

[Act 1996 No 99]



New South Wales

## **Fines Bill 1996**

### **Explanatory note**

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

#### **Overview of Bill**

The principal object of this Bill is to introduce new procedures for the enforcement of fines.

The Bill repeals existing statutory provisions relating to the imposition and enforcement of fines (including those relating to penalty notices) that are contained in various Acts and consolidates those provisions, with the modifications required by the new enforcement procedures, in a new Act. The Bill also applies the new enforcement procedures to forfeited monetary bail and recognizances.

The main features of the new procedures for the enforcement of fines are as follows:

- (a) A State Debt Recovery Office is established to take charge of and manage the new fine enforcement procedures.
  - (b) The new procedures are applied to fines imposed by any court for any offence and to fines payable under penalty notices for any offence.
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- (c) Fines are to be referred to the State Debt Recovery Office for enforcement action if they are not paid by their due date. The fine defaulter is notified by that Office of the enforcement action that will be taken if the fine is not paid.
- (d) If the fine is not paid, the Roads and Traffic Authority will suspend or cancel any driver's licence or vehicle registration of the fine defaulter (for both traffic and other offences).
- (e) If enforcement action cannot be taken by the Roads and Traffic Authority or it is unsuccessful, the State Debt Recovery Office will authorise civil enforcement of the fine (including the seizure of the fine defaulter's property by the Sheriff).
- (f) If civil enforcement action is not or is unlikely to be successful, a community service order will be served on the fine defaulter.
- (g) If the fine defaulter does not comply with the community service order, a warrant will be issued (except in the case of children) for the imprisonment of the fine defaulter, either full-time or by way of periodic detention.
- (h) The new procedures will be applied to existing fines but an amnesty period will be provided to enable fine defaulters to pay their fines before the new procedures are applied.

## Outline of provisions

### **Part 1 Preliminary**

**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** defines words and expressions used in the proposed Act.

**Clause 4** defines *fine* so as to include a monetary penalty imposed by a court for an offence or an amount payable under a penalty notice following an order of the State Debt Recovery Office for its enforcement. *Fine* does not include costs or any monetary forfeiture or compensation awarded by a court in criminal proceedings (which may be enforced under the proposed Act as a civil debt).

## Part 2 Fines imposed by courts

This Part (**clauses 5-18**) deals with the procedure for payment of court fines and related matters.

- (a) **Means to pay fine.** A court is required to have regard to the means of the accused when it fixes the amount of a fine.
- (b) **Payment details.** A fine imposed by a court is payable within 28 days after it is imposed.
- (c) **Notification of fine.** The person on whom the fine is imposed is to be notified of the fine, the arrangements for payment and the action that may be taken under the proposed Act to enforce the fine.
- (d) **Time to pay.** A court registrar may allow further time to pay the fine on the application of the person.
- (e) **Enforcement order.** If payment of the fine is not made by the due date, a court fine enforcement order may be made against the person by the State Debt Recovery Office. If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by the proposed Act may be taken (see Part 4).
- (f) **Withdrawal of enforcement order.** A court fine enforcement order may be withdrawn if an error has been made.

## Part 3 Penalty notices

This Part (**clauses 19-56**) deals with penalty notice procedures and related matters. The procedure is as follows:

- (a) **Breach of statutory provision.** A person is alleged to have committed an offence under a statutory provision for which a penalty notice may be issued (see Division 2 and Schedule 1).
- (b) **Issue of penalty notice.** A penalty notice is issued under the relevant statutory provision. The notice requires payment of a specified monetary penalty, unless the person alleged to have committed the offence elects to have the matter dealt with by a court (see Division 2 and Schedule 1).
- (c) **Penalty reminder notice.** If the penalty is not paid, a penalty reminder notice is issued. The person who is alleged to have committed the offence may elect to have the matter dealt with by a court (see Division 3).

