the person is not capable of performing work under an order or is otherwise not suitable to be engaged in such work.
- (4) The order may be made in the absence of, and without notice to, the fine defaulter.
- (5) The order may be made before the execution of a warrant under Division 4 and in anticipation that enforcement action may not be successful under that Division in satisfying the fine. The order is not to be served if that enforcement action is successful.

80 Service of order

- (1) A community service order under this Division is to be served by being given to the fine defaulter in accordance with the regulations.
- (2) The order may only be served on the fine defaulter in accordance with the directions of the State Debt Recovery Office.
- (3) The order may be so served on the fine defaulter by the Sheriff or the Sheriff's officers or by a court bailiff authorised by the Sheriff.

81 Number of hours of community service work

- (1) The number of hours of community service work, specified in a community service order made under this Division, to be served by the fine defaulter is to be calculated at the rate of 1 hour for each \$15 of the amount of the fine that remains unpaid.
- (2) The number of hours specified in any one order must not exceed 300 hours. The fine defaulter may be subject to more than one order under this Division at any one time.
- (3) The number of hours specified in any one order is additional to any number of hours of community service work required to be performed by any other order under this Division or otherwise than under this Division. Accordingly, the total number of hours that a person may be required to perform at any one time under another Act does not apply to any hours required to be worked by an order under this Division.
- (4) The regulations may increase the amount of \$15 mentioned in this section and section 83. If the regulations do so, the reference to the amount of \$15 in those sections is to be construed as a reference to that increased amount.

82 Satisfaction of orders by payment

If a fine defaulter who is subject to a community service order under this Division duly pays the fine (or the unsatisfied balance

of the fine having regard to the number of hours of community service work already performed) the order is taken to be satisfied.

Note. The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123. The amount of the fine includes enforcement costs—see section 57 (4).

83 Satisfaction of fine by community service

- (1) When a fine defaulter who is subject to a community service order under this Division duly complies with the order, the fine concerned is taken to be satisfied.
- (2) When a fine defaulter who is subject to a community service order under this Division duly serves part of the number of hours of community service work to be served under the order, the fine concerned is taken to be satisfied by the amount calculated at the rate of \$15 for each hour of community service work actually served.

84 Suspension of orders during imprisonment or detention

- (1) If a fine defaulter who is subject to a community service order under this Division is imprisoned while the order is in force, the order is suspended during that period of imprisonment. The period that the order is to be in force is extended, and not reduced, by the period that the order is suspended.
- (2) A fine defaulter is imprisoned for the purposes of this section if the fine defaulter is:
 - (a) in prison on remand or pursuant to a sentence of imprisonment (including periodic detention), or
 - (b) in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*) on remand or pursuant to a detention order.

85 Provisions relating to orders

- (1) An appeal does not lie in respect of the making of a community service order under this Division or the failure to make such an order.

- (2) The person who serves a community service order under this Division is required, in accordance with the regulations, to explain the order to the fine defaulter on whom it is served.
- (3) The person who serves a community service order under this Division is required to send a copy of the order to the head of Department of Corrective Services or the Department of Juvenile Justice, whichever is applicable. A failure to do so does not invalidate the order.

Note. Provisions of the *Children (Community Service Orders) Act 1987* apply to the order if the fine defaulter is a person to whom that Act applies. In any other case, provisions of the *Community Service Orders Act 1979* apply to the order.

86 Revocation of community service order

- (1) The State Debt Recovery Office may revoke a community service order made under this Division if it is satisfied that the fine defaulter who is subject to the order has failed, without reasonable excuse, to comply with the order or the requirements imposed with respect to the order by or under the *Community Service Orders Act 1979* or the *Children (Community Service Orders) Act 1987* as the case requires.
- (2) The State Debt Recovery Office is not to revoke an order under subsection (1) unless the relevant assigned officer (within the meaning of that Act) has reported the breach to the Office. The Office may decide not to revoke an order following the report of a breach of the order to the Office.
- (3) The State Debt Recovery Office may revoke a community service order made under this Division if it is satisfied, following a report by the assigned officer, that the fine defaulter is not capable of performing work under the order or is otherwise not suitable to be engaged in such work.
- (4) The State Debt Recovery Office may, when revoking an order, also revoke other community service orders that have been made against the fine defaulter.

- (5) Notice of the revocation is to be served on the fine defaulter. The notice may be served in the same way as notice of a fine enforcement order may be served.
- (6) The fine defaulter may, within the time specified in the notice, apply in writing to the State Debt Recovery Office for a review of the revocation. The Office may, if satisfied that the order was not breached or that the breach should be excused, reverse its decision to revoke the community service order.
- (7) The revocation of a community service order does not take effect:
 - (a) until the expiry of the period during which an application for review of the revocation may be made, or
 - (b) if an application for review is duly made—unless and until the application is refused.
- (8) The revocation of an order (or the review of any such revocation) may be made or held in the absence of, and without notice to, the fine defaulter.
- (9) A decision of the State Debt Recovery Office under this section is (subject to this section) final and is not subject to appeal.

Division 6 Imprisonment

87 Imprisonment following breach of community service order

- (1) After a community service order is revoked under Division 5, the State Debt Recovery Office may by warrant commit the fine defaulter to prison to be kept there according to the terms of the warrant for the period of imprisonment calculated in accordance with this Division, unless the fine defaulter sooner pays the relevant outstanding fine.
- (2) A single warrant may commit the fine defaulter to prison for 2 or more periods of imprisonment if 2 or more community service orders made against the fine defaulter have been revoked.
- (3) This section is subject to the other provisions of this Division.

88 The “relevant outstanding fine”

- (1) For the purposes of this Division, the *relevant outstanding fine* at any time is the amount of the fine under the relevant fine enforcement order that remains unpaid at that time.

Note. The amount of the fine includes enforcement costs—see section 57 (4).

- (2) In calculating the amount remaining unpaid, account is to be taken of any satisfaction of the fine by service under a community service order under Division 5 or by service of any part of the period of imprisonment under this Division.

