



New South Wales

Fines Amendment Act 2008 No 40

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New South Wales

Fines Amendment Act 2008 No 40

Act No 40, 2008

An Act to amend the *Fines Act 1996* in relation to the enforcement of fines and in relation to other matters concerning the administration of that Act; and for other purposes. [Assented to 25 June 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fines Amendment Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Fines Act 1996 No 99

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

4 Amendment of other Acts

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

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Fines Act 1996

(Section 3)

[1] Section 15, heading

Insert “**fine**” after “**court**”.

[2] Section 23 Payment of amount required by penalty notice

Insert after section 23 (1):

- (1A) A person may pay the amount by part payments. However, the full amount payable under a penalty notice is to be paid within the time required by the notice.

[3] Section 23 (2)

Omit “that amount”. Insert instead “the full amount under a penalty notice”.

[4] Section 23A

Insert after section 23:

23A Person may elect to have matter dealt with by court

- (1) A person alleged to have committed or to be guilty of the offence to which a penalty notice relates:
- (a) has the right to elect to have the matter dealt with by a court instead of under the statutory provision providing for the issue of the penalty notice, and
 - (b) may make that election:
 - (i) in the manner specified in that statutory provision, or
 - (ii) if no manner is specified in that statutory provision—in the manner specified in the penalty notice, or
 - (iii) if no manner is specified in that statutory provision or in the penalty notice—in the manner specified by the regulations.
- (2) A person may make such an election even if the whole or part of the amount payable under the penalty notice has been paid, but such an election may not be made later than 90 days after the penalty notice was served.
- (3) If a person elects under this section to have a matter dealt with by a court after any amount payable under the penalty notice has been paid:

- (a) section 23 (2) and the corresponding provision of the statutory provision under which the penalty notice was issued (being the provision that provides that if an amount is paid under the penalty notice, no person is liable to any further proceedings for the alleged offence concerned) then cease to have effect, and
- (b) any action taken to record demerit points against the person in the demerit points register kept under the *Road Transport (Driver Licensing) Act 1998* because of that payment is to be reversed by the Roads and Traffic Authority, and
- (c) the amount that has been paid under the penalty notice is repayable to the person to whom the penalty notice was directed.

[5] Sections 24, 26, 27 (1) (b), 34 and 42 (1) (d) and (2) (b)

Omit “the amount” wherever occurring. Insert instead “the full amount”.

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

Omit “make the payment” from section 27 (1) (a).

Insert instead “pay the full amount (or, if one or more part payments of that full amount have been paid, the remaining amount)”.

[7] Sections 28 (2) (c) and 61 (3) (c)

Omit “statutory declaration under section 38” wherever occurring.

Insert instead “notice given under section 38 (1) (a)”.

[8] Section 33 Payment under penalty reminder notice

Insert at the end of the section:

- (2) A person may pay the amount by part payments. However, the full amount payable under a penalty notice is to be paid within the time required by the penalty reminder notice.

[9] Section 35 Alleged offender’s right to elect to have matter dealt with by court

Insert “reminder” after “penalty”.

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

Omit section 36 (1) and (2). Insert instead:

- (1) A person may elect to have a matter dealt with by a court 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.

- (1A) Subject to subsection (2), a person may make such an election even if the whole or part of the amount payable under the penalty notice has been paid.
- (2) The statement must be served within the following time periods:
- (a) if no part of the amount payable under the penalty notice has been paid, on or before the due date specified in the penalty reminder notice for payment in relation to the offence concerned,
 - (b) if the whole or any part of that amount has been paid, not later than 90 days after the penalty notice was served.

[11] Section 36 (5)

Insert after section 36 (4):

- (5) If a person elects under this section to have a matter dealt with by a court after any amount payable under the penalty notice has been paid:
- (a) section 23 (2) and the corresponding provision of the statutory provision under which the penalty notice was issued (being the provision that provides that if an amount is paid under the penalty notice, no person is liable to any further proceedings for the alleged offence concerned) then cease to have effect, and
 - (b) any action taken to record demerit points against the person in the demerit points register kept under the *Road Transport (Driver Licensing) Act 1998* because of that payment is to be reversed by the Roads and Traffic Authority, and
 - (c) the amount that has been paid under the penalty notice is repayable to the person to whom the penalty notice was directed.

