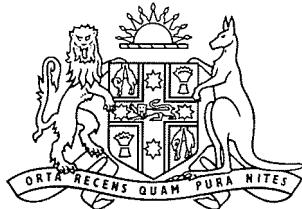


Passed by both Houses



New South Wales

Fines Amendment Bill 2017

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2017



New South Wales

Fines Amendment Bill 2017

Act No , 2017

An Act to amend the *Fines Act 1996* with respect to civil enforcement of fines; to enable the enforcement under that Act of amounts payable under orders for restitution; and to make related amendments to the *Victims Rights and Support Act 2013*.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fines Amendment Act 2017*.

2 Commencement

This Act commences 7 days after the date of assent to this Act.

Schedule 1 Amendment of Fines Act 1996 No 99

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

civil enforcement action means action under Division 4 of Part 4.

[2] Sections 16 (2) (c), 44 (2) (c) and 108J (2) (c)

Omit “enforcement action is taken by the Sheriff or other official under Division 4 of Part 4” wherever occurring.

Insert instead “civil enforcement action is taken by the Sheriff or other official”.

[3] Section 58 Summary of enforcement procedure

Omit “by the fine defaulter” from section 58 (1) (c).

Insert instead “by the fine defaulter. Civil enforcement action may be taken before or without taking driver licence or vehicle registration action under Division 3 if the Commissioner is satisfied that civil enforcement action is preferable”.

[4] Section 65 When enforcement action taken under this Division

Omit the note to the section. Insert instead:

Note. If the fine defaulter does not hold a driver licence, is not a visitor driver or is not the registered operator of a vehicle, civil enforcement action can be taken instead. In addition, civil enforcement action can be taken instead if the Commissioner is satisfied that civil enforcement action is preferable (see section 71) or if the fine defaulter is a body corporate (see section 99).

[5] Section 71 When enforcement action taken under this Division

Insert after section 71 (1):

- (1A) Enforcement action may be taken under this Division before or without taking action under Division 3 if the fine defaulter is an individual and the Commissioner is satisfied that civil enforcement action is preferable because, having regard to any information known to the Commissioner about the personal circumstances of the fine defaulter:
 - (a) enforcement action under Division 3 is unlikely to be successful in satisfying the fine, or
 - (b) enforcement action under Division 3 would have an excessively detrimental impact on the fine defaulter.
- (1B) The Commissioner may decide that civil enforcement action is preferable in the absence of, and without giving notice to or making inquiries of, the fine defaulter.

[6] Sections 78 (b) and 101 (1A) (a) (ii)

Omit “enforcement action under Division 4” wherever occurring.

Insert instead “civil enforcement action”.

[7] Section 99 Modification of enforcement procedures

Omit “enforcement action may be taken under Division 4 (Civil enforcement)”.

Insert instead “civil enforcement action may be taken”.

[8] Section 101 Unpaid fines may be written off

Insert “action” after “civil enforcement” in section 101 (2).

[9] Part 7A

Insert after Part 7:

Part 7A Enforcement of orders for restitution

Note. See Part 10, as in force between 1 December 2013 and 30 November 2014, for the trial for the enforcement of restitution orders that preceded this Part.

Division 1 General

112B Definitions

In this Part:

appropriate custodial officer means:

- (a) in the case of a person sentenced to imprisonment—the Commissioner of Corrective Services or the governor of the correctional centre in which the person is imprisoned, or
- (b) in the case of a person sentenced to children’s detention—the Secretary of the Department of Justice or the person in charge of the detention centre in which the person is detained.

attachment order—see section 112G.

children’s detention means detention under an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.

order for restitution means an order for restitution under Part 5 of the *Victims Rights and Support Act 2013* that is a confirmed order under that Part.

prison earnings means:

- (a) in the case of a person sentenced to imprisonment—the person’s earnings at the correctional centre in which the person is imprisoned, or
- (b) in the case of a person sentenced to children’s detention—the funds held on behalf of the person at the detention centre in which the person is detained.

relevant offence has the same meaning as it has in Part 5 of the *Victims Rights and Support Act 2013*.

restitution amount means an amount payable under an order for restitution.