Note. The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123.

89 Periodic detention

- (1) A fine defaulter who is committed to prison by warrant under this Division may apply to the Commissioner of Corrective Services for an order that the fine defaulter’s period of imprisonment be served by way of periodic detention. An application may be made in anticipation of the issue of a warrant.
- (2) The Commissioner of Corrective Services may, on an application under this section, order that the fine defaulter serve the period of imprisonment under a warrant under this Division by way of periodic detention.
- (3) A fine defaulter is not eligible to serve a period of imprisonment by way of periodic detention:
- (a) if the period of imprisonment is less than the minimum period determined in the guidelines under section 120 as appropriate to be served by way of periodic detention, or
 - (b) if the Commissioner of Corrective Services is of the opinion that accommodation is not available at a prison for the person to serve the period of imprisonment by way of periodic detention, or
 - (c) if the fine defaulter is remanded to or imprisoned in a prison (except as a periodic detainee), or

- (d) if the fine payable by the fine defaulter is for an offence committed while serving a period of imprisonment by way of periodic detention, or
 - (e) in any other circumstances prescribed by the regulations.
- (4) On making an order under this section, the warrant committing the fine defaulter to prison is subject to the terms of the order.
 - (5) The decision whether or not to grant an application under this section is at the discretion of the Commissioner of Corrective Services, and no appeal lies against a decision not to grant an application in a particular case.
 - (6) The Commissioner of Corrective Services is to serve notice on the State Debt Recovery Office of the making or revocation of an order under this section.
 - (7) If an order is revoked, the State Debt Recovery Office may cancel the original warrant in respect of which the order was made and issue a fresh warrant in connection with the relevant outstanding fine at that time.

Note. The *Periodic Detention of Prisoners Act 1981* applies to an order under this section.

90 Calculation of period of imprisonment under warrant

- (1) The period of imprisonment for the purposes of a warrant under this Division is to be calculated on the basis of the amount of the relevant outstanding fine, as follows:
 - (a) the period is to be 1 day for each \$120 (or part of \$120) of the relevant outstanding fine,
 - (b) the period is not to be less than 1 day,
 - (c) the period is not to exceed 3 months.
- (2) The period of imprisonment for the purposes of a warrant under this Division that is to be served by way of periodic detention is to contain detention periods (within the meaning of the *Periodic Detention of Prisoners Act 1981*), as follows:
 - (a) the period is to contain the number of detention periods calculated at the rate of 1 detention period for each 2 days of imprisonment calculated under subsection (1),

- (b) the period is not to contain less than 1 detention period,
 - (c) the period is not to contain more than 45 detention periods,
 - (d) if orders are made at the same time for the periods of imprisonment under 2 or more warrants under this Division to be served by way of periodic detention—the total number of detention periods under those orders is to be calculated at the rate of 1 detention period for each 2 days of the total periods of imprisonment under those warrants.
- (3) The regulations may increase the amount of \$120 mentioned in this section and section 91. If the regulations do so, the references to the amount of \$120 in this section and section 91 are to be construed as references to that increased amount.

91 Satisfaction of fine by imprisonment

- (1) When a fine defaulter duly serves the total period of imprisonment under a warrant under this Division, the fine concerned is taken to be satisfied.
- (2) When a fine defaulter duly serves part of the period of imprisonment under a warrant under this Division, the fine concerned is then taken to be satisfied by the amount calculated at the rate of \$120 for each day actually served or twice that amount for each detention period served by way of periodic detention, as the case requires.

92 Special provision relating to children

- (1) A fine defaulter cannot be committed to prison or a detention centre by a warrant under this Division if the person:
 - (a) was under 18 years of age when the offence concerned was committed, and
 - (b) was under 21 years of age at the time the person was charged with the offence or issued with a penalty notice (as the case requires).

- (2) If a further fine enforcement order is made against the fine defaulter and the person was 18 years of age or older at the time the offence concerned was committed, the fine defaulter may be committed to prison in respect of the earlier fine enforcement order despite subsection (1) if the fine defaulter is committed to prison in respect of that further fine enforcement order.

93 Terms under warrants to be served consecutively

- (1) If a fine defaulter is committed to 2 or more terms of imprisonment by one or more warrants of commitment under this Division, the terms are to be served consecutively, not concurrently.
- (2) This section extends to imprisonment served by way of periodic detention.

94 Terms under warrants to be served concurrently with other non-fine default imprisonment

- (1) A term of imprisonment (or consecutive terms) for which a fine defaulter has been committed by a warrant under this Division may be served concurrently with any imprisonment of the fine defaulter arising otherwise than by any such warrant.
- (2) This section extends to imprisonment served by way of periodic detention.

95 Execution of warrant

- (1) If the fine defaulter who is committed to prison by a warrant under this Division is already in prison, the warrant may be executed by the officer in charge of the prison or a person authorised by that officer. The warrant is executed by serving a copy of the warrant on the fine defaulter.
- (2) Notice is not required to be given to a fine defaulter of the proposed execution of a warrant under this Division.
- (3) However, a police officer executing a warrant under this Division may, in accordance with guidelines issued under section 120 or (subject to any such guidelines) issued by the Commissioner of

Police, delay the execution of the warrant to enable the fine defaulter to pay the relevant outstanding fine or seek the cancellation of the warrant.

- (4) A police officer is to cease executing a warrant under this Division if the fine defaulter pays the relevant outstanding fine (whether to the police officer or in any other manner authorised by this Act).
- (5) The State Debt Recovery Office may cancel a warrant issued under this Division if it considers that it is appropriate to do so.

96 Discharge from prison

A fine defaulter is to be discharged from the prison to which the fine defaulter has been committed by a warrant under this Division if the fine defaulter duly pays the relevant outstanding fine, unless in prison in respect of another matter.

Note. The relevant outstanding fine is progressively reduced by service of part of the period of imprisonment—see section 88.