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

Omit section 38 (1) (a) and (b). Insert instead:

- (a) on or before the due date specified in the penalty reminder notice, gives notice in accordance with subsection (1A) of 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 for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the penalty reminder notice) that the person did not know and could not with reasonable diligence have ascertained that name and address.

[13] Section 38 (1A)

Insert after section 38 (1):

- (1A) A notice for the purposes of subsection (1) (a) must:
 - (a) be verified by statutory declaration, and
 - (b) be given to the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the penalty reminder notice).

[14] Section 38 (2)

Omit “statutory declaration under subsection (1)”.

Insert instead “notice under subsection (1) (a) that is verified by statutory declaration”.

[15] Section 38 (3)

Omit “statutory declaration” wherever occurring. Insert instead “notice”.

[16] Section 38 (3A) and (3B)

Insert after section 38 (3):

- (3A) A person must not, in a notice given under subsection (1) (a), make a statement or provide information knowing that it is false or misleading in a material particular.
Maximum penalty: 50 penalty units.
- (3B) If the same facts establish an offence under this section and an offence under the *Oaths Act 1900*, the person is not liable to be convicted of both offences.

[17] Section 38 (4)

Omit the definition of *statutory declaration*.

[18] Section 41

Omit the section. Insert instead:

41 How are penalty notice enforcement orders made?

The State Debt Recovery Office may, on application by an appropriate officer for a penalty notice or its own initiative, make a penalty notice enforcement order.

[19] Section 42 When a penalty notice enforcement order may be made

Insert “made by an appropriate officer” after “enforcement order” in section 42 (2).

[20] Section 49 Determination of applications by State Debt Recovery Office

Omit “made” from section 49 (2) (a). Insert instead “served”.

[21] Section 49 (2) (a1)

Insert after section 49 (2) (a):

- (a1) the penalty reminder notice, or both the penalty notice and the penalty reminder notice, in relation to a particular offence were returned as being undelivered to its sender after being sent to the person at the person’s recently reported address (within the meaning of section 126A) and notice of the enforcement order was served on the person at a different address, or

[22] Section 49 (8)

Insert after section 49 (7):

- (8) For the avoidance of doubt, the State Debt Recovery Office may grant an application for annulment (and annul the penalty notice enforcement order) on the ground that the person was not aware that a penalty notice had been issued until the enforcement order was served even if section 126A (1) permitted the issue and service of a penalty reminder notice in relation to a particular offence referred to in the enforcement order or section 126A (2) permitted the making of the penalty notice enforcement order (or both).

[23] Section 51 Proceedings for alleged offence if penalty notice enforcement order annulled

Omit “fine enforcement order” from section 51 (1).

Insert instead “penalty notice enforcement order”.

[24] Section 51 (4)

Omit the subsection. Insert instead:

- (4) For the purposes of hearing and determining the matter, a court attendance notice in relation to each alleged offence to which the annulment of the penalty notice enforcement order relates is taken:
 - (a) to have been filed when the penalty notice enforcement order was made, and
 - (b) to have been filed by the appropriate officer for the penalty notice.

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

Omit section 52 (2).

[26] Section 100 Time to pay

Insert after section 100 (4):

- (4A) 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 State Debt Recovery Office's own initiative.

[27] Section 114 Functions of Office

Omit section 114 (1A) (a). Insert instead:

- (a) may enter into arrangements with persons who issue penalty notices, or on whose behalf penalty notices are issued, for or with respect to such penalty notices, including but not limited to:
 - (i) amending such penalty notices to correct minor errors, and
 - (ii) reviewing or withdrawing such penalty notices, and
 - (iii) refunding amounts paid under such penalty notices, and
 - (iv) the receipt, recovery and collection of amounts payable under such penalty notices, and

[28] Section 116A

Insert after section 116:

116A Delegation

The State Debt Recovery Office may delegate the exercise of any function of the Office that is imposed by or under this Act to any member of staff of the Office (except the Director of the Office), other than the following functions:

- (a) this power of delegation,
- (b) any function of the Office of making or issuing orders or warrants under this Act.

