



New South Wales

# Fines Regulation 1997

under the

## Fines Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fines Act 1996*.

JEFFREY SHAW, Q.C., M.L.C.,

Attorney General

### Explanatory note

The object of this Regulation is to make provision for the following matters connected with the administration of the *Fines Act 1996*:

- (a) matters relating to fines imposed by courts (Part 2), including:
  - (i) extending the definition of *fine* in section 4 of the Act (clause 5), and
  - (ii) prescribing enforcement costs under section 16 of the Act (clause 7),
- (b) matters relating to penalty notices (Part 3), including:
  - (i) extending the definition of *penalty notice* in section 20 of the Act (clause 9), and
  - (ii) extending the definition of *vehicle or vessel offence* in section 38 of the Act (clause 12), and
  - (iii) prescribing enforcement costs under section 44 of the Act (clause 13), and
  - (iv) prescribing the fees for an application to annul a penalty notice enforcement order and for an application to review the State Debt Recovery Office's decision on such an application (clauses 15 and 16),

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Explanatory note

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- (c) matters relating to fine enforcement action (Part 4), including:
  - (i) extending the range of functions that the Roads and Traffic Authority is prohibited from exercising in connection with fine defaulters (clause 17), and
  - (ii) prescribing circumstances in which a fine defaulter who is committed to prison may not be eligible to serve imprisonment by way of periodic detention (clause 20),
- (d) matters relating to the reciprocal enforcement of fines against bodies corporate (Part 5), including the declaration of reciprocating courts for the purposes of that Part (clause 22),
- (e) matters relating to civil enforcement of costs and other payments (Part 6), including the prescription of court fees and witnesses' expenses as amounts that are recoverable by the civil enforcement provisions of the Act (clause 23),
- (f) savings and transitional matters (Part 7), including a provision for the continuation of the former fine enforcement legislation with respect to fines imposed under Commonwealth legislation and fines imposed under State legislation on persons who reside outside the State.

This Regulation is made under the *Fines Act 1996*, including section 128 (the general regulation making power) and sections 4, 9, 16, 18, 20, 22, 36, 38, 44, 47, 48, 50, 68, 80, 85, 89, 103, 106, 109 and clauses 1 and 5A of Schedule 3.

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## Fines Regulation 1997

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Fines Regulation 1997*.

#### 2 Commencement

This Regulation commences on 27 January 1998.

#### 3 Definitions

In this Regulation:

**law enforcement officer** means a person exercising law enforcement functions in an official capacity:

- (a) as Director of Public Prosecutions, as a Deputy Director of Public Prosecutions or as Solicitor for Public Prosecutions within the meaning of the *Director of Public Prosecutions Act 1986*,
- (b) as a Crown Prosecutor within the meaning of the *Crown Prosecutors Act 1986*,
- (c) as a police officer within the Police Service,
- (d) as an officer or employee of the Public Service,
- (e) as an officer or employee of a corporation that, for the purposes of an Act, is a statutory body representing the Crown,
- (f) as a councillor or employee of a council within the meaning of the *Local Government Act 1993*,
- (g) as an officer or employee of a rural lands protection board under the *Rural Lands Protection Act 1989*,
- (h) as an officer within the meaning of the *Prevention of Cruelty to Animals Act 1979*.

**the Act** means the *Fines Act 1996*.

#### 4 Notes

The explanatory note and table of contents do not form part of this Regulation.

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Part 2 Fines imposed by courts

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**Part 2 Fines imposed by courts**

**5 Meaning of “fine”: section 4**

Each of the following amounts is prescribed as a fine for the purposes of the Act:

- (a) any court fees payable by a person under an order made by a court in proceedings for an offence (including proceedings on appeal),
- (b) any witnesses’ expenses payable by a person under an order made by a court in proceedings for an offence,

but in the case only of proceedings that have been brought by a law enforcement officer.

**6 Fine notification: section 9**

For the purposes of section 9 (2) of the Act, the following means are authorised as means by which written notice of a fine may be served on a person:

- (a) by means of a document exchange,
- (b) by facsimile transmission.

**7 Enforcement costs under court fine enforcement orders: section 16**

- (1) The following enforcement costs are payable under a court fine enforcement order:
  - (a) \$50, payable to the State Debt Recovery Office on the making of the order,
  - (b) \$40, payable to the Roads and Traffic Authority if any enforcement action is taken by that Authority under Division 3 of Part 4 of the Act before payment is made under the order,
  - (c) \$50, payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 of the Act before payment is made under the order.

