

# Fines Act 1996 No 99

[1996-99]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Residential \(Land Lease\) Communities Act 2013 No 97](#) (not commenced)
  - [Passenger Transport Act 2014 No 46](#) (not commenced)
  - [Health Services Amendment \(Ambulance Fees\) Act 2014 No 60](#) (not commenced)
  - [Marine Estate Management Act 2014 No 72](#) (not commenced)
  - [Water NSW Act 2014 No 74](#) (not commenced)

### Authorisation

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# Fines Act 1996 No 99



New South Wales

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# Fines Act 1996 No 99



New South Wales

An Act relating to fines and their enforcement, and to other matters.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Fines Act 1996*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, subject to subsection (2).
- (2) The day appointed for the commencement of clause 2 of Schedule 3 is to be a day that is at least 3 months before the day appointed for the commencement of clause 3 of that Schedule.

#### Note—

Clause 2 of Schedule 3 provides for an amnesty period, before the application of the Act to existing fine defaulters under clause 3 of that Schedule, during which action to commit existing fine defaulters to prison is suspended.

### 3 Definitions

- (1) In this Act:

**Act** includes a Code or other statutory provision of another jurisdiction that applies as a law of this State.

**appropriate officer** for a penalty notice—see section 22.

**approved form** means a form approved by the Commissioner for the purposes of the provision in which the term is used.

**authorised officer** has the meaning given by section 116B.

**combined payment arrangement** has the meaning given by section 100.

**Commissioner** means the Commissioner of Fines Administration referred to in section

113.

**court** means the Supreme Court, the Industrial Relations Commission, the Land and Environment Court, the District Court, the Local Court, the Children's Court or any other court.

**court fine enforcement order**—see section 12.

**driver licence** means a driver licence under the [Road Transport Act 2013](#).

**exercise** of a function includes the performance of a duty.

**fine**—see section 4.

**fine defaulter** means a person liable to pay a fine under a fine enforcement order.

**fine enforcement order** means a court fine enforcement order or a penalty notice enforcement order.

**function** includes a power, authority or duty.

**Hardship Review Board** means the Hardship Review Board constituted under section 101A.

**issuing agency**, in relation to a penalty notice or official caution, means the agency in or by which the appropriate officer who issued the penalty notice or gave the caution is employed or engaged.

**law enforcement officer** means a person exercising law enforcement functions in the official capacity of any of the following:

- (a) the Director of Public Prosecutions, a Deputy Director of Public Prosecutions or a Solicitor for Public Prosecutions,
- (b) a Crown Prosecutor,
- (c) a police officer,
- (d) a public servant,
- (e) an officer or employee of a statutory body representing the Crown,
- (f) a member or an employee of a local council,
- (g) a member of staff of Local Land Services,
- (h) an officer within the meaning of the [Prevention of Cruelty to Animals Act 1979](#),
- (i) an officer or employee of a kind prescribed by the regulations.

**order for examination** means an order under section 75.

**pay** a fine or amount means to pay the fine or amount in full by its due date and, if payment by instalments is permitted under this Act, includes to pay each instalment in full by its due date.

**penalty notice**—see section 20.

**penalty notice enforcement order**—see section 40.

**penalty notice offence**—see section 19A.

**person in receipt of a Government benefit** means:

- (a) a person in receipt of a pension or other benefit paid by the Commonwealth being a pension or benefit of a kind approved by the Commissioner, or
- (b) a person belonging to a class of persons prescribed by the regulations.

**registered**, in relation to a vehicle, means registered within the meaning of the [Road Transport Act 2013](#).

**registered operator** has the same meaning as in the [Road Transport Act 2013](#).

**responsible person** for a vehicle has the same meaning as in the [Road Transport Act 2013](#).

**reviewing agency**, in relation to a penalty notice, means the Commissioner or the issuing agency.

**time to pay order** means an order under section 100.

**victims support levy** means a victims support levy payable under Part 7 of the [Victims Rights and Support Act 2013](#).

**visitor driver privileges** has the meaning given by section 66A.

**work and development order**—see section 99A.

- (2) Notes in the text of this Act do not form part of this Act.

#### 4 Meaning of “fine”

- (1) For the purposes of this Act, a **fine** is:

- (a) any monetary penalty imposed by a court for an offence (including a fine to which Part 7 of the [Service and Execution of Process Act 1992](#) of the Commonwealth applies, subject to that Part), or
- (b) any amount payable under a penalty notice enforcement order, or

- (c) any court fees or charges payable by a person under an order made by a court in proceedings for an offence, or
  - (d) any victims support levy, or
  - (d1) any court costs levy payable under section 211A of the *Criminal Procedure Act 1986* in proceedings for an offence, or
  - (e) any witnesses' expenses payable by a person under an order made by a court in proceedings for an offence that were brought by a law enforcement officer, or
  - (f) any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence that were brought by a law enforcement officer, or
  - (g) any other amount of a kind prescribed by the regulations.
- (2) However, a **fine** does not include any amount of a kind excluded by the regulations.
- (2A) For the purposes of this Act:
- (a) a victims support levy is taken to be a fine imposed by the court by which the person liable to pay the levy was convicted, and
  - (b) a court costs levy payable under section 211A of the *Criminal Procedure Act 1986* is taken to be a fine imposed by the court by which the person liable to pay the court costs levy was convicted or found guilty.
- (3) In this section, **proceedings for an offence** includes:
- (a) proceedings for an apprehended violence order, and
  - (b) proceedings on appeal in respect of proceedings for an offence.