- (d) **Enforcement order.** If payment of the specified monetary penalty is not made and the person does not elect to have the matter dealt with by a court, a penalty notice enforcement order may be made against the person (see Division 4). If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by this Act may be taken in the same way as action may be taken for the enforcement of a fine imposed on a person after a court hearing for the offence (see Part 4).
- (e) **Withdrawal of enforcement order.** A penalty notice enforcement order may be withdrawn if an error has been made (see Division 4).
- (f) **Annulment of enforcement order.** A penalty notice enforcement order may, on application, be annulled by the State Debt Recovery Office or, if the Office refuses the application, by a Local Court. If the order is annulled, the alleged offence may be heard and determined by the Local Court (see Division 5).

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

This Part (**clauses 57–104**) deals with the action to be taken for the enforcement of fines. The procedure is as follows:

- (a) **Service of fine enforcement order.** Notice of the fine enforcement order is served on the fine defaulter and the fine defaulter is notified that if payment is not made enforcement action will be taken.
- (b) **Driver's licence or vehicle registration suspension or cancellation.** If the fine is not paid within the period specified, the Roads and Traffic Authority suspends any driver's licence, and may cancel any vehicle registration, of the fine defaulter. If the driver's licence of the fine defaulter is suspended and the fine remains unpaid for 6 months, the Roads and Traffic Authority cancels that driver's licence.
- (c) **Civil enforcement.** If the fine defaulter does not have a driver's licence or a registered vehicle or the fine remains unpaid after 6 months, civil action is taken to enforce the fine, namely, a property seizure order, a garnishee order or the registration of a charge on land owned by the fine defaulter.
- (d) **Community service order.** If civil enforcement action is not successful, a community service order is served on the fine defaulter.

- (e) **Imprisonment if failure to comply with community service order.** If the fine defaulter does not comply with the community service order, a warrant of commitment is issued to a police officer for the imprisonment of the fine defaulter (except in the case of children). The fine defaulter may apply to serve that period of imprisonment by way of periodic detention.
- (f) **Fines payable by corporations.** The procedures for fine enforcement (other than community service orders and imprisonment) apply to fines payable by corporations.

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

This Part (**clauses 105–108**) transfers from the *Criminal Procedure Act 1984* uniform State and Territory provisions relating to the reciprocal enforcement of fines imposed on bodies corporate.

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

This Part (**clauses 109 and 110**) deals with the enforcement of costs, forfeiture, compensation and similar orders in connection with criminal proceedings. It applies the same enforcement procedures as those that apply to the enforcement of judgment debts in civil proceedings.

## **Part 7 Enforcement of monetary bail or recognizances**

This Part (**clauses 111 and 112**) deals with the forfeiture of bail and recognizances. It applies the enforcement procedures for fines to the enforcement of forfeited monetary bail and recognizances.

## **Part 8 State Debt Recovery Office**

This Part (**clauses 113–118**) deals with the establishment, functions and management of the State Debt Recovery Office. The Office is established as a corporation under the control of a Director. In addition to its functions in connection with the management of the new fine enforcement procedures, the Office has functions in connection with the collection of other Crown debts. Police officers and government agencies and utilities will be required to provide the office with available information about the criminal record, address or assets of a fine defaulter for the purposes of fine enforcement.

## **Part 9      Miscellaneous**

This Part (**clauses 119–132**) contains miscellaneous provisions, including:

- (a) the issue of guidelines by the Minister on the exercise of the functions of the State Debt Recovery Office and other bodies and officials under the proposed Act (clause 120),
- (b) the requirement that fines be paid into the Consolidated Fund unless another Act otherwise provides (clause 121),
- (c) the power of a court to direct that a portion of a fine (not exceeding one-half) be paid to the prosecutor (clause 122),
- (d) the continuation of the power of the Governor to remit fines (clause 123),
- (e) the repeal of legislation being replaced by the proposed Act (clause 129),
- (f) the consequential amendment of other Acts (clause 130 and Schedule 2).

## **Schedules**

**Schedule 1** lists the statutory provisions under which penalty notices are issued.

**Schedule 2** contains consequential amendments to other Acts.

**Schedule 3** contains savings, transitional and other provisions. The Schedule provides that the new procedures for fine enforcement apply to existing fines but provides an amnesty period to enable fine defaulters to pay their fines before the new procedures are applied.