97 Regulations as to warrants

The regulations may make provision for or with respect to warrants under this Division, including:

- (a) the form of any such warrants, or
- (b) the execution of any such warrants.

Division 7 Bodies corporate

98 Application of civil and other enforcement procedures

Enforcement action under this Part extends to a fine enforcement order in respect of a fine defaulter that is a body corporate, other than enforcement action under Division 5 (Community service orders) and Division 6 (Imprisonment).

99 Modification of enforcement procedures

If the fine defaulter is a body corporate, enforcement action may be taken under Division 4 (Civil enforcement) before or without taking enforcement action under Division 3 (Driver's licence or vehicle registration suspension or cancellation).

Division 8 Miscellaneous

100 Time to pay

- (1) After a fine enforcement order is made and before a community service order is issued in the matter, an application for time to pay the fine may be made to the State Debt Recovery Office by the fine defaulter.
- (2) The State Debt Recovery Office may, by order, allow further time to pay the fine if satisfied the application is genuine and it appears expedient to do so.
- (3) The State Debt Recovery Office may:
 - (a) extend the time for payment of the whole fine, or
 - (b) allow the fine to be paid by instalments of such amounts, and at such times, as the Office specifies.
- (4) If an instalment of a fine is not paid by the due date, the remaining instalments then become due and payable unless the State Debt Recovery Office otherwise orders.
- (5) Further enforcement action under this Part is suspended if an application for time to pay is granted and payment of the fine is made in accordance with the order of the State Debt Recovery Office.
- (6) However, the Sheriff is not required to return any property seized under a property seizure order under Division 4, and a charge on land created under that Division need not be cancelled, until the fine is paid.

101 Unpaid fines may be written off

- (1) The State Debt Recovery Office may write off unpaid fines in accordance with guidelines issued under section 120.
- (2) Any such guidelines are to extend to fine defaulters who do not have the means to pay the fine or sufficient property for civil enforcement and who are not suitable to undertake work under a community service order.
- (3) An unpaid fine that is written off is taken to have been paid for the purpose of cancelling enforcement action under this Act.

102 Disposition of money paid by or recovered from fine defaulters

- (1) Any fine paid by a fine defaulter after the making of a fine enforcement order is payable to the State Debt Recovery Office.
- (2) However, with the approval of that Office, any fine paid to another person or body may be directly credited to the Consolidated Fund or other account, or retained, in accordance with this or any other Act or law.

Note. Fines include enforcement costs—see section 57 (4).

103 Electronic transmission of orders and warrants

- (1) The following directions, orders and warrants under this Part may be transmitted electronically to the persons to whom they are given or directed:
 - (a) a direction of the State Debt Recovery Office to the Roads and Traffic Authority under Division 3,
 - (b) a property seizure order directed to the Sheriff under Division 4,
 - (c) a community service order given to the Sheriff for service under Division 5,
 - (d) a warrant of commitment to prison directed to a police officer or other officer under Division 6.

- (2) For the purpose of executing any such order or warrant, the Sheriff or other officer to whom the order or warrant is so transmitted is to cause a copy of the order or warrant to be converted into written form and to be endorsed in the manner required by the regulations.

104 Power of person executing order or warrant to demand name and address

- (1) The Sheriff or other person executing an order or warrant under this Part may require a person whom the Sheriff or other person suspects on reasonable grounds to be the fine defaulter to state his or her full name and residential address and to produce evidence of his or her identity.
- (2) A person is not required to comply with such a requirement unless the person was warned on that occasion that a failure to comply is an offence.
- (3) A person who, without reasonable excuse, fails to comply with such a requirement is guilty of an offence.

Maximum penalty: 10 penalty units.

Part 5 Reciprocal enforcement of fines against bodies corporate

105 Definitions

In this Part:

conviction means a conviction or order entered or made (before or after the commencement of this Part) in proceedings for an offence, including a penalty notice enforcement order or similar order.

fine includes:

- (a) a pecuniary penalty, pecuniary forfeiture and pecuniary compensation, and
- (b) fees, charges and costs payable by a body corporate under an order made in proceedings in which the conviction was entered in respect of the body corporate.

New South Wales fine means a fine payable under a conviction of a New South Wales court (including a fine payable under a penalty notice enforcement order under this Act).

reciprocating court means a court, or a court included in a class of court, declared under section 106 to be a reciprocating court or a class of reciprocating courts.

relevant officer of a reciprocating court means the registrar or other corresponding officer of the court.

State includes a Territory.

106 Declaration of reciprocating court

Where another State has laws providing for enforcement in that State of a New South Wales fine against a body corporate, the regulations may:

- (a) declare a court that exercises criminal jurisdiction in that State to be a reciprocating court, or

- (b) declare a class of courts that exercise criminal jurisdiction in that State to be a class of reciprocating courts.

107 Enforcement of fine imposed by reciprocating court

- (1) Where, under a conviction of a reciprocating court, a fine is payable by a body corporate having or appearing to have property in New South Wales and the State Debt Recovery Office receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the fine, accompanied by:
 - (a) a copy, certified by the relevant officer to be correct, of the conviction, and
 - (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid,the Office is required:
 - (c) to register the certified copy of the conviction, and
 - (d) to note, on the certified copy, the date of registration.
- (2) On registration of a conviction:
 - (a) the conviction is, for the purposes of this Part, taken to be a conviction of a New South Wales court, and
 - (b) the State Debt Recovery Office is required to make a fine enforcement order under this Act for the purpose of recovering the amount specified as unpaid in the certificate relating to conviction.
- (3) Where a request is made under this section in respect of a fine payable under a conviction of a reciprocating court and the State Debt Recovery Office, after the request, receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or in part of the amount of the fine:
 - (a) the Office must record particulars of the payment, and
 - (b) the payment is, for the purposes of enforcement action under this Act, taken to be payment in pursuance of the fine enforcement order made under this section.