112C Restitution amounts taken to be court imposed fines

- (1) For the purposes of this Act, a restitution amount is taken to be a fine imposed by a court.
- (2) Accordingly:
 - (a) the Commissioner may make a court fine enforcement order under Division 3 of Part 2 for the enforcement of a restitution amount, and
 - (b) enforcement action may be taken in respect of that amount under this Act.
- (3) The court fine enforcement order may be in a form that is appropriate to the circumstances of the case.

- (4) A reference in Division 3 of Part 2 to the registrar of the court is taken, in relation to a restitution amount, to be a reference to the Commissioner of Victims Rights.

Note. Under the *Victims Rights and Support Act 2013*, the Commissioner of Victims Rights has the functions of the registrar under that Division in relation to a restitution amount.

112D Application of Act to restitution amounts

This Act applies to restitution amounts in the same way as it applies to fines imposed by a court, subject to the following:

- (a) Divisions 1 and 2 of Part 2 do not apply,
- (b) Division 6 (Imprisonment) of Part 4 does not apply,
- (c) Part 6 does not apply,
- (d) any other modifications provided for by this Part or by the regulations or by the *Victims Rights and Support Act 2013*.

112E Time to pay orders

- (1) A person may apply for time to pay a restitution amount, and a time to pay order may be made in relation to a restitution amount, whether or not the person is in receipt of a Government benefit.
- (2) A requirement imposed by this Act that an applicant for time to pay must be a person who is in receipt of a Government benefit is to be disregarded for the purposes of this Part.
- (3) Accordingly, a restitution amount is to be referred to the Commissioner for the making of a court fine enforcement order if the person seeks a time to pay order in relation to the restitution amount.

112F Joint and several liability

If 2 or more persons are jointly and severally liable to pay a restitution amount:

- (a) a separate court fine enforcement order for the restitution amount may be made against any of those persons, and
- (b) any person against whom an order is made is liable to pay any enforcement costs payable under the order made against him or her.

Division 2 Attachment of prison earnings

112G Enforcement by attachment of prison earnings

- (1) The Commissioner may, for the purpose of enforcing payment of a restitution amount, make an attachment order in relation to a person's prison earnings.
- (2) An **attachment order** is an order that authorises deductions to be made from a person's prison earnings and applied towards payment of a restitution amount payable by the person.
- (3) An attachment order may be made only if:
 - (a) a restitution amount payable by a person has not been paid as required by a court fine enforcement order, and
 - (b) the person is serving a sentence of imprisonment or children's detention for a relevant offence in connection with which the order requiring payment of the restitution amount was imposed.
- (4) An attachment order is to be in the approved form.

- (5) The Commissioner is to serve notice of an attachment order on the appropriate custodial officer.
- (6) An attachment order may be made in the absence of, and without notice to, a fine defaulter.
- (7) This section does not limit the Commissioner's functions under Part 4.

112H Deductions under attachment order

- (1) An appropriate custodial officer may make deductions from a person's prison earnings as authorised by an attachment order.
- (2) The deductions are to be paid to the Commissioner.

112I Cancellation of attachment order

- (1) An attachment order is cancelled on payment of the restitution amount concerned.
- (2) The Commissioner may cancel an attachment order at any time for any good reason.

Division 3 Miscellaneous

112J Effect of appeals

- (1) The Commissioner must not commence enforcement action under this Part, and is to suspend any enforcement action already taken, in respect of a restitution amount payable by a person if the Commissioner of Victims Rights notifies the Commissioner of a relevant appeal by the person.
- (2) Subsection (1) has effect until the appeal proceedings have been finally determined.
- (3) The Commissioner suspends enforcement action as follows:
 - (a) by directing Roads and Maritime Services to cease enforcement action under Division 3 of Part 4,
Note. See section 65 (4).
 - (b) by cancelling any property seizure order that has already been made in relation to the restitution amount that has not been executed,
 - (c) by cancelling any garnishee order for payment of the restitution amount that has already been made in relation to the debts due and accruing to the person,
 - (d) by cancelling any attachment order that has already been made against the person for payment of the restitution amount.
- (4) However, any property obtained as a result of enforcement action is not required to be returned, and a charge on land created under Part 4 need not be cancelled, unless the relevant court fine enforcement order is withdrawn.
- (5) The suspension of enforcement action by the Commissioner does not prevent further enforcement action being taken after the appeal proceedings have been finally determined.
- (6) On the final determination of the appeal proceedings, the Commissioner may, by order, vary a court fine enforcement order in accordance with the outcome of the appeal.
- (7) Notice of the variation is to be served on the fine defaulter in the same way as notice of a court fine enforcement order.