- (2) The enforcement costs referred to in subclause (I) (c):
- (a) apply to each of the following kinds of enforcement action:
    - (i) the making of a property seizure order against a fine defaulter, as referred to in section 72 (1) of the Act,
    - (ii) the making of a garnishee order against a fine defaulter, as referred to in section 73 (1) of the Act,
    - (iii) an application to register a fine enforcement order as a charge on land held by a fine defaulter, as referred to in section 74 (1) of the Act,
    - (iv) the issue of an examination summons against a fine defaulter, as referred to in section 75 (1) of the Act,
    - (v) the issue of a warrant for the apprehension of a fine defaulter who fails to attend in accordance with an examination summons, as referred to in section 75 (7) of the Act, and
  - (b) are to be paid to the State Debt Recovery Office for payment into the Consolidated Fund.

### **8 Court fine enforcement orders: section 18**

- (1) An unpaid fine may be referred to the State Debt Recovery Office for the making of a court fine enforcement order:
- (a) by post, or
  - (b) by means of a document exchange, or
  - (c) by facsimile transmission or other electronic transmission.
- (2) A court fine enforcement order is to be issued in a form that specifies:
- (a) the fine defaulter's name, address and date of birth (if known), and
  - (b) in relation to each fine to which the order relates:
    - (i) a description of the offence in respect of which the fine was imposed, together with the date of the offence,
    - (ii) the date on which the fine was imposed,
    - (iii) the amount of the fine that remains to be paid (as required by section 15 (1) of the Act), and
  - (c) the amount of the enforcement costs payable in connection with the making of the order (as required by section 15 (1) of the Act).

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Clause 9 Fines Regulation 1997

Part 3 Penalty notices

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### Part 3 Penalty notices

#### 9 What is a penalty notice?: section 20

The following statutory provisions are specified for the purposes of section 20 of the Act, as referred to in subsection (2) (b) of that section:

*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

#### 10 Appropriate officers: section 22

For the purposes of section 22 (2) (c) of the Act, all persons who are employed in the Infringement Processing Bureau of the Police Service and are authorised by the Director of that Bureau for the purposes of Part 3 of the Act are a specified class of persons for all penalty notices.

#### 11 Service of statements electing to have matters dealt with by court: section 36

For the purposes of section 36 (3) of the Act, the following means are prescribed means by which a written statement may be served on the appropriate officer or other person or body:

- (a) by means of a document exchange,
- (b) by facsimile transmission.

#### 12 Vehicle or vessel offences: section 38

- (1) The following devices are prescribed for the purposes of paragraph (b) of the definition of *vehicle or vessel offence* in section 38 (4) of the Act:

- An approved camera detection device within the meaning of the *Traffic Act 1909*.
- An approved speed measuring device within the meaning of the *Traffic Act 1909*.



(2) Offences to which the following statutory provisions apply (being offences committed in relation to a vehicle or vessel) are prescribed offences for the purposes of paragraph (c) of the definition of *vehicle or vessel offence* in section 38 (4) of the Act:

- *Bicentennial Park Trust Act 1987*, section 22
- *Centennial Park and Moore Park Trust Act 1983*, section 23
- *Crown Lands Act 1989*, section 161
- *Forestry Act 1916*, section 38C
- *Impounding Act 1993*, section 32A
- *Local Government Act 1993*, section 651
- *Maritime Services Act 1935*, section 30C
- *National Parks and Wildlife Act 1974*, section 159
- *Roads Act 1993*, section 244
- *Royal Botanic Gardens and Domain Trust Act 1980*, section 22A
- *State Sports Centre Trust Act 1984*, section 20A
- *Traffic Act 1909*, section 18A
- *Transport Administration Act 1988*, section 116

**13 Enforcement costs under penalty notice enforcement orders:  
section 44**

- (1) The following enforcement costs are payable under a penalty notice enforcement order:
- (a) \$50, payable to the State Debt Recovery Office on the making of the order,
  - (b) \$40, payable to the Roads and Traffic Authority if any enforcement action is taken by that Authority under Division 3 of Part 4 of the Act before payment is made under the order,
  - (c) \$50, payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 of the Act before payment is made under the order.

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Clause 13 Fines Regulation 1997

Part 3 Penalty notices

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- (2) The enforcement costs referred to in subclause (1) (c):
- (a) apply to each of the following kinds of enforcement action:
    - (i) the making of a property seizure order against a fine defaulter, as referred to in section 72 (1) of the Act,
    - (ii) the making of a garnishee order against a fine defaulter, as referred to in section 73 (1) of the Act,
    - (iii) an application to register a fine enforcement order as a charge on land held by a fine defaulter, as referred to in section 74 (1) of the Act,
    - (iv) the issue of an examination summons against a fine defaulter, as referred to in section 75 (1) of the Act,
    - (v) the issue of a warrant for the apprehension of a fine defaulter who fails to attend in accordance with an examination summons, as referred to in section 75 (7) of the Act, and
  - (b) are to be paid to the State Debt Recovery Office for payment into the Consolidated Fund.