## Part 2 Fines imposed by courts

### Division 1 General

#### 5 Summary of procedure for payment of court fines

- (1) The following is a summary of the procedure under this Part for the payment of fines imposed by any court:
- (a) **Payment details**

A fine imposed by a court is payable within 28 days after it is imposed.
  - (b) **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 this Act to enforce the fine.

(c) **Time to pay**

A court registrar may allow further time to pay the fine on the application of the person.

(d) **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. If the person does not pay the amount (including enforcement costs) within 28 days, enforcement action authorised by this Act may be taken (see Part 4).

(e) **Withdrawal of enforcement order**

A court fine enforcement order may be withdrawn if an error has been made.

(2) This section does not affect the provisions of this Part that it summarises.

**6 Consideration of accused's means to pay** (cf *Crimes Act 1900* sec 440AB and *Justices Act 1902* sec 80A)

In the exercise by a court of a discretion to fix the amount of any fine, the court is required to consider:

- (a) such information regarding the means of the accused as is reasonably and practicably available to the court for consideration, and
- (b) such other matters as, in the opinion of the court, are relevant to the fixing of that amount.

## **Division 2 Payment of fines**

### **7 When fine payable**

- (1) A fine imposed by any court is payable within 28 days after it is imposed.
- (2) Arrangements for the payment of the fine after that time may be made under this Part.
- (3) The court, when imposing a fine:
  - (a) may direct that the fine is payable before that time for the special reasons stated by the court, and
  - (b) may not allow time for payment of the fine after that time.

## **8 To whom fine payable**

- (1) A fine imposed by any court is payable to the registrar of the court unless the court or the registrar of the court otherwise directs.
- (2) The payment may be lodged with the registrar or other officer of any court.

## **9 Fine notification**

- (1) Written notice of a fine imposed on a person by a court is to be served on the person by the registrar or other officer of the court as soon as practicable after the fine is imposed.
- (2) The notice may be served personally or by post, by means of document exchange, by facsimile transmission or by any other means authorised by the regulations.
- (3) The notice is to be served personally during or at the completion of the proceedings concerned if the person is present at those proceedings and available to be served.
- (4) The notice is to specify the amount payable, the time for payment and the person to whom it is to be paid. The notice is to inform the person:
  - (a) of the arrangements that may be made for further time to pay the amount, and
  - (b) of enforcement action that may be taken under this Act if the amount is not paid by the due date, and
  - (c) of additional enforcement costs that become payable under this Act if enforcement action is taken.
- (5) The regulations may make provisions for or with respect to the form and service of the notice.

## **10 Application to registrar for further time to pay fine**

- (1) A person liable to pay a fine imposed by a court may apply for further time to pay the fine to:
  - (a) the registrar of that court, or
  - (b) in the case of a fine imposed by the Local Court—a registrar of the Local Court, or
  - (c) any other registrar of a court specified in the notice of the fine served on the person under this Part as a registrar who may deal with the application.
- (2) The registrar may, by order, allow further time to pay the fine if it appears expedient to do so.
- (3) The registrar may, by such an order:



- (a) extend the time for payment of the whole fine, or
  - (b) allow the fine to be paid by instalments in such amounts, and at such times, as the registrar specifies.
- (4) If an instalment of a fine is not paid by the due date, the remaining instalments then become payable.
- (5) An order allowing further time to pay a fine may be amended or revoked by a further order made on the application of the person liable to pay the fine or on the registrar's own initiative.

### **11 Provisions relating to application for further time to pay fine**

- (1) This section applies to an application for further time to pay a fine.
- (2) More than one application may be made in respect of a fine (whether or not the earlier applications were granted).
- (3) The registrar may, for the purposes of dealing with an application, require the applicant to provide information or documents in support of the application (including documents relating to the financial means and identity of the applicant). The registrar may refuse to deal with the application if the information or documents are not provided.
- (4) The registrar, when dealing with an application, is to comply with such requirements as are prescribed by the regulations for the purposes of this section. The registrar is also to have due regard to any relevant guidelines under section 120.
- (5) The decision of the registrar on an application is final, and may not be appealed against, reviewed, quashed, or called into question by any court or tribunal.
- (6) The registrar may not grant an application after a court fine enforcement order is made in respect of the fine.

**Note—**

After the making of the enforcement order, an application for further time to pay may be made to the Commissioner (see section 100).