- (8) In section 69, a reference to an appeal against conviction includes, in relation to a court fine enforcement order for a restitution amount, a reference to a relevant appeal.
- (9) In this section:
relevant appeal means:
 - (a) an application to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision to make the order for restitution, or
 - (b) an application to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision to approve the making of a recognition payment from which the order for restitution arises, or
 - (c) an appeal against conviction for a relevant offence in respect of which the order for restitution was imposed or an application under Part 2 of the *Crimes (Appeal and Review) Act 2001* to annul conviction for the relevant offence.

112K Payment of money recovered

- (1) Any amount recovered under a court fine enforcement order made under this Part is to be applied as follows:
 - (a) firstly, towards enforcement costs payable under the court fine enforcement order,
 - (b) secondly, towards payment of the restitution amount.
- (2) Money applied towards payment of the restitution amount, after payment of enforcement costs, is money recovered under this Act for the purposes of section 15 of the *Victims Rights and Support Act 2013*. Accordingly, that money is payable into the Victims Support Fund under that Act.
- (3) Section 122C applies to any overpayment under a court fine enforcement order.
- (4) This section does not affect section 106 (4) of the *Victims Rights and Support Act 2013*.

112L Arrangements with Commissioner of Victims Rights

The Commissioner may enter into arrangements with the Commissioner of Victims Rights of a kind referred to in section 16A of the *Victims Rights and Support Act 2013*.

[10] Section 117A Disclosure of information by Commissioner

Insert after section 117A (1) (c) (v):

- (vi) to a person engaged in the administration or execution of the *Victims Rights and Support Act 2013*, in connection with a matter referred to the Commissioner for the making of a court fine enforcement order under this Act, or

[11] Section 117A (3)

Omit “to an agency referred to in subsection (1) (c) (i) or (ii)”.

Insert instead “as referred to in subsection (1) (c) (i), (ii) or (vi)”.

[12] Section 121 Fines payable into Consolidated Fund

Insert “to the other provisions of this Act and” before “to the provisions” in section 121 (2).

Schedule 2 Amendment of Victims Rights and Support Act 2013 No 37

[1] Section 15 Payments into Fund

Omit section 15 (c). Insert instead:

- (c) all money payable under Part 5 that is recovered under this Act or under the *Fines Act 1996*,
- (c1) all money recovered under Part 7,

[2] Section 16 Payments from Fund

Insert after section 16 (d):

- (d1) all expenses incurred by the Commissioner of Fines Administration that are payable to the Commissioner of Fines Administration under an arrangement referred to in section 16A,
- (d2) all set-off amounts that are payable to the Commissioner of Fines Administration under section 45,

[3] Section 16A

Insert after section 16:

16A Arrangements with Commissioner of Fines Administration

- (1) The Commissioner may enter into arrangements with the Commissioner of Fines Administration with respect to the recovery by the Commissioner of Fines Administration of amounts payable under orders for restitution within the meaning of Part 5.
- (2) Without limiting subsection (1), the arrangements may provide for the reimbursement from the Fund of expenses incurred by the Commissioner of Fines Administration in connection with the recovery of those amounts.

[4] Section 45

Omit the section. Insert instead:

45 Payments may be applied towards liability for restitution under Part 5

- (1) If financial support or a recognition payment is payable to a person who is also liable for payment of a restitution amount, the Commissioner may authorise the amount payable, or any part of that amount, to be applied towards discharging the person's liability for the restitution amount.
- (2) Any amount that the Commissioner authorises to be applied towards discharging the person's liability for a restitution amount is a *set-off amount*.
- (3) When a set-off amount is applied towards discharging a person's liability for a restitution amount, the person is taken to have been paid financial support or a recognition payment to the extent of the set-off amount.
- (4) If the restitution amount has been referred to the Commissioner of Fines Administration for the making of a court fine enforcement order under the *Fines Act 1996*, the set-off amount:
 - (a) is to be paid to the Commissioner of Fines Administration, and

- (b) is taken to be an amount recovered from the person under a court fine enforcement order made under that Act.