### 14 Penalty notice enforcement orders: section 47

■ penalty notice enforcement order is to be issued in a form that specifies:

- (a) the fine defaulter's name, address and date of birth (if known), and
- (b) in relation to each fine to which the order relates:
  - (i) a description of the offence in respect of which the relevant penalty notice was served, together with the date of the offence,
  - (ii) the amount of the fine that remains to be paid (as required by section 43 (1) of the Act), and
- (c) the amount of the enforcement costs payable in connection with the making of the order (as required by section 43 (1) of the Act).

**15 Applications for annulment of penalty notice enforcement orders: section 48**

- (1) An application fee of \$50 is payable in relation to an application to the State Debt Recovery Office for annulment of a penalty notice enforcement order.
- (2) The State Debt Recovery Office may waive, postpone or remit the application fee payable under this clause in such circumstances as it considers appropriate.

**16 Applications to Local Court for redetermination of applications for annulment of penalty notice enforcement orders: section 50**

- (1) An application for annulment of a penalty notice enforcement order that has been made to the State Debt Recovery Office (the *original application*) may not be the subject of an application to have that application determined by a Local Court (the *renewed application*) unless the renewed application is made within 28 days after the date on which the original application is determined by the State Debt Recovery Office.
- (2) An application fee of \$50 is payable in relation to the renewed application.
- (3) The registrar of the Local Court to which a renewed application is lodged may waive, postpone or remit the application fee payable under this clause in such circumstances as the registrar considers appropriate.

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Clause 17 Fines Regulation 1997

Part 4 Fine enforcement action

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### **Part 4 Fine enforcement action**

#### **17 Suspension of dealings with Roads and Traffic Authority: section 68**

The following functions are prescribed for the purposes of section 68 of the Act, as referred to in subsection (2) (f) of that section, as functions that the Roads and Traffic Authority must refuse to exercise if that section applies to a fine defaulter:

- (a) the issuing of an unregistered vehicle permit to the fine defaulter,
- (b) the registration of a motor vehicle in the name of the fine defaulter, or the renewal of registration of a motor vehicle in the name of the fine defaulter, under the *Recreation Vehicles Act 1983*,
- (c) the issuing of trader's plates to a fine defaulter,
- (d) the processing of a number plate exchange for the fine defaulter,
- (e) the reservation of a particular number plate for the fine defaulter,
- (f) the ordering of a particular number plate, or a particular design of number plate, for the fine defaulter,
- (g) the testing of the fine defaulter to ascertain the fine defaulter's eligibility for a driver's licence,
- (h) the booking of a driving test for the fine defaulter.

#### **18 Service of community service orders: section 80**

For the purposes of section 80 (1) of the Act, a community service order is given to a fine defaulter in accordance with the regulations if it is served on the fine defaulter personally.

**19 Explanation of community service orders to fine defaulters:  
section 85**

The explanation of a community service order to be given to a fine defaulter under section 85 (2) of the Act must include information, in language likely to be understood by the fine defaulter, as to the following matters:

- (a) the requirements to be complied with by the fine defaulter under the order,
- (b) the consequences that may follow if the fine defaulter fails to comply with those requirements,
- (c) the fact that the order may be satisfied by payment of such part of the fine as has not been satisfied by the performance of community service work under the order.

**20 Periodic detention: section 89**

For the purposes of section 89 (3) (e) of the Act, a fine defaulter is not eligible to serve a period of imprisonment by way of periodic detention in circumstances in which an earlier order for periodic detention (whether under the *Fines Act 1996* or the *Periodic Detention of Prisoners Act 1981*) has been revoked because the fine defaulter has failed to serve a sentence of imprisonment in accordance with the requirements of the order.

**21 Endorsement of electronically transmitted orders and warrants:  
section 103**

For the purposes of section 103 (2) of the Act, a written copy of an order or warrant that has been transmitted electronically must be endorsed with the following words:

This document has been transmitted electronically by the State Debt Recovery Office in accordance with section 103 of the *Fines Act 1996*.

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Clause 22 Fines Regulation 1997

Part 5 Reciprocal enforcement of fines against bodies corporate

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**Part 5 Reciprocal enforcement of fines against bodies corporate**

**22 Declaration of reciprocating court: section 106**

For the purposes of section 106 of the Act, the following courts (or classes of courts) are declared to be reciprocating courts (or classes of reciprocating courts):

- Magistrates Courts of Queensland
- Courts of Summary Jurisdiction of South Australia
- Courts of Summary Jurisdiction of Tasmania
- Magistrates' Courts of Victoria
- Courts of Petty Sessions of Western Australia
- Magistrates Courts of the Australian Capital Territory
- Courts of Summary Jurisdiction of the Northern Territory

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## **Part 6      Civil enforcement—costs and other payments**

### **23   Ancillary money orders: section 109**

For the purposes of section 109 (c) of the Act, each of the following amounts is prescribed:

- (a) any court fees payable by a person under an order made by a court in proceedings for an offence (including proceedings on appeal),
- (b) any witnesses' expenses payable by a person under an order made by a court in proceedings for an offence,

but in the case only of proceedings that have been brought otherwise than by a law enforcement officer.