- (7) The registrar of a court may authorise any officer of the court to deal with an application and to make, amend or revoke an order allowing further time to pay a fine.
- (8) Without limiting subsection (7), the principal registrar of the District Court, a registrar of the Local Court at the Downing Centre and a registrar of the Children's Court may authorise, subject to any conditions specified in the authorisation, a person employed in the Department of Attorney General and Justice to deal with an application and to make, amend or revoke an order allowing further time to pay a fine.

## **Division 3 Court fine enforcement orders**

### **12 What is a court fine enforcement order?**

- (1) A court fine enforcement order is an order made by the Commissioner for the enforcement of a fine imposed by a court.
- (2) A single order may be made for the enforcement of 2 or more fines payable by a person.

**Note—**

Part 4 provides for the fine defaulter to be notified by the Commissioner of the enforcement order and of the enforcement action that may be taken if the outstanding balance of the fine (and enforcement costs) is not paid within 28 days.

### **13 Referral for a court fine enforcement order**

- (1) The registrar of the court that imposed a fine (or, if the fine is payable to the registrar of some other court, the registrar of the court to whom the fine is payable) is to refer the matter to the Commissioner for the making of a court fine enforcement order if:
  - (a) the fine has not been paid by the due date, or
  - (b) the person on whom the fine has been imposed seeks a work and development order in relation to the fine, or
  - (c) the person is in receipt of a Government benefit and seeks a time to pay order in relation to the fine, or
  - (d) the person seeks a time to pay order in relation to the fine that provides for a combined payment arrangement.
- (2) A matter may be referred to the Commissioner 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.
- (3) Subsection (1) (a) does not apply to a court that uses an automated electronic system for the referral of unpaid court imposed fines to the Commissioner.

### **14 When an order may be made**

- (1) The Commissioner may make a court fine enforcement order:
  - (a) if the registrar of the court that imposed the fine refers the matter to the Commissioner for the making of a court fine enforcement order, or

- (b) if the fine is registered in New South Wales under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth and that Act permits the fine to be enforced in or by New South Wales as the registering State.

**Note—**

Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth allows interstate fines imposed by courts that are registered in New South Wales to be enforced in New South Wales in the same way as New South Wales court imposed fines.

- (1A) A court fine enforcement order may be made only if there has been a default in payment of the fine by the due date.
- (1B) However, a court fine enforcement order may be made, without any default in payment, in relation to a fine imposed by a court on a person if:
- (a) the person seeks a work and development order in relation to the fine, or
  - (b) the person is in receipt of a Government benefit and seeks a time to pay order in relation to the fine, or
  - (c) the person seeks a time to pay order in relation to the fine that provides for a combined payment arrangement.
- (1BA) The Commissioner must not make a court fine enforcement order referred to in subsection (1B) unless the Commissioner decides to make the work and development order, or time to pay order, sought by the person.
- (1C) If the Commissioner does not make a court fine enforcement order in respect of a matter referred to the Commissioner by a registrar under section 13 (1) (b), (c) or (d), the Commissioner is to refer the matter back to the registrar.
- (2) The Commissioner is not required to inquire into whether this section authorises the making of an order in a matter referred to the Commissioner by the registrar of a court.
- (3) A court fine enforcement order may be made in the absence of, and without notice to, the person liable to pay the fine.
- (4) The Commissioner may, but is not required to, make a court fine enforcement order if a fine to which it is to apply has previously been the subject of a court fine enforcement order in respect of which any enforcement action has been taken.

**15 Form of court fine enforcement order**

- (1) A court fine enforcement order must specify the following matters:
- (a) the fine defaulter's name, address and date of birth (if known),
  - (b) a description of the offence in respect of which each fine to which the order

applies was imposed,

(c) the date on which the fine was imposed,

(d) the amount required to be paid, being the amount of the fine that remains to be paid, together with specified enforcement costs.

(2) Any amount recovered in consequence of the making of a court fine enforcement order (other than for enforcement costs) is to be dealt with in the same way as if the amount had been paid on the imposition of the fine.

#### **16 Enforcement costs under order**

(1) The regulations may prescribe the enforcement costs payable under a court fine enforcement order and an amount is not payable for enforcement costs unless it is so prescribed, or is payable under section 76A (Sheriff's additional costs of taking enforcement action under this Division).

(2) The following applies to any such enforcement costs:

(a) an amount may be prescribed as the enforcement costs payable to the Commissioner on the making of the order,

(b) an amount may be prescribed as the enforcement costs payable to Roads and Maritime Services if any enforcement action is taken by Roads and Maritime Services under Division 3 of Part 4 before payment is made under the order,

(c) an amount may be prescribed as the enforcement costs payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 before payment is made under the order.

(3) Any amount recovered in consequence of the making of a court fine enforcement order is to be applied firstly towards enforcement costs payable under this section or section 76A and the balance towards the amount payable under the fine.

#### **17 Withdrawal of order**

(1) The Commissioner may, on application or the Commissioner's own initiative, withdraw a court fine enforcement order if satisfied that:

(a) a fine to which it applies has previously been the subject of a court fine enforcement order in respect of which any enforcement action has been taken, or

(b) the person named in the court fine enforcement order is not the same person as the person in respect of whom a fine to which it applies was imposed, or

(c) the order was otherwise made in error.