Note. Section 112K of the *Fines Act 1996* provides that amounts recovered under the court fine enforcement order are to be applied firstly towards enforcement costs payable under the order and secondly towards payment of the restitution amount.

- (5) If the restitution amount has not been referred to the Commissioner of Fines Administration for the making of a court fine enforcement order under the *Fines Act 1996*, the person is taken to have paid the restitution amount to the extent of the set-off amount.
- (6) In this section:
restitution amount means an amount payable under a confirmed order within the meaning of Part 5.

[5] Section 56 Recovery from fraudulent claimants

Omit section 56 (3). Insert instead:

- (3) The provisions of Part 5 relating to the recovery of money under an order for restitution and Part 7A of the *Fines Act 1996* apply to an order for restitution under this section (with any modifications prescribed by the regulations).

[6] Section 58 Definitions

Omit the definitions of *defendant*, *objection*, *order for restitution*, *provisional order* and *review proceedings*.

Insert in alphabetical order:

confirmed order means an order for restitution that is confirmed by the Commissioner or the Tribunal under section 63, 64 or 67.

debt notice—see section 70B.

defendant means the person on whom an order for restitution is served.

Fines Commissioner means the Commissioner of Fines Administration under the *Fines Act 1996*.

objection means an objection by the defendant under section 62 to an order for restitution.

order for restitution means an order for restitution that is made by the Commissioner under section 59 or 60.

review proceedings means proceedings of the Tribunal concerning an order for restitution.

[7] Sections 59 (1) and 63 (2)

Omit “a provisional order” wherever occurring. Insert instead “an order”.

[8] Sections 59 (2) and 60 (2)–(4)

Omit “A provisional order” wherever occurring. Insert instead “An order”.

[9] Section 60 Commissioner’s discretion to make order for restitution by other person

Omit “a provisional order has” and “a provisional order for” from section 60 (1).

Insert instead “an order for restitution has” and “an order for”, respectively.

[10] Sections 60 (3) and 68 (4)

Omit “the provisional order” wherever occurring. Insert instead “the order for restitution”.

[11] Section 60 (4)

Omit “or any consequent restitution order”.

Insert instead “by the Commissioner or the Tribunal or”.

[12] Sections 61 (1), 67 (3) and (4) and 69 (1)

Omit “a provisional order” wherever occurring. Insert instead “an order for restitution”.

[13] Section 61 Notification of decision

Omit “the confirmation of” from section 61 (2) (d) (i).

[14] Section 62 Objection to order

Omit section 62 (1). Insert instead:

- (1) A person served with notice of an order for restitution may lodge a written objection to the order with the Commissioner.

[15] Section 63 Confirmation by Commissioner of order if no objection

Omit section 63 (1). Insert instead:

- (1) The Commissioner may confirm an order for restitution without conducting a hearing if:
 - (a) the Commissioner is satisfied that the person has not lodged an objection within 28 days after notice of the order was served on the person, or
 - (b) the person agrees to the confirmation of the order and seeks time to pay the amount payable under the order under the *Fines Act 1996*.
- (1A) A person cannot object to the making of the order if the person agrees to its confirmation and seeks a time to pay order under the *Fines Act 1996*, and the Fines Commissioner decides to make the time to pay order sought by the person.

[16] Section 63 (3)

Omit the subsection.

[17] Section 64 Powers of Commissioner on objection

Omit section 64 (1) (b). Insert instead:

- (b) confirm the decision to which the objection was made (with or without variations) or reverse that decision.

[18] Section 64 (2) and (2A)

Omit section 64 (2). Insert instead:

- (2) The Commissioner may confirm the order for restitution if the Commissioner confirms the decision to which the objection was made (with or without variations).
- (2A) Before confirming the order, the Commissioner may vary the order by reducing the amount payable under it.