- (4) The State Debt Recovery Office is required to remit to the relevant officer of the reciprocating court concerned the amount of any fine recovered in pursuance of a fine enforcement order made under this section.
- (5) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court is taken to have been so signed unless the contrary is proved.

108 Enforcement of New South Wales fine by reciprocating court

- (1) Where another State has laws providing for enforcement in that State of a New South Wales fine against a body corporate, the State Debt Recovery Office may (on its own behalf or on behalf of the registrar of a New South Wales court) send a request in writing to the relevant officer of the reciprocating court for the enforcement of the New South Wales fine.
- (2) Any amount received from a reciprocating court by the State Debt Recovery Office or the registrar of a court in satisfaction of the whole or part of a New South Wales fine is to be applied as if the amount had been paid to the Office or registrar by the body corporate by which the fine was payable in satisfaction of the whole or part of the fine.
- (3) If:
 - (a) a request has been made under subsection (1), and
 - (b) an amount is received by the State Debt Recovery Office (otherwise than from the relevant officer of the reciprocating court to whom the request was made) in satisfaction of the whole or part of the fine,

the Office is required, as soon as practicable, to notify that relevant officer of the amount of the payment.

Part 6 Civil enforcement—costs and other payments

109 Application

This Part applies to the enforcement of payment of the following:

- (a) costs awarded by a court in proceedings for an offence (including proceedings on appeal),
- (b) any monetary forfeiture or monetary compensation made or awarded by a court in proceedings for an offence,
- (c) any other amounts payable under an order of a court of a kind prescribed by the regulations.

Note. Amounts whose payment may be enforced under this Part are not *finés* for the purposes of this Act (see section 4 (2)).

110 Enforcement as civil judgments

- (1) An order of a court for the payment of an amount that is enforceable under this Part is enforceable as if it were a judgment for the payment of that amount under the *Local Courts (Civil Claims) Act 1970*.
- (2) The order may be entered in the records of any Local Court on which jurisdiction is conferred by that Act as a judgment given in that Local Court for a debt due to the person to whom the payment is required to be made by that order.
- (3) The order may be so entered even though the order was made by a court that is not a Local Court or the amount ordered to be paid exceeds the jurisdictional limit of a Local Court.
- (4) The method of enforcement provided by this section does not affect any other remedy for enforcement provided by any other Act or law.

Part 7 Enforcement of monetary bail or recognizances

111 Definition

In this Part, *forfeited bail undertaking or recognizance* means a bail undertaking or recognizance that is transmitted to the State Debt Recovery Office under the *Forfeited Recognizances and Bail Act 1954* to be dealt with according to law.

112 Enforcement as fines

- (1) Part 4 (Fine enforcement action) applies to a forfeited bail undertaking or recognizance as if the amount payable were a fine imposed by a court for an offence.
- (2) The application of that Part is subject to the following:
 - (a) the State Debt Recovery Office is to make a court fine enforcement order for the purposes of taking enforcement action (being a form of order that is appropriate to the circumstances of the case),
 - (b) enforcement costs are not payable on the making of the order,
 - (c) all other necessary or prescribed modifications to the application of that Part apply.

Part 8 State Debt Recovery Office

113 Establishment of State Debt Recovery Office

- (1) There is established by this Act a body corporate with the corporate name of the State Debt Recovery Office.
- (2) The Office is a statutory body representing the Crown.
- (3) The Office is, for the purposes of the *Public Finance and Audit Act 1983*, the *Annual Reports (Departments) Act 1985* or any other prescribed Act, taken to be part of the Attorney General's Department.

114 Functions of Office

- (1) The State Debt Recovery Office has the functions conferred or imposed on it by or under this or any other Act.
- (2) The Office has the function of administering the following:
 - (a) the making of fine enforcement orders,
 - (b) the taking of enforcement action against fine defaulters under this Act,
 - (c) the write-off policy for outstanding fines,
 - (d) the receipt and collection of fines.
- (3) The Office may act for the State for the purpose of recovering debts or other amounts due to the State. In this subsection, *State* includes the Crown or any authority of the State.

115 Director and other staff of Office

A Director and other staff of the State Debt Recovery Office are to be employed under Part 2 of the *Public Sector Management Act 1988*.

116 Management of Office

- (1) The affairs of the State Debt Recovery Office are to be managed and controlled by the Director of the Office in accordance with this Act and the regulations and the guidelines in force under section 120. Any act, matter or thing done in the name of, or on behalf of, the Office by the Director is taken to have been done by the Office.

- (2) The functions of the Office of making or issuing orders or warrants under this Act are to be exercised by the Director of the Office or other staff of the Office who are justices of the peace. Any such functions exercised by other staff may be exercised in their own names or in the name of the Director.
- (3) The Director and other staff have, in connection with the making or issue of an order or warrant under this Act, the same immunities and protections as officers of a court.

117 Access to information by Office

- (1) Police officers or other members of the Police Service and government agencies are authorised and required to provide the State Debt Recovery Office, on request, with available information about the criminal record, address or assets of a fine defaulter for the purposes of the Office taking action against the person to enforce payment of a fine.
- (2) In this section, *government agency* includes:
 - (a) the Roads and Traffic Authority, and
 - (b) a State owned corporation.

118 Registration of fine enforcement orders

The State Debt Recovery Office is to register each fine enforcement order made by it, and to record details of payment of the fine and the taking of enforcement action.