(2) A court fine enforcement order must be withdrawn if application for its withdrawal is

made by the registrar who referred the matter to the Commissioner.

- (3) A court fine enforcement order may be withdrawn completely or only to the extent of some of the fines to which it applies.
- (4) If a court fine enforcement order is withdrawn completely:
  - (a) the order then ceases to have effect, and
  - (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another court fine enforcement order or penalty notice enforcement order, and
  - (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable.
- (4A) If a court fine enforcement order is withdrawn only to the extent of some of the fines to which it applies:
  - (a) the order continues to have effect in respect of the remaining fines to which it applies, and
  - (b) any amount that has been paid under the order is to be applied to payment of the remaining fines to which it applies and any enforcement costs in respect of that order.
- (5) The withdrawal of a court fine enforcement order does not prevent the making of a further order in respect of the fine.
- (6), (7) (Repealed)

**Note—**

The Commissioner may, instead of repaying an amount under this section, reallocate it towards the payment of other amounts payable by the person under fine enforcement orders (see section 122C).

**18 Special provision relating to certain victims support levies**

- (1) This section applies to a victims support levy if the person liable to pay the levy (**the offender**) has been sentenced to a term of imprisonment by way of full-time detention in respect of the conviction that gave rise to the imposition of the levy (whether or not the sentence is consecutive with another sentence or concurrent with another sentence or partly consecutive and partly concurrent).
- (2) However, this section does not apply if the relevant sentence has been suspended.
- (3) Despite the other provisions of this Division, a victims support levy to which this section applies that is not paid by the due date may be enforced by deducting the amount due from the offender's prison earnings.

- (4) The appropriate deduction is to be made by the Commissioner of Corrective Services or the governor of the correctional centre in which the offender is imprisoned.
- (5) Money may be deducted from prison earnings in accordance with this section despite the provisions of any other Act or law.
- (6) Any amount of a victims support levy to which this section applies that remains unpaid when the offender is discharged from the correctional centre, or released on parole, is taken to have been satisfied.
- (7) Subsection (6) applies even if the offender's parole is subsequently revoked.
- (8) In this section, a reference to an offender's **prison earnings** is a reference to the payments (if any) to be made to the offender under section 7 of the *Crimes (Administration of Sentences) Act 1999* and to any remuneration earned by the offender as a participant in an external work release program (within the meaning of section 7A of that Act).

## **Part 3 Penalty notices**

### **Division 1 Summary of penalty notice procedure**

#### **19 Summary of penalty notice procedure**

- (1) The following is a summary of the penalty notice procedure under this Part:

- (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).

- (a1) **Determine whether to give official caution rather than penalty notice**

The appropriate officer determines whether to issue a penalty notice or whether an official caution would be more appropriate (see Division 1A).

- (b) **Issue of penalty notice**

If it is determined that it is not appropriate to give an official caution, 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).

- (b1) **Internal review**

A reviewing agency may conduct a review of the decision to issue the penalty notice. If a review is conducted, the agency may withdraw the penalty notice or confirm the decision and issue a penalty reminder notice (see Division 2A).

(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 Commissioner or, if the Commissioner refuses the application, by the Local Court. If the order is annulled, the alleged offence is to be heard and determined by the Local Court (see Division 5).

(2) This section does not affect the provisions of this Part that it summarises.

## **Division 1A Official cautions**

### **19A Appropriate officer may give official caution**

(1) An appropriate officer may give a person an official caution instead of issuing a penalty notice if the appropriate officer believes:

- (a) on reasonable grounds that the person has committed an offence under a statutory provision for which a penalty notice may be issued (a **penalty notice offence**), and
- (b) that it is appropriate to give an official caution in the circumstances.

(2) In making a decision under subsection (1), an appropriate officer (other than a police officer) must have regard to the applicable guidelines relating to the giving of official cautions in respect of penalty notice offences.

(3) In this section:

**guidelines** means guidelines:

- (a) issued by the Attorney General that are published in the Gazette and made available on the internet site of the Office of State Revenue in the Department of Finance and Services, or
- (b) issued by the relevant issuing agency that are consistent with the guidelines issued by the Attorney General.

### **19B Official caution does not affect other powers**

An official caution in relation to a penalty notice offence does not affect the power of an appropriate officer or issuing agency to:

- (a) commence proceedings against the person to whom the official caution was given, or
- (b) issue a penalty notice in relation to the offence, or
- (c) take no further action, or
- (d) take any other specified action permitted under this Act or the Act that establishes the penalty notice offence.