[19] Section 64 (3)

Omit “discharge the provisional order concerned”. Insert instead “revoke the order for restitution”.

[20] Section 67 Powers of Tribunal on administrative review

Omit section 67 (1) (a). Insert instead:

- (a) confirm the original decision the subject of review (with or without variations) or reverse that decision, and

[21] Section 67 (2A)

Insert after section 67 (2):

- (2A) The Tribunal may confirm the order for restitution the subject of the review proceedings if the Tribunal confirms the decision to make the order (with or without variations).

[22] Section 68 Arrangements for reduction of amount payable

Omit section 68 (1) and (2). Insert instead:

- (1) The Commissioner and a defendant may enter into an arrangement with respect to payment under an order for restitution (whether or not it is a confirmed order) that enables the defendant to satisfy the order by paying a reduced amount.

[23] Section 68 (4)

Omit “taken”. Insert instead “recommenced on application”.

[24] Section 68 (5)

Insert after section 68 (4):

- (5) The Commissioner cannot enter into an arrangement under this section if the matter has been referred to the Fines Commissioner for the making of a court fine enforcement order under the *Fines Act 1996*.

[25] Section 69 Provisions relating to orders for restitution confirmed by Tribunal

Omit section 69 (2) and (3).

[26] Sections 70–70B

Insert after section 69:

70 Amount payable

- (1) The maximum amount that may be ordered to be paid under an order for restitution (whether made against one or more defendants) is the amount that has been paid to the victim under an approval for the giving of financial support or making of a recognition payment to which the order relates.
- (2) If an order for restitution is made against 2 or more defendants in respect of the same approval for the giving of financial support or making of a recognition payment, each of the defendants is jointly and severally liable under the order.

70A Effect of confirmation of order and due date for payment

- (1) If an order for restitution is confirmed by the Commissioner or the Tribunal, the amount payable under the order by the person or persons against whom the order is made is a debt payable to the Commissioner.

- (2) The due date for the amount is the due date for payment specified in a debt notice served on the person.

70B Debt notice to be served

- (1) The Commissioner may, by notice served on a person against whom a confirmed order has been made (a *debt notice*), require the person to pay the amount payable by the person under the order.
- (2) The notice is to specify the amount payable, the due date for payment and the person to whom it is to be paid.
- (3) The due date specified must not be less than 28 days after the notice is served on the person.
- (4) A debt notice must inform the person that, if the amount payable is not paid by the due date:
 - (a) the matter may be referred to the Fines Commissioner and enforcement action for recovery of the amount may be taken under the *Fines Act 1996*, and
 - (b) additional enforcement costs may become payable under that Act if that enforcement action is taken.

[27] Section 71 Orders for restitution to be subject to administrative review of relevant approvals of victims support

Omit “An order for restitution” from section 71 (1). Insert instead “A confirmed order”.

[28] Section 71 (3)

Omit “provisional order”. Insert instead “order for restitution”.

[29] Section 71 (4)

Insert after section 71 (3):

- (4) If the Commissioner refers an order for restitution to the Fines Commissioner for the making of a court fine enforcement order under the *Fines Act 1996*, the Commissioner must advise the Fines Commissioner:
 - (a) if an application is made for administrative review of the decision to approve the making of a recognition payment from which the order arises, and
 - (b) of the outcome of the application.

[30] Sections 72 and 73

Omit the sections. Insert instead:

72 Enforcement of order for restitution

- (1) The Commissioner has, and is to exercise, the functions of a registrar of a court under Division 3 of Part 2 of the *Fines Act 1996* (as they apply under Part 7A of that Act) in relation to an amount payable under an order for restitution.
Note. Under the *Fines Act 1996*, a restitution amount is taken to be a fine and is to be referred to the Fines Commissioner for enforcement under that Act if it is not paid by the due date or if the person required to pay the restitution amount seeks a time to pay order in respect of the amount.
- (2) If the Commissioner confirms an order for restitution following an objection by the defendant, the Commissioner is not to refer the matter to the Fines

Commissioner for the making of a court fine enforcement order under the *Fines Act 1996*:

- (a) before the period in which an application may be made to the Tribunal by the defendant for an administrative review of the decision to make the order has expired, or
 - (b) if the defendant has applied to the Tribunal for an administrative review of the decision to make the order, until the application is finally determined.
- (3) If a matter is referred to the Fines Commissioner for the making of a court fine enforcement order, the Commissioner must provide the Fines Commissioner with any information about the order for restitution that the Fines Commissioner reasonably requires to monitor the status of the order.

