



New South Wales

Fines Amendment Act 2012 No 61

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New South Wales

Fines Amendment Act 2012 No 61

Act No 61, 2012

An Act to amend the *Fines Act 1996* to make further provision with respect to fines and their enforcement. [Assented to 10 September 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fines Amendment Act 2012*.

2 Commencement

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

Schedule 1 Amendment of Fines Act 1996 No 99

[1] Section 23A Person may elect to have matter dealt with by court

Omit “, but such an election may not be made later than 90 days after the penalty notice was served” from section 23A (2).

[2] Section 23A (2A)–(2D)

Insert after section 23A (2):

(2A) If the whole of the amount payable under the penalty notice has been paid, such an election may not be made later than 90 days after the penalty notice was served.

(2B) Despite subsection (2A), a person may make such an election at any time while a review under Division 2A of the decision to issue the penalty notice is in progress.

Note. Section 24I provides that a review under Division 2A is terminated on the person making such an election.

(2C) Despite subsection (2A), if a reviewing agency confirms the decision to issue the penalty notice, such an election may not be made later than 28 days after the outcome of the review has been notified under section 24E.

(2D) This section does not apply if a penalty reminder notice has been served in respect of the offence.

Note. Sections 35 and 36 provide for the right to elect to have a matter dealt with by a court, and the making of and timing for an election, if a penalty reminder notice is served under section 24F or 26.

[3] Sections 23A (3) (c), 24G (2) (b) (ii) and 36 (5) (c)

Omit “to whom the penalty notice was directed” wherever occurring.

Insert instead “by whom it was paid”.

[4] Section 24A Application for review of penalty notice

Omit section 24A (3). Insert instead:

(3) An application for a review may be made even if the whole or part of the amount payable under the penalty notice has been paid, but such an application may not be made later than:

(a) if the whole of the amount payable under the penalty notice has been paid and no penalty reminder notice is served in respect of the offence—60 days after the penalty notice was served, or

- (b) in any other case—the due date specified in the penalty reminder notice for payment in relation to the offence concerned.

[5] Section 24F Action to be taken if decision to issue penalty notice is confirmed

Omit section 24F (1). Insert instead:

- (1) If, after a review under this Division, a reviewing agency confirms a decision to issue a penalty notice in respect of an offence by a person (and the whole amount payable under the notice has not been paid), it must, in accordance with Division 3, serve a penalty reminder notice in respect of the offence on the person.

Note. Accordingly, the time for making an election to have a matter dealt with by a court under section 36 (2) will be on or before the due date for payment specified in the penalty reminder notice served under this section.

[6] Section 24F (3)

Omit the subsection.

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

Omit “Subject to subsection (2), a person” from section 36 (1A).

Insert instead “A person”.

[8] Section 36 (2) and (2A)

Omit section 36 (2). Insert instead:

- (2) Such an election may not be made later than the due date specified in the penalty reminder notice for payment in relation to the offence concerned.

- (2A) Despite subsection (2), a person may make such an election at any time while a review under Division 2A of the decision to issue the penalty notice is in progress.

Note. Section 24I provides that a review under Division 2A is terminated on the person making such an election.

[9] Section 36 (3)

Omit “The statement”. Insert instead “A statement under this section”.

[10] Section 37 Matter to proceed

Insert “, in accordance with this Part,” after “elects”.

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- [11] Section 37A Extension of time limit for taking proceedings if person has elected to have penalty notice matter dealt with by court**
Omit the note to section 37A (2). Insert instead:
Note. An election to have a penalty notice matter dealt with by a court must be made in accordance with section 23A or 36 (as applicable).
- [12] Section 42 When a penalty notice enforcement order may be made**
Insert “or 36” after “section 23A” in section 42 (1CC) (a).
- [13] Section 61 Service of notice**
Insert “, 117AA or 117AB” after “section 117” in section 61 (3) (d).
- [14] Section 73 Order to garnishee debts, wages or salary of fine defaulter**
Insert after section 73 (4):
- (5) A garnishee order is sufficiently served on a corporation if the order is transmitted electronically to the corporation and received through an information system designated by or on behalf of the corporation as the system to be used for the purpose of receiving the order.
 - (6) An order served electronically pursuant to subsection (5):
 - (a) if served after 5.00pm on any day, is taken (subject to paragraph (b)) to have been served on the next day, and
 - (b) if served on a Saturday, Sunday or public holiday, is taken to have been served on the next day that is not a Saturday, Sunday or public holiday.
- [15] Section 113 Establishment of State Debt Recovery Office**
Omit “the Treasury” from section 113 (3).
Insert instead “the Department of Finance and Services”.
- [16] Section 117 Access to information held by police and government agencies**
Omit “or assets” from section 117 (1).
Insert instead “, property, date of birth or driver licence number”.
- [17] Section 117 (1A)**
Insert after section 117 (1):
- (1A) Police officers or other members of the NSW Police Force and government agencies are authorised and required to provide the State Debt Recovery Office, on request, with available

information about a fine defaulter's bank account number or employer for the purposes of making a garnishee order (within the meaning of section 73) against the person.

[18] Section 117AB

Insert after section 117AA:

117AB Access to and use of information held by credit reporting agencies

(1) A credit reporting agency is authorised to disclose to the State Debt Recovery Office, on written request, relevant information about a fine defaulter contained in the person's credit information file for the purposes of the Office taking action against the person to enforce payment of a fine.

(2) In this section:

credit information file and *credit reporting agency* have the same meanings as in the *Privacy Act 1988* of the Commonwealth (the *Privacy Act 1988*).

relevant information about a fine defaulter means any information included in the person's credit information file under section 18E (1) (a) of the *Privacy Act 1988* (that is, information that is reasonably necessary in order to identify the individual to whom the file relates).

Note. The following kinds of information have been determined under section 18E (3) of the *Privacy Act 1988* to be reasonably necessary to be included in an individual's credit information file in order to identify the individual:

- (a) full name (including any known aliases), sex and date of birth,
- (b) a maximum of 3 addresses consisting of a current or last known address and 2 immediately previous addresses,
- (c) name of current or last known employer,
- (d) driver licence number.

[19] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Fines Amendment Act 2012

[20] **Schedule 3**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Fines Amendment Act 2012**

Definition

In this Part:

amending Act means the *Fines Amendment Act 2012*.

Application of amendments

- (1) The amendments made by Schedule 1 [1]–[4], [6] and [8] to the amending Act apply only in relation to an offence that was committed or is alleged to have been committed on or after the commencement of the amending Act.
- (2) The amendments made by Schedule 1 [14] and [16]–[18] to the amending Act apply in relation to an offence whether it was committed or is alleged to have been committed before, on or after the commencement of the amending Act.

[Second reading speech made in—

Legislative Council on 15 August 2012

Legislative Assembly on 5 September 2012]