## **Division 2 Penalty notices**

### **20 What is a penalty notice?**

- (1) A penalty notice is a notice referred to in subsection (2) to the effect that the person to whom it is directed has committed a specified offence and that, if the person does not wish to have the matter dealt with by a court, the person may pay the specified amount for the offence to a specified person within a specified time.
- (2) A penalty notice for the purposes of this Act is:
  - (a) a notice issued under any of the statutory provisions set out in Schedule 1, or
  - (b) any similar notice issued under any statutory provision specified by the regulations for the purposes of this section, or
  - (c) a notice issued under a statutory provision that declares the notice to be a penalty notice for the purposes of this Act, or
  - (d) a notice that, at the time it was issued, was issued under a statutory provision referred to in paragraph (a), (b) or (c).
- (3) A notice is not a penalty notice for the purposes of this Act unless it is of a kind referred to in subsection (2).



## **21 When penalty notices may be issued**

A penalty notice may be issued in the circumstances specified in the statutory provision providing for the issue of the notice.

## **22 Persons who may issue and deal with penalty notices (appropriate officers)**

- (1) A penalty notice may be issued by a person authorised by the statutory provision providing for the issue of the notice.
- (2) For the purposes of this Part, the following are **appropriate officers** for a penalty notice:
  - (a) a person so authorised to issue that kind of penalty notice,
  - (b) a person who is:
    - (i) employed in the Office of State Revenue in the Department of Finance and Services, or whose services are made use of by that Office (whether by way of temporary hire arrangement, secondment or otherwise), and
    - (ii) authorised by, and subject to the control and direction of, the Commissioner for the purposes of this Part,
  - (c) a person, or a member of a specified class of persons, specified in the regulations for that kind of penalty notice or for all penalty notices.

## **23 Payment of amount required by penalty notice**

- (1) For the purposes of this Part, the amount payable under a penalty notice is the amount specified in the notice, as fixed by or in accordance with law.
- (1A) A person may pay the amount by part payments. However, the full amount payable under a penalty notice is to be paid within the time required by the notice.
- (2) Payment of the full amount under a penalty notice results in there being no further liability for further proceedings for the offence to which the notice relates.

### **Note—**

The statutory provisions under which mechanisms for the issue of penalty notices are provided also provide for the effect of payment in accordance with the notice. The effect of payment in accordance with a penalty notice generally is that no further proceedings will be taken for the alleged offence. Payment generally does not have the effect of an admission of any liability in relation to the events out of which the offence arose.

## **23A Person may elect to have matter dealt with by court**

- (1) A person alleged to have committed or to be guilty of the offence to which a penalty notice relates:
  - (a) has the right to elect to have the matter dealt with by a court instead of under the

statutory provision providing for the issue of the penalty notice, and

(b) may make that election:

(i) in the manner specified in that statutory provision, or

(ii) if no manner is specified in that statutory provision—in the manner specified in the penalty notice, or

(iii) if no manner is specified in that statutory provision or in the penalty notice—in the manner specified by the regulations.

(2) A person may make such an election even if the whole or part of the amount payable under the penalty notice has been paid.

(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.

(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.

**Note—**

Section 24I provides that a review under Division 2A is terminated on the person making such an election.

(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.

(2D) This section does not apply if a penalty reminder notice has been served in respect of the offence.

**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.

(3) If a person elects under this section to have a matter dealt with by a court after any amount payable under the penalty notice has been paid:

(a) section 23 (2) and the corresponding provision of the statutory provision under which the penalty notice was issued (being the provision that provides that if an amount is paid under the penalty notice, no person is liable to any further proceedings for the alleged offence concerned) then cease to have effect, and

(b) any action taken to record demerit points against the person in the NSW demerit points register kept under the [Road Transport Act 2013](#) because of that payment is to be reversed by Roads and Maritime Services, and

(c) the amount that has been paid under the penalty notice is repayable to the person by whom it was paid.

## **24 Failure to pay amount required by penalty notice**

Divisions 3-5 set out the procedure that applies when a person who has been served with a penalty notice fails to pay the full amount payable under the notice within the time required by the notice.

### **Division 2A Internal review**

#### **24A Application for review of penalty notice**

- (1) An application may be made by or on behalf of any person for a review of the decision to issue a penalty notice in respect of the person.
- (2) An application for a review:
  - (a) is to be made in writing to the issuing agency for the penalty notice or to the Commissioner (if the fine under the penalty notice is payable to the Commissioner), and
  - (b) is to include the mailing address of the applicant and the grounds on which the review is sought (including supporting evidence).
- (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:
  - (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
  - (b) in any other case—the due date specified in the penalty reminder notice for payment in relation to the offence concerned.
- (4) The regulations may make provision for or with respect to applications under this section.

#### **24B Circumstances when agency is not required to conduct a review**

- (1) An agency that receives an application for a review of a decision to issue a penalty notice is not required to conduct a review of the decision under this Division in any of the following circumstances:
  - (a) the agency notifies the applicant in writing, within 10 days after receiving the application, that it has decided not to conduct a review under this Division and gives reasons for its decision,
  - (b) a review of the decision has already been conducted under this Division,
  - (c) such other circumstances as may be prescribed by the regulations.

- (2) An agency that decides not to conduct a review may take such other action as it sees fit, including withdrawing the penalty notice to which an application relates.