[29] Section 117A Disclosure of information by State Debt Recovery Office

Insert after section 117A (1) (a):

- (a1) to a tax officer (within the meaning of the *Taxation Administration Act 1996*) for the purposes of the administration or execution of a taxation law (within the meaning of that Act), including for the purpose of any legal proceedings arising out of a taxation law or a report of any such proceedings, or
- (a2) to a person engaged in the administration or execution of the following laws for the purposes of the administration or execution of those laws (including for the purpose of any legal proceedings arising out of any of those laws or a report of any such proceedings):
 - (i) the *First Home Owner Grant Act 2000* or a corresponding law of another State or a Territory,
 - (ii) the *Unclaimed Money Act 1995*, or

[30] Section 117A (3A)

Insert after section 117A (3):

- (3A) A tax officer who has obtained personal information under subsection (1) (a1) may disclose that information, in accordance with section 82 of the *Taxation Administration Act 1996*, as if that information had been obtained under or in relation to the administration of a taxation law.

[31] Section 126A

Insert after section 126:

126A Penalty notices and penalty reminder notices sent to recently reported address and returned to sender

- (1) Despite sections 25 and 26, a penalty reminder notice may be issued to and served on a person even if the penalty notice to which it relates was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the appropriate officer concerned has received some other evidence that the penalty notice was not served on the person.
- (2) Despite section 42 (1), a penalty notice enforcement order may be made in relation to an offence even if the penalty notice or a penalty reminder notice (or both) in relation to the offence was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the State Debt Recovery Office has received some other evidence that the penalty notice was not served on the person.
- (3) In this section, *recently reported address*, in relation to a penalty notice or penalty reminder notice sent to a person, means:
 - (a) if, at the time the offence concerned is alleged to have been committed:
 - (i) an address was duly supplied by the person to an appropriate officer in response to a request for that address, and
 - (ii) the person had a legal obligation to supply the address to that officer,unless paragraph (b) applies—the address so supplied, or
 - (b) if, after an address was supplied to an appropriate officer in accordance with paragraph (a), the records of the Roads and Traffic Authority in relation to a current driver licence or vehicle registration were altered to show a different address for the person—that address, or
 - (c) in any other case—an address shown in the records of the Roads and Traffic Authority in relation to a current driver licence or vehicle registration as the address of the person.

Note. Before any enforcement action can be taken in relation to a penalty notice, notice of the relevant penalty notice enforcement order must be served on the person concerned: see sections 59, 65 and 71. The State Debt Recovery Office must annul a penalty notice

enforcement order if it is satisfied that the person concerned was not aware that a penalty notice had been issued until the enforcement order was served on the person: see section 49.

[32] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Fines Amendment Act 2008

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Criminal Procedure Act 1986 No 209

Section 36A

Insert after section 36:

36A Representation and appearance in penalty notice matters

- (1) In any criminal proceedings relating to an offence for which a penalty notice was issued under this or any other Act, the prosecutor of the offence may be represented and appear by a police prosecutor.
- (2) Nothing in this section:
 - (a) requires a police prosecutor to represent or appear for any person, or
 - (b) prevents any person from appearing personally, or being represented and appearing by an Australian legal practitioner or other person empowered by an Act or other law to appear for the person, in any proceedings.

2.2 Road Transport (Driver Licensing) Act 1998 No 99

Section 14 Demerit points register

Insert “the whole or any part of” after “pays” in section 14 (2) (b).

[Agreement in principle speech made in Legislative Assembly on 2 April 2008
Second reading speech made in Legislative Council on 18 June 2008]

BY AUTHORITY