



New South Wales

Fines Amendment Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Fines Act 1996* as follows:

- (a) to reframe time limits applying to elections to have a penalty notice matter dealt with by a court so that they are directly referable to whether or not a penalty reminder notice has been issued,
- (b) to allow a person to elect to have a penalty notice matter dealt with by a court at any time during an internal review of the decision to issue the penalty notice,
- (c) to extend the time within which a person may elect to have a penalty notice matter dealt with by a court following an internal review that confirms the decision to issue the penalty notice,
- (d) to provide for the time within which a person who is not issued a penalty reminder notice may apply for an internal review of the decision to issue the penalty notice,
- (e) to extend the power of the State Debt Recovery Office to obtain information about fine defaulters (including from credit reporting agencies),

- (f) to provide that amounts paid under penalty notices or penalty reminder notices that are to be refunded under the Act are to be refunded to the persons by whom they were paid (rather than to the alleged offender),
- (g) to allow garnishee orders to be served electronically on corporations,
- (h) to make minor, consequential or ancillary amendments.

Outline of provisions

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Fines Act 1996 No 99

Time for electing to go to court

Schedule 1 [2] and [8] reframe time limits that apply to elections to have a penalty notice matter dealt with by a court so that those limits are directly referable to whether or not a penalty reminder notice has been issued.

Currently, a person who fully pays the penalty amount by the due date specified in the penalty notice or who is issued a penalty reminder notice, having fully or partly paid the penalty amount, may elect to go to court no later than 90 days after the penalty notice was issued and a person who is issued a penalty reminder notice, having paid none of the penalty amount, may elect to go to court no later than the due date specified in the reminder notice.

Generally, the effect of the proposed amendments is that a person who fully pays the penalty amount by the due date specified in the penalty notice may elect to go to court no later than 90 days after the penalty notice was issued, and a person who receives a penalty reminder notice (as in the case of a person who has not, or has only partly, paid the penalty amount by that due date) may make such an election no later than the due date specified in the reminder notice. However, regardless of these time limits:

- (a) a person who seeks an internal review of a decision to issue a penalty notice may make such an election at any time during the review, and
- (b) if a person who has fully paid the penalty amount by the due date specified in the penalty notice applies for an internal review which confirms the decision to issue the penalty notice, the person may make such an election no later than 28 days after being notified of the outcome of the review.

Schedule 1 [1], [5], [7] and [9]–[12] make consequential and ancillary amendments.

Schedule 1 [6] omits a provision so as to extend the time limit for court election by a person who is issued with a replacement penalty reminder notice following an internal review that confirms the decision to issue the penalty notice, from the due

date specified in the replaced penalty reminder notice to that in the replacement penalty reminder notice.

Time for applying for internal review

Schedule 1 [4] restates the time limit that applies to applications by persons who have been issued with a penalty reminder notice, for an internal review of the decision to issue the penalty notice, and expressly provides for the time limit for the making of such applications by persons who are not issued a penalty reminder notice (having fully paid the penalty amount by the due date specified in the penalty notice).

Schedule 1 [5] makes a consequential amendment.

Repayment of amounts under penalty notices

Schedule 1 [3] makes various references to the person to whom an amount paid under a penalty notice or penalty reminder notice is to be repaid (for example, if the notice is withdrawn) consistent with other such references in the Act, so that it is always to be repaid to the person by whom it was paid (rather than to the alleged offender).

Access to information by SDRO

Schedule 1 [16]–[18] extend the power of the State Debt Recovery Office (the *SDRO*) to obtain information about fine defaulters. **Schedule 1 [16] and [17]** require police officers and government agencies and utilities to provide the SDRO, on request, with available information about a fine defaulter’s property (expressed as “assets” in the current provision), date of birth or driver licence number for the purposes of fine enforcement, and about a fine defaulter’s bank account number or employer for the purposes of making a garnishee order against the person.

Schedule 1 [18] authorises credit reporting agencies (within the meaning of the *Privacy Act 1988* of the Commonwealth) to disclose to the SDRO, on request, relevant information about a fine defaulter contained in the person’s credit information file (within the meaning of that Act), for the purposes of fine enforcement. **Relevant information** is any information that is reasonably necessary in order to identify the individual to whom the file relates. The following kinds of information have been determined under that Act to be reasonably necessary to be included in a person’s credit information file to identify the person:

- (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.

Schedule 1 [13] updates a cross-reference.

Service of garnishee orders

Schedule 1 [14] enables a garnishee order made under the Act to be served electronically on a corporation.

Statute law revision and savings and transitional provisions

Schedule 1 [15] updates a reference to a Division of the Government Service to reflect administrative changes.