Part 9 Miscellaneous

119 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

120 Guidelines on exercise of functions under this Act

- (1) The Minister may issue guidelines (not inconsistent with this Act or the regulations) with respect to the following:
 - (a) the exercise by the State Debt Recovery Office of its functions under this Act (including writing off unpaid fines, the issue of fine enforcement orders or community service orders and the taking of other enforcement action under this Act),
 - (b) the exercise by registrars of courts of their functions under this Act (including the determination of time for payment of fines imposed by courts),
 - (c) the exercise by the Roads and Traffic Authority, the Sheriff and other persons of their functions under this Act in connection with the taking of enforcement action,
 - (d) the exercise by the Commissioner of Corrective Services of the function under this Act of making an order that a fine defaulter serve a period of imprisonment by way of periodic detention.
- (2) The Minister is required to make the guidelines public. However, the Minister is not required to make public the guidelines on writing off unpaid fines.
- (3) The guidelines are required to be complied with. However, a failure to comply with a guideline does not affect the validity of any proceedings, decision, order or warrant.
- (4) The regulations may make provision for or with respect to the issue and publication of the guidelines.

121 Fines payable into Consolidated Fund (cf Fines and Penalties Act 1901 sec 5 (1))

- (1) A fine or other penalty imposed or authorised to be imposed by or under any Act is, when recovered, payable into the Consolidated Fund.
- (2) This section is subject to the provisions of any other Act (whether enacted before or after this Act).

Note. *Penalty* is defined in the *Interpretation Act 1987* to include forfeiture or punishment.

122 Payment of share of fine to prosecutor (cf Fines and Penalties Act 1901 sec 5 (3))

- (1) This section applies where:
 - (a) the Act imposing or authorising the imposition of a fine or other penalty does not make any provisions for its application when recovered, and
 - (b) the prosecutor is not a police officer.
- (2) The court before which proceedings are taken to recover any such fine or other penalty may direct that such portion of it (not exceeding one-half) is to be paid to the prosecutor.

123 Remission of fines or other penalties

- (1) The Governor may remit, in whole or in part, any fine or other penalty imposed on a convicted offender under any Act.
- (2) Without limiting subsection (1), the Royal prerogative of mercy may be extended to a person imprisoned for the non-payment of a pecuniary fine or other penalty even though it was payable in whole or in part to a person other than the Crown.
- (3) A fine that is remitted is taken to have been paid for the purpose of cancelling enforcement action under this Act.
- (4) This section extends to all fines and other penalties (including an order for the payment of compensation by a person found guilty of an offence).

Note. *Penalty* is defined in the *Interpretation Act 1987* to include forfeiture and punishment and accordingly is not limited to the payment of money.

124 Royal prerogative preserved

Nothing in this Act limits or affects in any manner the Royal prerogative of mercy or any entitlement of a prisoner to be discharged or released from prison under any other Act.

125 Abolition of imprisonment as primary enforcement action for fine default

- (1) A person is not liable to be committed to prison for a failure to pay a fine or other penalty by the due date.
- (2) However, a fine defaulter is liable to be committed to prison in accordance with this Act for a failure to comply with a community service order served on the fine defaulter under this Act.

126 Abolition of recovery by distress (cf Justices Act 1902 sec 82)

- (1) A fine, or any other order for the payment of money made by a Justice or Justices under the *Justices Act 1902* or any other Act, is not to be levied by distress.
- (2) This section does not affect civil enforcement action authorised by this Act or any other Act.

127 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

128 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.

129 Repeals

The following Acts are repealed:

Fines and Penalties Act 1901 No 16

*Community Service Orders (Fine Default) Amendment Act 1987
No 264*

130 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

131 Savings, transitional and other provisions

Schedule 3 has effect.

132 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 Statutory provisions under which
penalty notices issued**

(Section 20)

Bicentennial Park Trust Act 1987, section 23
Business Names Act 1962, section 28A
Centennial Park and Moore Park Trust Act 1983, section 24
Crown Lands Act 1989, section 162
Dog Act 1966, section 22A
Employment Agents Act 1996, section 29
Environmental Offences and Penalties Act 1989, section 8G
Fair Trading Act 1987, section 64
Fisheries Management Act 1994, section 276
Forestry Act 1916, section 46A
Futures Industry (New South Wales) Code, section 149
Impounding Act 1993, section 36
Industrial Relations Act 1996, section 396
Jury Act 1977, section 64
Liquor Act 1982, section 145A
Local Government Act 1993, section 314, 647 or 679
Maritime Services Act 1935, section 30D
Motor Dealers Act 1974, section 53E
National Parks and Wildlife Act 1974, section 160
Noxious Weeds Act 1993, section 63
Occupational Health and Safety Act 1983, section 51B
Ozone Protection Act 1989, section 20
Parliamentary Electorates and Elections Act 1912, section 120C

Passenger Transport Act 1990, section 59
Periodic Detention of Prisoners Act 1981, section 33B
Plant Diseases Act 1924, section 19
Ports Corporatisation and Waterways Management Act 1995,
section 100
Rail Safety Act 1993, section 88
Registered Clubs Act 1976, section 66
Roads Act 1993, section 243
Rural Lands Protection Act 1989, section 205
State Sports Centre Trust Act 1984, section 20B
Stock Diseases Act 1923, section 200
Summary Offences Act 1988, section 29
Swimming Pools Act 1992, section 35
Sydney Market Authority Act 1968, section 18
Trade Measurement Administration Act 1989, section 23
Traffic Act 1909, section 18B
Transport Administration Act 1988, section 117
Water Board (Corporatisation) Act 1994, section 50
Water Supply Authorities Act 1987, section 51
Wool, Hide and Skin Dealers Act 1935, section 12A
Workers Compensation Act 1987, section 278A

Schedule 2 Amendment of other Acts

(Section 130)

2.1 Bail Act 1978 No 161

Section 54 Notices

Omit "*Fines and Forfeited Recognizances Act 1954*" from section 54 (1) (c).

Insert instead "*Forfeited Recognizances and Bail Act 1954* and the *Fines Act 1996*".

2.2 Children (Community Service Orders) Act 1987 No 56

[1] Section 3 Definitions

Omit the definition of *children's community service order*.

Insert instead:

children's community service order means a community service order made under section 5 or a community service order made under section 79 of the *Fines Act 1996* in respect of a person to which this Act applies.

[2] Section 3 (2)

Omit the subsection.

[3] Part 2, heading

Insert "by courts" after "orders".