#### **24C Review by reviewing agency**

- (1) Except as provided by section 24B, an agency that receives an application for review under this Division must conduct a review in accordance with this Division.
- (2) The reviewing agency is to ensure that a review under this Division is conducted by a person who was not involved in making the decision that is the subject of the review.

#### **24D Request for additional information**

- (1) When conducting a review under this Division, a reviewing agency may request, in writing, additional information from the applicant.
- (2) The additional information must be provided by the applicant to the reviewing agency within 14 days of the request.
- (3) If the information is not provided within the time specified, the review may be conducted without that information.

#### **24E Outcome of review**

- (1) After reviewing a decision under this Division, a reviewing agency may confirm the decision to issue a penalty notice or may withdraw the penalty notice.
- (2) A reviewing agency must withdraw a penalty notice if it finds any of the following grounds to be made out:
  - (a) the penalty notice was issued contrary to law,
  - (b) the issue of the penalty notice involved a mistake of identity,
  - (c) the penalty notice should not have been issued, having regard to the exceptional circumstances relating to the offence,
  - (d) the person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
    - (i) to understand that the person's conduct constituted an offence, or
    - (ii) to control such conduct,
  - (e) an official caution should have been given instead of a penalty notice, having regard to the relevant guidelines under section 19A,
  - (f) any other ground prescribed by the regulations.

- (3) A reviewing agency may, at its discretion, also decide to withdraw a penalty notice on a ground other than those specified in subsection (2).
- (4) A reviewing agency is to notify the applicant in writing of the outcome of the review within 42 days of receipt of the application, or within 56 days if additional information has been requested under this Division.

#### **24F Action to be taken if decision to issue penalty notice is confirmed**

- (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.

**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.

- (2) A penalty reminder notice served under subsection (1) replaces any previous penalty reminder notice in respect of the offence.
- (3) (Repealed)

#### **24G Effect of withdrawal of penalty notice**

- (1) If a reviewing agency withdraws a penalty notice, following a review under this Division or otherwise, it may, if it considers it appropriate to do so, give an official caution to the person in accordance with Division 1A as if it were an appropriate officer.
- (2) If a penalty notice is withdrawn:
  - (a) any penalty reminder notice, in respect of the offence to which the penalty notice relates, is also taken to be withdrawn, and
  - (b) if all or part of the amount under the penalty notice or penalty reminder notice has been paid:
    - (i) any action taken to record demerit points against a person in the NSW demerit points register kept under the *Road Transport Act 2013* because of that payment is to be reversed by Roads and Maritime Services, and
    - (ii) the amount that has been paid is repayable to the person by whom it was paid.

#### **24H Agency may review a decision on its own motion**

- (1) Nothing in this Division limits the power of a reviewing agency to review a decision to issue a penalty notice, or withdraw a penalty notice, on its own motion.

- (2) If a reviewing agency withdraws a penalty notice on its own motion after the amount under the penalty notice (or a penalty reminder notice in respect of the offence to which the penalty notice relates) has been paid, no person is liable to any further proceedings for the alleged offence.

#### **24I Review terminated if matter dealt with by court**

If a person elects to have a matter dealt with by a court under this Part while a review under this Division is in progress, the review is terminated on the person making that election.

#### **24J Reviewing agencies may enter into arrangements with respect to functions under Division**

A reviewing agency may enter into arrangements with another person or body under which the functions of the agency under this Division are exercised by that person or body on behalf of the agency.

### **Division 3 Penalty reminder notices**

#### **25 What is a penalty reminder notice?**

A penalty reminder notice is a notice (and any matter annexed to, or enclosed with, a notice) served on a person on whom a penalty notice (and any matter annexed to, or enclosed with, a notice) has been served and containing the matters required by this Division.

#### **26 When a penalty reminder notice may be sent**

An appropriate officer may serve a penalty reminder notice on a person on whom a penalty notice was served if it appears to the officer that the full amount payable under the penalty notice has not been paid within the time required by the notice.

#### **27 What a penalty reminder notice must say**

- (1) A penalty reminder notice must inform the person on whom it is served:
- (a) that the person has until the due date specified in the notice to pay the full amount (or, if one or more part payments of that full amount have been paid, the remaining amount) for the offence specified in the notice, and
  - (a1) of the steps to be taken for seeking a review of the decision to issue the penalty notice, and
  - (b) of enforcement action that may be taken under this Act if the full amount is not paid by the due date, and
  - (c) of additional enforcement costs that become payable under this Act if enforcement action is taken.

- (2) If there is an approved form for a penalty reminder notice, a penalty reminder notice must be in that form.
- (3) The inclusion in a penalty reminder notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the penalty reminder notice.