Schedule 1 [19] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [20] enacts transitional provisions concerning the application of various amendments made by the proposed Act.

First print



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New South Wales

Fines Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend the *Fines Act 1996* to make further provision with respect to fines and their enforcement.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fines Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Fines Act 1996 No 99	1
[1]	Section 23A Person may elect to have matter dealt with by court	2
	Omit “, but such an election may not be made later than 90 days after the penalty notice was served” from section 23A (2).	3 4
[2]	Section 23A (2A)–(2D)	5
	Insert after section 23A (2):	6
	(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.	7 8 9
	(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.	10 11 12
	Note. Section 24I provides that a review under Division 2A is terminated on the person making such an election.	13 14
	(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.	15 16 17 18
	(2D) This section does not apply if a penalty reminder notice has been served in respect of the offence.	19 20
	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.	21 22 23
[3]	Sections 23A (3) (c), 24G (2) (b) (ii) and 36 (5) (c)	24
	Omit “to whom the penalty notice was directed” wherever occurring.	25
	Insert instead “by whom it was paid”.	26
[4]	Section 24A Application for review of penalty notice	27
	Omit section 24A (3). Insert instead:	28
	(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:	29 30 31
	(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	32 33 34 35

	(b) in any other case—the due date specified in the penalty reminder notice for payment in relation to the offence concerned.	1 2 3
[5]	Section 24F Action to be taken if decision to issue penalty notice is confirmed	4 5
	Omit section 24F (1). Insert instead:	6
	(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.	7 8 9 10 11 12
	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.	13 14 15 16
[6]	Section 24F (3)	17
	Omit the subsection.	18
[7]	Section 36 How person may elect to have matter dealt with by court	19
	Omit “Subject to subsection (2), a person” from section 36 (1A).	20
	Insert instead “A person”.	21
[8]	Section 36 (2) and (2A)	22
	Omit section 36 (2). Insert instead:	23
	(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.	24 25 26
	(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.	27 28 29
	Note. Section 24I provides that a review under Division 2A is terminated on the person making such an election.	30 31
[9]	Section 36 (3)	32
	Omit “The statement”. Insert instead “A statement under this section”.	33
[10]	Section 37 Matter to proceed	34
	Insert “, in accordance with this Part,” after “elects”.	35

[11]	Section 37A Extension of time limit for taking proceedings if person has elected to have penalty notice matter dealt with by court	1 2
	Omit the note to section 37A (2). Insert instead:	3
	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).	4 5
[12]	Section 42 When a penalty notice enforcement order may be made	6
	Insert “or 36” after “section 23A” in section 42 (1CC) (a).	7
[13]	Section 61 Service of notice	8
	Insert “, 117AA or 117AB” after “section 117” in section 61 (3) (d).	9
[14]	Section 73 Order to garnishee debts, wages or salary of fine defaulter	10
	Insert after section 73 (4):	11
	(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.	12 13 14 15 16
	(6) An order served electronically pursuant to subsection (5):	17
	(a) if served after 5.00pm on any day, is taken (subject to paragraph (b)) to have been served on the next day, and	18 19
	(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.	20 21 22
[15]	Section 113 Establishment of State Debt Recovery Office	23
	Omit “the Treasury” from section 113 (3).	24
	Insert instead “the Department of Finance and Services”.	25
[16]	Section 117 Access to information held by police and government agencies	26 27
	Omit “or assets” from section 117 (1).	28
	Insert instead “, property, date of birth or driver licence number”.	29
[17]	Section 117 (1A)	30
	Insert after section 117 (1):	31
	(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	32 33 34

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. 1
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[18] Section 117AB 4

Insert after section 117AA: 5

117AB Access to and use of information held by credit reporting agencies 6

(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. 7
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(2) In this section: 12

credit information file and *credit reporting agency* have the same meanings as in the *Privacy Act 1988* of the Commonwealth (the *Privacy Act 1988*). 13
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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). 16
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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: 21
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- (a) full name (including any known aliases), sex and date of birth, 25
- (b) a maximum of 3 addresses consisting of a current or last known address and 2 immediately previous addresses, 26
27
- (c) name of current or last known employer, 28
- (d) driver licence number. 29

[19] Schedule 3 Savings, transitional and other provisions 30

Insert at the end of clause 1 (1): 31

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[20] Schedule 3	1
Insert at the end of the Schedule (with appropriate Part and clause numbers):	2
Part Provisions consequent on enactment of Fines Amendment Act 2012	3 4
Definition	5
In this Part:	6
<i>amending Act</i> means the <i>Fines Amendment Act 2012</i> .	7
Application of amendments	8
(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.	9 10 11 12
(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.	13 14 15 16