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Clause 24 Fines Regulation 1997

Part 7 Savings and transitional provisions

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## Part 7 Savings and transitional provisions

### 24 Forfeited recognizances and bail

- (1) Pending the commencement of clause 9 of Schedule 3 to the Act, the *Forfeited Recognizances and Bail Act 1954* continues to apply to any recognizance or bail money forfeited under that Act as if the *Fines Act 1996* had not been enacted.
- (2) This clause ceases to have effect on the commencement of clause 9 of Schedule 3 to the Act.

### 25 Continuation of former fine enforcement legislation in certain circumstances

- (1) In this clause, former fine enforcement legislation means the provisions of the following Acts, as those Acts were in force immediately before 27 January 1998:
  - (a) the *Children (Community Service Orders) Act 1987*,
  - (b) the *Children (Criminal Proceedings) Act 1987*,
  - (c) the *Community Service Orders Act 1979*,
  - (d) the *Crimes Act 1900*,
  - (e) the *Criminal Procedure Act 1986*,
  - (f) the *Forfeited Recognizances and Bail Act 1954*,
  - (g) the *Justices Act 1902*,
  - (h) the *Periodic Detention of Prisoners Act 1981*,
  - (i) the *Traffic Act 1909*.
- (2) The former fine enforcement legislation continues to apply to and in respect of:
  - (a) any fine imposed with respect to an offence arising under the laws of the Commonwealth, and
  - (b) any fine imposed with respect to an offence arising under the laws of New South Wales, being an offence the subject of an order in force under subclause (3).



- (3) An order declaring that a fine imposed with respect to an offence arising under the laws of New South Wales is to be enforced in accordance with the former fine enforcement legislation (an *interstate resident order*) may be made as follows:
- (a) in the case of a fine imposed by a court, such an order may be made by the registrar of the court at any time before the matter is referred to the State Debt Recovery Office under section 13 of the Act, or
  - (b) in the case of any fine (whether or not imposed by a court), such an order may be made by the State Debt Recovery Office at any time after the relevant fine enforcement order is made.
- (4) An interstate resident order may be made only if the registrar or State Debt Recovery Office, as the case may be, is of the opinion that the person on whom the relevant fine has been imposed does not reside, or no longer resides, in New South Wales.
- (5) As soon as practicable after it makes an interstate resident order, the State Debt Recovery Office must cause the order, together with a copy of the relevant fine enforcement order, to be lodged with the registrar of a Local Court.
- (6) A fine enforcement order that is lodged with the registrar of a Local Court in accordance with subclause (5) (being a fine enforcement order that, in accordance with section 116 (2) of the Act, has been made by the Director of the State Debt Recovery Office or some other member of staff of the Office who is a justice of the peace):
- (a) in the case of a court fine enforcement order, is taken to be a warrant of commitment made in that Local Court under section 87 of the *Justices Act 1902* (as in force immediately before 27 January 1998), or
  - (b) in the case of a penalty notice enforcement order, is taken to be an enforcement order made in that Local Court under section 100L of the *Justices Act 1902* (as in force immediately before 27 January 1998).

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Clause 25 Fines Regulation 1997

Part 7 Savings and transitional provisions

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- (7) The registrar of the Local Court in which a fine enforcement order has been lodged in accordance with subclause (5) may at any time revoke the associated interstate resident order if of the opinion that the person on whom the relevant fine has been imposed is residing in New South Wales.
- (8) On the revocation of an interstate resident order, the warrant of commitment or enforcement order that the fine enforcement order is taken to have become by operation of subclause (6) is taken instead to be the court fine enforcement order or penalty notice enforcement order that it was immediately before the interstate resident order was made, and Part 5 of the Act applies accordingly.
- (9) This clause ceases to have effect on 1 January 2000.

### 26 Construction of reference in section 11AB of the Traffic Act 1909

The reference in section 11AB (3) (b) of the *Traffic Act 1909* to an order made under section 100L of the *Justices Act 1902* is to be construed as a reference to a penalty notice enforcement order made under the *Fines Act 1996*, and extends to a penalty notice enforcement order referred to in clause 5 (5) of Schedule 3 to the *Fines Act 1996*.