[4] Section 5A Community service work in default of payment of fine

Omit the section.

[5] Section 10 Children's community service orders may run concurrently

Omit "or authorised justices".

[6] Section 11 Conditions that may be attached to children's community service order

Omit "or authorised justice".

[7] Section 11 (2)

Insert at the end of the section:

- (2) This section extends to children's community service orders made under the *Fines Act 1996*.

[8] Section 12 Preparation and service of copies of children's community service order

Omit section 12 (3).

[9] Section 12 (4)

Omit "or an authorised justice".

[10] Section 13 Number of hours of community service work

Omit "or authorised justice" from section 13 (1).

[11] Section 13 (2A) and (4)

Omit the subsections.

[12] Section 14 Place etc and time for presentation for work

Omit "or an authorised justice".

[13] Section 14 (2)

Insert at the end of the section:

- (2) This section extends to children's community service orders made under the *Fines Act 1996*.

[14] Section 16 Assignment of officer by Director-General

Omit "or (3)".

Insert instead "of this Act or section 85 (3) of the *Fines Act 1996*".

[15] Section 17 Obligations of persons subject to children's community service orders

Omit "or 5A (1AA)" from section 17 (2).

[16] Section 19 Duration of children's community service orders

Insert "or the *Fines Act 1996*" after "Act" in section 19 (c).

[17] Section 21 Revocation etc of children's community service orders on application

Omit section 21 (3) and (4).

[18] Section 22 Revocation of children's community service orders on being dealt with for other offences

Omit section 22 (3) and (4).

[19] Section 22A Satisfaction of certain orders by payment

Omit the section.

[20] Section 22B Satisfaction of certain orders by detention

Omit the section.

[21] Section 26A Breach of fine default community service order

Omit the section.

2.3 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 37 Term of control order

Omit section 37 (1). Insert instead:

- (1) An order under section 33 (1) (g) takes effect when it is made.

[2] Section 41A Enforcement of fines etc

Omit the section.

2.4 Community Service Orders Act 1979 No 192

[1] Section 3 Definitions

Omit "or 26F" from the definition of *assigned officer*.

[2] Section 3

Omit the definition of *authorised Justice*.

[3] Section 3

Omit the definition of *community service order*. Insert instead:

community service order means a community service order made under section 4 (1) and, except in Part 2, includes a community service order made under section 79 of the *Fines Act 1996* in respect of a person who is not a person to whom the *Children (Community Service Orders) Act 1987* applies.

[4] Section 14 Obligations of persons in respect of whom orders are in force

Omit “or section 26A (1AA)” from section 14 (2).

[5] Part 3 Fine default (sections 26A–26K)

Omit the Part. Insert instead:

Part 3 Fine default

26A Application of Part

- (1) Sections 9, 10 (1), 13, 14, 15, 16 (except subsection (1) (c)) and 17 apply to a community service order under section 79 of the *Fines Act 1996* in the same way they apply to a community service order under Part 2 of this Act.
- (2) In the application of those provisions:
 - (a) a reference to a court in section 9 or 10 (1) is to be read as a reference to the State Debt Recovery Office, and
 - (b) a reference to section 12 (2) in section 13 is to be read as a reference to section 85 (3) of the *Fines Act 1996*, and
 - (c) a reference to a court in section 17 is to be read as a reference to the Director-General or State Debt Recovery Office, and
 - (d) the circumstances in which an order ceases to be in force under section 16 include that the order is revoked or satisfied under the *Fines Act 1996*.

[6] Section 27 Regulations

Omit “, under section 13 or 26F,” from section 27 (1) (a) (iii).

2.5 Crimes Act 1900 No 40

[1] Section 440AA Power to fine

Omit "(other than section 440B)" from section 440AA (2) (a).

[2] Section 440AA (3) and (4)

Omit the subsections.

[3] Section 440AB Consideration of accused's means to pay

Omit the section.

[4] Section 440AC Instalments and time for payment

Omit the section.

[5] Section 440B Imposition of fine or sentence being deferred or suspended

Omit the section.

[6] Section 558 Deferring sentence

Omit section 558 (5).

2.6 Criminal Procedure Act 1986 No 209

[1] Section 18

Insert after section 17:

18 Common informer (cf Fines and Penalties Act 1901 sec 4)

A prosecution or proceeding in respect of any offence under an Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons.

[2] Part 8 Reciprocal enforcement of fines against bodies corporate (sections 25–29)

Omit the Part.

2.7 Fines and Forfeited Recognizances Act 1954 No 25

[1] Section 1 Name of Act and commencement

Omit section 1 (1). Insert instead:

- (1) This Act is the *Forfeited Recognizances and Bail Act 1954*.

[2] Section 3 Definitions

Omit the definition of *appropriate registrar*.

[3] Section 3A Application of Act to bail money

Omit the section.

[4] Section 4 Forfeiture of certain recognizances

Omit “appropriate registrar” from section 4 (2).
Insert instead “State Debt Recovery Office”.

[5] Section 4A Forfeiture of bail money

Omit “appropriate registrar” from section 4A (1).
Insert instead “State Debt Recovery Office”.

[6] Section 5 Procedure after forfeiture of certain recognizances

Omit “to a registrar of the District Court” and “to the appropriate registrar”.
Insert instead “to the State Debt Recovery Office”.

[7] Section 6 Enforcement of certain recognizances where amount has been deposited

Omit "to a registrar of the District Court and shall not be entered on any Estreat Roll" from section 6 (1) (a) and (1A) (c) wherever occurring.

Insert instead "to the State Debt Recovery Office".

[8] Section 6A

Insert after section 6:

6A Enforcement under Fines Act 1996

Part 7 of the *Fines Act 1996* applies to the enforcement of a bail undertaking or recognizance transmitted to the State Debt Recovery Office in accordance with this Act.

[9] Sections 7–15

Omit the sections.

[10] Second, Third and Fourth Schedules

Omit the Schedules.