## **28 Service of penalty reminder notices**

- (1) A penalty reminder notice may be served on a person:
  - (a) personally, or
  - (b) by post, or
  - (c) by means of a document exchange, or
  - (d) by facsimile transmission or other electronic transmission, or
  - (e) by any other manner prescribed by the regulations.
- (2) The address for service of any such penalty reminder notice includes:
  - (a) the address of the person shown on the relevant penalty notice or supplied by the person in connection with the service of the relevant penalty notice, or
  - (b) if the relevant penalty notice was served on the person in his or her capacity as owner or responsible person for a vehicle or owner of a vessel or was served by being left on a vehicle or vessel—the address shown in the records of Roads and Maritime Services or other public agency as the address of the owner or responsible person at the time the relevant penalty notice was served, or
  - (c) if the relevant penalty notice was served on the person in his or her capacity as the person driving or in charge of a vehicle or vessel—the address specified in a notice given under section 38 (1) (a) as the address of the person in charge of the vehicle or vessel at the time of the alleged offence.

## **29 Time for service of penalty reminder notices by post**

Despite any other provision of this Act, it is presumed that a penalty reminder notice sent to a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period.

## **30 Due date for payment in penalty reminder notices**

- (1) The due date for payment in a penalty reminder notice must be at least 21 days after it is served on the person.
- (2) Accordingly, a penalty reminder notice that is posted may specify a date that is at

least 28 days after the penalty reminder notice is posted as the due date for making the payment concerned.

### **31 Extension of due date if notice takes more than 7 days**

- (1) If a penalty reminder notice is served on a person more than 7 days after it was posted, the notice is not invalid merely because it specifies as the due date a date that is less than 21 days after it was served on the person.
- (2) In such a case however, the due date is extended to a date that is 21 days after the penalty reminder notice was served and the penalty reminder notice is taken to specify that date as the due date.

### **32 Effect of penalty reminder notice on payment time in penalty notice**

If a penalty reminder notice is served on a person, the time for payment of the amount payable under the penalty notice for the offence concerned is extended to the due date specified in the penalty reminder notice for payment.

### **33 Payment under penalty reminder notice**

- (1) Payment of the amount payable under the penalty notice to which a penalty reminder notice relates may be made in accordance with the penalty notice and the relevant provisions of the statutory provision under which the notice was served.
- (2) A person may pay the amount by part payments. However, the full amount payable under a penalty notice is to be paid within the time required by the penalty reminder notice.

### **34 Effect of payment under penalty reminder notice**

Payment of the full amount payable under the penalty notice to which a penalty reminder notice relates has the same effect as payment in accordance with the penalty notice.

### **35 Alleged offender's right to elect to have matter dealt with by court**

A person alleged to have committed or to be guilty of the offence to which a penalty reminder notice relates has the right to elect to have the matter dealt with by a court instead of under this Part.

### **36 How person may elect to have matter dealt with by court**

- (1) A person may elect to have a matter dealt with by a court by serving on the appropriate officer or other person or body specified in the penalty reminder notice a written statement that the person so elects.
- (1A) A person may make such an election even if the whole or part of the amount payable under the penalty notice has been paid.



(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.

(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.

**Note—**

Section 24I provides that a review under Division 2A is terminated on the person making such an election.

(3) A statement under this section may be served on a person personally or by post, by means of document exchange, by facsimile or other electronic transmission or in any other manner prescribed by the regulations.

(4) The regulations may make provision for or with respect to the form of written statements under this section.

(5) If a person elects under this section to have a matter dealt with by a court after any amount payable under the penalty notice has been paid:

(a) section 23 (2) and the corresponding provision of the statutory provision under which the penalty notice was issued (being the provision that provides that if an amount is paid under the penalty notice, no person is liable to any further proceedings for the alleged offence concerned) then cease to have effect, and

(b) any action taken to record demerit points against the person in the NSW demerit points register kept under the *Road Transport Act 2013* because of that payment is to be reversed by Roads and Maritime Services, and

(c) the amount that has been paid under the penalty notice is repayable to the person by whom it was paid.

### **37 Matter to proceed**

If a person duly elects, in accordance with this Part, to have the matter dealt with by a court, proceedings against the person in respect of the offence may be taken as if a penalty notice or penalty reminder notice had not been issued.

### **37A Extension of time limit for taking proceedings if person has elected to have penalty notice matter dealt with by court**

(1) This section applies to proceedings for a summary offence that has an applicable limitation period (apart from this section) of less than 12 months if:

(a) a penalty notice in relation to the offence has been issued to a person within that applicable limitation period, and

(b) the person has duly elected, in accordance with this Part, to have the matter dealt with by a court.

- (2) Proceedings relating to that offence may, despite the applicable limitation period, be commenced not later than 12 months from when the offence was alleged to have been committed.

**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).

- (3) Subsection (2) does not affect the operation of section 179 of the *Criminal Procedure Act 1986* in relation to the commencement in any other circumstances of proceedings for an offence.

