

[Act 1998 No 35]



New South Wales

Fines Amendment Bill 1998

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* (*the Principal Act*) to make miscellaneous changes to that Act, including the following:

- (a) to allow the Sheriff to recoup all costs and expenses reasonably incurred in the taking of enforcement action against a fine defaulter (instead of only a single amount prescribed by the regulations),
 - (b) to ensure that a community service order made against a fine defaulter is not suspended under the Principal Act during any period of periodic detention of the fine defaulter,
 - (c) to ensure that when a fine enforcement order that applies to more than one fine is withdrawn only to the extent of some of the fines to which it applies it continues to have effect in respect of the remaining fines to which it applies,
 - (d) to ensure that enforcement action against a fine defaulter (for example, driver's licence suspension or cancellation) may continue until all outstanding fines against the fine defaulter are satisfied,
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- (e) to include within the definition of a *fine* covered by the fine enforcement procedures of the Principal Act, any professional costs ordered by a court in proceedings brought by a law enforcement officer,
- (f) to transfer to the Principal Act provisions currently found in the regulations under that Act.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Fines Act 1996* set out in Schedule 1.

Schedule 1 Amendment of Fines Act 1996

Sheriff's enforcement costs

At present, enforcement costs incurred by the Sheriff in taking enforcement action against a fine defaulter under Division 4 of Part 4 of the Principal Act are prescribed by the regulations as a fixed amount (currently \$50) payable into the Consolidated Fund. It is proposed to insert a new section 76A into the Act so as to allow the Sheriff to recoup any costs and expenses reasonably incurred that are in excess of those prescribed costs (Schedule 1 [28]). Under section 57 (4), such enforcement costs, once approved by the State Debt Recovery Office, form part of the fine. Consequential amendments are made by Schedule 1 [8], [9], [14], [15], [18] and [19].

Non-suspension of community service order upon order for periodic detention

It is proposed to amend section 84 of the Principal Act to ensure that a community service order that is imposed on a fine defaulter under that Act is not suspended during any period of periodic detention served by the fine defaulter for any offence (Schedule 1 [29] and [30]).

Issue of subsequent warrant for imprisonment

It is proposed to amend section 89 of the Principal Act to clarify that a warrant for imprisonment issued after the revocation of an order made under an earlier warrant replaces that earlier warrant (rather than cancelling it) to avoid any doubt being cast on the previous detention of the fine defaulter under the earlier warrant (Schedule 1 [31]).

Information to be given to a fine defaulter

It is proposed to amend sections 9 and 27 of the Principal Act to clarify the information required to be given in a written notice of a court-imposed fine (Schedule 1 [7]) or a penalty reminder notice (Schedule 1 [12]). The proposed amendments require notification of enforcement action that may be taken (instead of the action that will be taken) under the Principal Act if the amount is not paid by the due date as well as notification of the additional enforcement costs that become payable if such enforcement action is taken.

Withdrawal or annulment of fine enforcement order relating to more than one fine

It is proposed to amend sections 17 and 46 of the Principal Act to ensure that when a court fine enforcement order that applies to more than one fine, or a penalty notice enforcement order that applies to more than one penalty notice, is withdrawn only to the extent of some of the fines or penalty notices to which it applies, it continues to have effect in respect of any remaining fines or penalty notices to which it applies (Schedule 1 [10] and [16]). A similar amendment is proposed for section 52, which relates to the annulment of a penalty notice enforcement order (Schedule 1 [17]). The revised provisions will also enable amounts paid under the withdrawn or annulled order to be applied to the payment of the remaining fines payable under the order.

Enforcement action with respect to fine defaulter liable under more than one fine enforcement order

It is proposed to amend section 66 of the Principal Act to ensure that the State Debt Recovery Office has the power to direct the Roads and Traffic Authority to continue enforcement action against a fine defaulter under Division 3 of Part 4 until every fine payable by the fine defaulter has been paid or satisfied (Schedule 1 [21]). It is also proposed to amend section 65 to ensure that once all fines have been paid or satisfied, the State Debt Recovery Office is obliged to direct the Roads and Traffic Authority to cease enforcement action under the Division (Schedule 1 [20]).

Professional costs

It is proposed to amend section 4 of the Principal Act:

- (a) to include within the definition of a *fine* any professional costs and witnesses' expenses payable under an order of a court in proceedings for an offence brought by a law enforcement officer (Schedule 1 [3]), and
- (b) to clarify that the existing reference to fees and charges payable under a court order being within the definition of a fine applies only to court fees and charges payable under such an order (Schedule 1 [2]).

It is also proposed to amend section 3 of the Principal Act to include a definition of *law enforcement officer* (Schedule 1 [1]). At present, this definition is found in the regulations. Consequential amendments are proposed to sections 4 and 109 to provide that an amount will be recoverable as a civil debt under Part 6 only if it is not prescribed as a fine under section 4 (Schedule 1 [4] and [32]). Consequential amendments are also proposed to those sections to ensure that the term *proceedings for an offence* includes proceedings for an apprehended violence order and proceedings on appeal (Schedule 1 [5] and [32]).

Adjournment of examination of fine defaulter

It is proposed to amend section 75 of the Principal Act to ensure that, where a fine defaulter is summoned to attend an examination before a specified officer of the court (as opposed to the State Debt Recovery Office), the officer may adjourn the examination (Schedule 1 [27]). Currently, only the State Debt Recovery Office has this authority.

Provisions transferred from the regulations

The following provisions currently found in the regulations are proposed to be transferred to the Principal Act:

- (a) provisions relating to the means by which written notice of a fine is to be served on a person (Schedule 1 [6]),
- (b) provisions relating to the persons who may issue and deal with penalty notices (Schedule 1 [11]),
- (c) provisions relating to the means by which a written statement stating that a person elects to have a matter dealt with by a court is to be served on the appropriate officer (Schedule 1 [13]),
- (d) provisions relating to the statutory provisions under which a penalty notice is issued (Schedule 1 [33]).

Miscellaneous

The following amendments are also proposed:

- (a) an amendment to clarify the process that occurs when a court or the Roads and Traffic Authority suspends or cancels the driver's licence of a fine defaulter whose driver's licence has already been suspended or cancelled under Division 3 of Part 4 of the Principal Act (Schedule 1 [22]),
- (b) amendments to clarify that civil enforcement action is to be taken under Division 4 of Part 4 of the Principal Act only if enforcement action under Division 3 of that Part is not available or has failed (Schedule 1 [24] and [25]),
- (c) amendments to effect minor law revision (Schedule 1 [23] and [26]),
- (d) an amendment to allow regulations of a savings and transitional nature to be made (Schedule 1 [34]).