



New South Wales

Fines Amendment Act 1998 No 35

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Fines Amendment Act 1998 No 35

Act No 35, 1998

An Act to amend the *Fines Act 1996* in relation to the enforcement of fines and other matters relating to the administration of that Act; and for other purposes. [Assented to 15 June 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fines Amendment Act 1998*.

2 Commencement

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

3 Amendment of Fines Act 1996 No 99

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

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

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

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

[2] Section 4 Meaning of “fine”

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

[3] Section 4 (1) (e)–(g)

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

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

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

[4] Section 4 (2) (a)

Omit the paragraph.

[5] Section 4 (3)

Insert after section 4 (2):

- (3) In this section, *proceedings for an offence* includes:
 - (a) proceedings for an apprehended violence order, and
 - (b) proceedings on appeal in respect of proceedings for an offence.

[6] Section 9 Fine notification

Insert “, by means of document exchange, by facsimile transmission” after “post” in section 9 (2).

[7] Section 9 (4) (b) and (c)

Omit the paragraphs. Insert instead:

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

[8] Section 16 Enforcement costs under order

Insert “, or is payable under section 76A (Sheriff’s additional costs of taking enforcement action under this Division)” after “so prescribed” in section 16 (1).

[9] Section 16 (3)

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

[10] Section 17 Withdrawal of order

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

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

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

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

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

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

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

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

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

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

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

[15] Section 44 (3)

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

[16] Section 46 Withdrawal of order

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

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

- (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another penalty notice enforcement order or a court fine enforcement order, and
 - (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable, and
 - (d) any amount that has been paid under the order is repayable to the person by whom it was paid.
- (5) If a penalty notice enforcement order is withdrawn only to the extent of some of the penalty notices to which it applies:
 - (a) the order continues to have effect in respect of the remaining penalty notices to which it applies, and
 - (b) any amount that has been paid under the order is to be applied to payment of the remaining penalty notices to which it applies and any enforcement costs in respect of that order.

[17] Section 52 Provisions relating to annulment of enforcement orders

Omit section 52 (3), (4), (5) and (6). Insert instead:

- (3) An application may be made for the annulment of a penalty notice enforcement order completely or only to the extent of some of the penalty notices to which it applies.
- (4) If a penalty notice enforcement order is annulled completely:
 - (a) the order then ceases to have effect, and
 - (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another penalty notice enforcement order or a court fine enforcement order, and

- (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable, and
 - (d) any amount that has been paid under the order is repayable to the person by whom it was paid.
- (5) If a penalty notice enforcement order is annulled only to the extent of some of the penalty notices to which it applies:
- (a) the order continues to have effect in respect of the remaining penalty notices to which it applies, and
 - (b) any amount that has been paid under the order is to be applied to payment of the remaining penalty notices to which it applies and any enforcement costs in respect of that order.

[18] Section 60 What notice must say

Insert “, except as provided in subsection (1A),” after “indicating” in section 60 (1) (d).

[19] Section 60 (1A)

Insert after section 60 (1):

- (1A) The notice of a fine enforcement order may (but need not) contain information relating to the enforcement costs payable under section 76A when the Sheriff is required to take enforcement action.

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

Omit section 65 (4). Insert instead:

- (4) As soon as practicable after all outstanding fines payable by a fine defaulter under fine enforcement orders have been satisfied, the State Debt Recovery Office must direct the Roads and Traffic Authority to cease enforcement action under this Division against the fine defaulter.

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

Insert after section 66 (3):

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

[22] Section 66 (5)

Omit the second sentence from the subsection.

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

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

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

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

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

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

[25] Section 71 (1) (b)

Insert "any available" after "though".

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

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

[27] Section 75 Examination of fine defaulter

Omit section 75 (10). Insert instead:

- (10) An examination under this section may be adjourned:
- (a) by the State Debt Recovery Office, in the case where a person is summoned to attend before the Director or other specified officer of the State Debt Recovery Office, or
 - (b) by a specified officer of a court, in the case where a person is summoned to attend before the specified officer,

and the State Debt Recovery Office or the specified officer, respectively, must notify the person concerned of the time and place for the adjourned examination.

[28] Section 76A

Insert after section 76:

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

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

- (4) Enforcement costs recoverable under this section are payable to the Sheriff and not to the Consolidated Fund.
- (5) The power of a Local Court to review a decision of a registrar of the court in respect of any such enforcement costs applies to a decision of the State Debt Recovery Office under this section.

Note. Enforcement costs payable under a fine enforcement order form part of the fine—see section 57 (4).

[29] Section 84 Suspension of orders during imprisonment or detention

Omit “(including periodic detention)” from section 84 (2) (a).

[30] Section 84 (2) (b)

Omit “order.”. Insert instead:

order,

but not if the fine defaulter is serving a sentence of periodic detention.

[31] Section 89 Periodic detention

Omit section 89 (7). Insert instead:

- (7) The State Debt Recovery Office may replace the original warrant in respect of which the order was made with a fresh warrant in connection with the outstanding fine at the time.

[32] Section 109

Omit the section. Insert instead:

109 Application

- (1) This Part applies to the enforcement of payment of the following (referred to in this Part as *ancillary money orders*):

- (a) any witnesses' expenses payable by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer,
- (b) any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer,
- (c) any monetary forfeiture or monetary compensation made or awarded by a court in proceedings for an offence,
- (d) any other amounts payable under an order of a court of a kind prescribed by the regulations,

but does not apply to the enforcement of payment of any amount that is a fine within the meaning of section 4.

(2) In this section, *proceedings for an offence* includes:

- (a) proceedings for an apprehended violence order, and
- (b) proceedings on appeal in respect of proceedings for an offence.

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

Insert in alphabetical order:

Jury Act 1977, section 66

Pawnbrokers and Second-hand Dealers Act 1996, section 26

Royal Botanic Gardens and Domain Trust Act 1980, section 22B

Sydney Cricket and Sports Ground Act 1978, section 30A

[34] Schedule 3 Savings, transitional and other provisions

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

Fines Amendment Act 1998

[Minister's second reading speech made in—
Legislative Council on 20 May 1998
Legislative Assembly on 2 June 1998]