73 Joint and several liability

- (1) If 2 or more persons are jointly and severally liable for the payment of an amount payable under a confirmed order:
 - (a) a debt notice may be served on any of those persons, and
 - (b) in each case, the matter may be referred to the Fines Commissioner for the making of a court fine enforcement order under the *Fines Act 1996* against the person on whom the debt notice was served.
- (2) Accordingly, more than one referral, and more than one court fine enforcement order, may be made in respect of the amount payable.
- (3) The total amount that may be recovered under the order (excluding enforcement costs) is not to exceed the total amount payable under the order for restitution.
- (4) If 2 or more persons are jointly and severally liable for payment of the amount payable under an order for restitution, a person who pays an amount in accordance with the liability imposed by this Part has such rights of contribution or indemnity from the other person or persons as are just.

[31] Section 74 Effect of order for restitution on subsequent civil proceedings

Omit “an order for restitution” from section 74 (3). Insert instead “a confirmed order”.

[32] Section 75 Access to information about whereabouts of defendant

Omit “a provisional order on the defendant or taking any action against the defendant to enforce an order for restitution”.

Insert instead “an order for restitution on the defendant or any other notice required under this Part”.

[33] Sections 76 and 77

Omit the sections.

[34] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Fines
Amendment Act 2017**

Definitions

In this Part:

amending Act means the *Fines Amendment Act 2017*.

existing order means:

- (a) an order for restitution arising from a provisional order that was confirmed by the Commissioner or Tribunal before the substitution of section 72 by the amending Act, or
- (b) an order for restitution within the meaning of the *Victims Support and Rehabilitation Act 1996* (as in force before its repeal) that is in force.

Amendments apply to orders confirmed after commencement

- (1) The amendments made to this Act by the amending Act apply in respect of any order for restitution (within the meaning of Part 5 of this Act) that is confirmed by the Commissioner or the Tribunal after the substitution of section 72 by the amending Act.
- (2) An amendment does not affect the validity of any action taken before that substitution in respect of an existing order and, subject to this Part, this Act, as in force at the time the action was taken, continues to apply in respect of the existing order.

Extension of amendments to existing orders

- (1) The Commissioner may refer an existing order to the Commissioner of Fines Administration for the making of a court fine enforcement order under the *Fines Act 1996* if:
 - (a) the Commissioner serves a debt notice on the person against whom the order was made in accordance with section 70B, and
 - (b) that amount is not paid by the due date.
- (2) If an amount is referred as provided for by this clause, Part 7A of the *Fines Act 1996* extends to the amount payable under the existing order.
- (3) For that purpose, a reference in the *Fines Act 1996* to an order for restitution under this Act is taken to include a reference to an existing order.
- (4) The following provisions have effect if an amount payable by a person under an existing order is referred to the Commissioner of Fines Administration for the making of a court fine enforcement order against the person:
 - (a) the Commissioner cannot commence or maintain any proceedings under section 72 (as in force before its substitution by the amending Act) for the payment of the amount by the person,
 - (b) any charge registered on land owned by the defendant under section 76 (as in force before its repeal by the amending Act) to secure payment of the amount is taken to be a charge duly registered under section 74 of the *Fines Act 1996* as if the order for restitution were a court fine enforcement order,

- (c) any deductions being made under section 73 (as in force before its substitution by the amending Act) can continue to be made as if an attachment order had duly been made against the person under Part 7A of the *Fines Act 1996*.
- (5) This clause applies to an existing order only if, immediately before the order is referred to the Commissioner of Fines Administration, the order is enforceable under section 72 (as in force before its substitution by the amending Act).