2.8 Freedom of Information Act 1989 No 5

Schedule 1 Exempt documents

Insert at the end of clause 20:

, or

- (e) a write-off policy referred to in section 101 of the *Fines Act 1996*.

2.9 Justices Act 1902 No 27

[1] Section 41A Payment of costs by informant

Omit section 41A (3).

[2] Section 49 Discharge on recognizance

Omit "*Fines and Forfeited Recognizances Act 1954*" wherever occurring from section 49 (4).

Insert instead "*Forfeited Recognizances and Bail Act 1954*".

[3] Section 50 Procedure on non-appearance of persons discharged on recognizances

Omit "to the registrar of the District Court for the nearest proclaimed place" wherever occurring.

Insert instead "to the State Debt Recovery Office".

[4] Section 51B Application of Division 2 to indictable offences

Omit "sections 80A-95". Insert instead "sections 80AA-86".

[5] Section 75B Ex parte procedure for certain offences

Omit section 75B (2B) (a). Insert instead:

- (a) a penalty notice enforcement order is annulled under Division 5 of Part 3 of the *Fines Act 1996* and the order (together with any annexure) is taken to be an information in relation to the alleged offence, and

[6] Section 75B (2B)

Omit "the certificate" wherever occurring.

Insert instead "the order".

[7] Section 75B (10)

Omit the subsection.

[8] Section 80A Consideration of defendant's means to pay

Omit the section.

[9] Section 82 Abolition in all cases of recovery of fine etc by levy and distress

Omit the section.

[10] Section 83 Payment by instalments of or security taken for payment of money

Omit the section.

[11] Part 4, Division 2, Subdivision 8 (sections 86A–95)

Omit the Subdivision.

[12] Section 96 Recognizances generally

Omit "*Fines and Forfeited Recognizances Act 1954*" wherever occurring from section 96 (4).

Insert instead "*Forfeited Recognizances and Bail Act 1954*".

[13] Part 4B Penalty notices (sections 100I–100ZG)

Omit the Part.

[14] Section 131 Recovery of costs of appeal

Omit section 131 (1) (c) and (d), (2), (3) and (4).

[15] Section 154 Regulations

Omit "*Fines and Forfeited Recognizances Act 1954*" from section 154 (1) (f).

Insert instead "*Forfeited Recognizances and Bail Act 1954*".

[16] Section 154 (1E)

Omit the subsection.

2.10 Land and Environment Court Act 1979 No 204

[1] Section 53

Omit the section. Insert instead:

53 Enforcement of fines or orders

The payment of any money ordered by a Judge exercising summary jurisdiction under this Act to be paid as a penalty or for costs may be enforced in accordance with the *Fines Act 1996*.

[2] Section 54 Payment by instalments or security taken for payment of money

Omit the section.

2.11 Marketing of Primary Products Act 1983 No 176

[1] Section 156 Proceedings

Omit "Subject to subsection (5), all" from section 156 (1).

Insert instead "All".

[2] Section 156 (5) and (6)

Omit the subsections.

2.12 Motor Accidents Act 1988 No 102

[1] Section 13 Cancellation of third-party policies

Omit "section 18C of the *Traffic Act 1909*" from section 13 (3).
Insert instead "Division 3 of Part 4 of the *Fines Act 1996*".

[2] Section 13 (7)

Omit "section 18C of the *Traffic Act 1909*".
Insert instead "Division 3 of Part 4 of the *Fines Act 1996*".

2.13 Periodic Detention of Prisoners Act 1981 No 18

[1] Section 4 Definitions

Omit "or 5C" from the definition of *order for periodic detention*.
Insert instead "or an order under section 89 of the *Fines Act 1996*".

[2] Section 5C

Omit the section. Insert instead:

5C Periodic detention orders for fine defaulters

- (1) This section applies to an order for periodic detention made under section 89 of the *Fines Act 1996*.
- (2) In the application of this Act to such an order:

- (a) a reference to a court having made an order is to be read as a reference to the Commissioner,
- (b) a reference to a sentence of imprisonment to be served by way of periodic detention or to which an order for periodic detention relates is to be read as a reference to the committal of the person to prison as referred to in section 87 of the *Fines Act 1996*, and a reference to the court that imposed the sentence is to be read as a reference to the Commissioner,
- (c) the powers of a court under section 25 or 27 may be exercised by the Commissioner.

[3] Section 5D Conversion of fine default warrants for periodic detainees

Omit the section.

[4] Section 25 Cancellation of orders for periodic detention otherwise than on subsequent conviction

Omit section 25 (3E).

[5] Section 26 Issue of warrant on cancellation of an order for periodic detention

Omit "under section 5C" from section 26 (2).

Insert instead "under section 89 of the *Fines Act 1996*".

2.14 Poisons and Therapeutic Goods Act 1966 No 31

Section 26 Penalties

Omit section 26 (5).

2.15 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert in the definition of *search warrant* in alphabetical order of Acts:

section 76 of the *Fines Act 1996*

2.16 Supreme Court (Summary Jurisdiction) Act 1967 No 72

[1] Section 15

Omit the section. Insert instead:

15 Enforcement of fines or orders

The payment of any money ordered by a Judge exercising summary jurisdiction under this Act to be paid as a penalty or for costs may be enforced in accordance with the *Fines Act 1996*.

[2] Section 16 Payment by instalments or security taken for payment of money

Omit the section.

2.17 Traffic Act 1909 No 5

[1] Section 5A Detention of vehicle in certain cases

Omit “, and in default of payment may impose a penalty of imprisonment for a period not exceeding seven days”.

[2] Section 18C Cancellation of licence or registration in default of payment of penalty

Omit the section.

[3] Section 21 Authority to notify certain decisions

Insert at the end of the section:

- (8) This section does not apply to the suspension or cancellation of a driver's licence or registration of a vehicle, or the refusal to exercise a function, under Part 4 of the *Fines Act 1996*.

[4] Section 22 Appeals

Insert at the end of the section:

- (9) This section does not apply to the suspension or cancellation of a driver's licence or registration of a vehicle, or the refusal to exercise a function, under Part 4 of the *Fines Act 1996*.

[5] Schedule 1 Savings, transitional and other provisions

Omit Part 1A.

2.18 Victims Compensation Act 1987 No 237

Section 65D Payment and enforcement of compensation levy

Omit the section.

2.19 Victims Compensation Act 1996

Section 80 Payment and enforcement of compensation levy

Omit the section.

Schedule 3 Savings, transitional and other provisions

(Section 131)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Amnesty period for existing fine defaulters

- (1) During the amnesty period:
 - (a) a warrant of commitment may not be issued under the *Justices Act 1902* for non-payment of an amount of money, and
 - (b) any such warrant that has been issued but not executed before the commencement of the amnesty period is not to be executed.

- (2) This clause does not prevent the making of a community service order in respect of any such warrant of commitment.
- (3) Nothing in this clause prevents arrangements being made by the registrar of a court or the State Debt Recovery Office in accordance with this Act for time to pay an existing fine. Any such arrangements made do not affect any suspension or cancellation of a driver's licence or vehicle registration.
- (4) This clause has effect despite anything to the contrary in the *Justices Act 1902* or any other Act.
- (5) In this clause:

amnesty period means the period after the commencement of this clause and before the commencement of clause 3.

Note. See section 2 of this Act for provisions relating to the commencement of this clause and clause 3.

3 Act applies to existing fines

- (1) This Act extends, subject to this Schedule, to a fine imposed by a court before the commencement of this clause or an amount payable under a penalty notice issued before the commencement of this clause.
- (2) For the purposes of this Schedule, any such fine or amount is called an ***existing fine***.

4 Court fine provisions

- (1) The time for payment of an existing fine imposed by a court is not affected by section 7 and a notice of such an existing fine need not be given under section 9.
- (2) However, sections 10 and 11 apply to any such existing fine. The registrar of a court may allow further time to pay such a fine under those sections even though the time for payment of the fine has been fixed by the court.
- (3) A court fine enforcement order may be made by the State Debt Recovery Office for an existing fine, whether or not an application is made under this Act for the order.

5 Penalty notice provisions

- (1) A penalty notice for the purposes of this Act includes a penalty notice within the meaning of Part 4B of the *Justices Act 1902* immediately before its repeal by this Act.
- (2) A courtesy letter issued under the *Justices Act 1902* in respect of an existing fine is taken to be a penalty reminder notice issued under this Act.
- (3) An enforcement order issued under section 100L of the *Justices Act 1902* in respect of an existing fine and in force immediately before the commencement of this clause is taken to be a penalty notice enforcement order under this Act.

6 Existing warrants of commitment

- (1) The State Debt Recovery Office may cancel a warrant of commitment issued under the *Justices Act 1902* for non-payment of an amount of money (being a warrant that was not executed immediately before the commencement of this clause) and may make a fine enforcement order under this Act in respect of the fine concerned.
- (2) The State Debt Recovery Office is not required to serve a copy of any such fine enforcement order on the fine defaulter or to give the fine defaulter any further time to pay the fine before enforcement action is taken under Part 4 of this Act.
- (3) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made.
- (4) A person who is, on the commencement of this clause, serving a period of imprisonment under a warrant of commitment issued under the *Justices Act 1902* for non-payment of an amount of money is taken to be serving that period of imprisonment under a warrant issued under this Act.

7 Existing suspension or cancellation of drivers' licences or vehicle registration

Any driver's licence or vehicle registration that has been suspended or cancelled under section 18C of the *Traffic Act 1909* before the repeal of that section by this Act is taken to be a driver's licence or vehicle registration suspended or cancelled under Division 3 of Part 4 of this Act.

8 Existing community service orders and orders for periodic detention

- (1) A community service order made on application under section 89C of the *Justices Act 1902* and in force immediately before the commencement of this clause is taken to be a community service order made under section 79 of this Act.
- (2) An order for periodic detention made on application under section 89D of the *Justices Act 1902* and in force immediately before the commencement of this clause is taken to be an order for periodic detention made under section 89 of this Act.
- (3) If any such community service order or order for periodic detention is revoked, the State Debt Recovery Office may make a fine enforcement order under this Act in respect of the fine concerned.
- (4) The State Debt Recovery Office is not required to serve a copy of any such fine enforcement order on the fine defaulter or to give the fine defaulter any further time to pay the fine before enforcement action is taken under Part 4 of this Act.
- (5) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made.

9 Existing forfeited recognizances and bail

- (1) The Sheriff is to transmit to the State Debt Recovery Office particulars of all forfeited recognizances and bail that are entered on a copy of an Estreat Roll on the commencement of this clause and that have not been recovered before that commencement.

- (2) Part 7 of this Act applies to those forfeited recognizances and bail as if they had been transmitted to the State Debt Recovery Office under the *Forfeited Recognizances and Bail Act 1954*.
- (3) The State Debt Recovery Office is not required to serve a copy of any fine enforcement order made in respect any such forfeited recognizance or bail on the fine defaulter or to give the fine defaulter any further time to pay the amount due before enforcement action is taken under Part 4 of this Act.
- (4) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made.

10 Reciprocal enforcement of fines against bodies corporate

- (1) A conviction registered, a notification received or a writ of execution issued, under Part 8 of the *Criminal Procedure Act 1986*, before the commencement of this clause is taken to be registered, received or issued under Part 5 of this Act.
- (2) Until regulations are made under section 106 of this Act, courts or classes of courts declared by order in the *Gazette* under section 26 of the *Criminal Procedure Act 1986* immediately before the repeal of that section by this Act are taken to be declared by the regulations under section 106 of this Act.

[Minister's second reading speech made in—
Legislative Assembly on 30 October 1996
Legislative Council on 14 November 1996]