**38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty**

- (1) A person on whom a penalty reminder notice is served in relation to a vehicle or vessel offence is not liable to make any payment under the penalty notice if the person:
- (a) on or before the due date specified in the penalty reminder notice, gives notice in accordance with subsection (1A) of the name and address of some other person who was in charge of the vehicle or vessel concerned at all relevant times relating to the offence, or
  - (b) satisfies the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the penalty reminder notice) that the person did not know and could not with reasonable diligence have ascertained that name and address.
- (1A) A notice for the purposes of subsection (1) (a) must:
- (a) in the case of a penalty reminder notice served on a person other than a corporation—be verified by a statutory declaration, and
  - (a1) in the case of a penalty reminder notice served on a corporation:
    - (i) be verified by a statutory declaration, or
    - (ii) be a notice of a kind approved for the purposes of subsection (1B), and
  - (b) be given to the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the penalty reminder notice).
- (1B) The Commissioner may approve one or more kinds of notices (**approved notices**) for use by corporations when giving notice for the purposes of subsection (1) (a).
- (1C) Without limiting subsection (1B), the Commissioner may approve notices under that subsection:

- (a) to be provided in printed or electronic form (or both), and
- (b) to be used in relation to more than one offence involving one or more vehicles or vessels.

(1D) If a corporation gives an approved notice for the purposes of subsection (1) (a) instead of a notice verified by statutory declaration, an appropriate officer for the penalty notice to which the penalty reminder notice relates may, by written notice served on the corporation (a **verification notice**), require the corporation to supply a statutory declaration for use in court proceedings verifying such of the information contained in the approved notice as is specified in the verification notice.

(1E) A corporation served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).

Maximum penalty: 100 penalty units.

- (2) A notice under subsection (1) (a) that is verified by statutory declaration if produced in any proceedings against the person named in it and in respect of the vehicle or vessel offence concerned is prima facie evidence that the person was in charge of the vehicle or vessel at all relevant times relating to the offence.
- (3) A statutory declaration that relates to more than one vehicle or vessel offence is not a statutory declaration under, or for the purposes of, subsection (1A) or (1D) unless each of the offences is a camera recorded offence (within the meaning of section 179 of the *Road Transport (General) Act 2005*) detected by the same camera device at approximately the same time.
- (3A) A person must not, in a notice given under subsection (1) (a), make a statement or provide information knowing that it is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

(3B) If the same facts establish an offence under this section and an offence under the *Oaths Act 1900*, the person is not liable to be convicted of both offences.

(4) In this section:

**vehicle or vessel offence** means any of the following offences:

- (a) an offence of standing or parking a vehicle or of causing or permitting a vehicle to stand, wait or be parked in contravention of any law,
- (b) an offence relating to a vehicle or vessel (such as exceeding the speed limit) that is detected by an approved average speed detection device, approved camera detection device or an approved speed measuring device within the meaning of the former *Road Transport (Safety and Traffic Management) Act 1999* and in

respect of which the penalty notice is served subsequently on the owner or responsible person for the vehicle or the owner of the vessel,

- (b1) an offence relating to a vehicle or vessel (such as exceeding the speed limit) that is detected by an approved traffic enforcement device (within the meaning of the [Road Transport Act 2013](#)) and in respect of which the penalty notice is served subsequently on the owner or responsible person for the vehicle or the owner of the vessel,
- (c) an offence under section 23 of the [Centennial Park and Moore Park Trust Act 1983](#),
- (d) an offence under section 161 of the [Crown Lands Act 1989](#),
- (e) an offence under section 87 (Liability of vehicle owner for parking offences) of the [Forestry Act 2012](#),
- (f) an offence under section 32A of the [Impounding Act 1993](#),
- (g) an offence under section 651 of the [Local Government Act 1993](#),
- (h) an offence under section 30C of the [Maritime Services Act 1935](#),
- (i) an offence under section 159 of the [National Parks and Wildlife Act 1974](#),
- (j) an offence under section 29 of the [Parramatta Park Trust Act 2001](#),
- (k) an offence under section 179 of the former [Road Transport \(General\) Act 2005](#),
- (k1) an offence under Division 2 of Part 7.3 of the [Road Transport Act 2013](#),
- (l) an offence under section 244 of the [Roads Act 1993](#),
- (m) an offence under section 22A of the [Royal Botanic Gardens and Domain Trust Act 1980](#),
- (n) an offence under section 20A of the [State Sports Centre Trust Act 1984](#),
- (o) an offence under section 78 of the [Sydney Olympic Park Authority Act 2001](#),
- (p) an offence under section 116 of the [Transport Administration Act 1988](#),
- (q) an offence relating to a vehicle or vessel that is of a kind prescribed by the regulations.

### **39 Withdrawal of penalty reminder notices**

- (1) An appropriate officer may withdraw a penalty reminder notice before the due date for payment under the notice.
- (2) The following provisions have effect in relation to an alleged offence, if a penalty

reminder notice for the alleged offence is withdrawn in accordance with this section:

- (a) the amount that was payable under the notice ceases to be payable,
- (b) any amount that has been paid under the notice is repayable to the person by whom it was paid,
- (c) further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had not been issued.

## **Division 4 Penalty notice enforcement orders**

### **40 What is a penalty notice enforcement order?**

- (1) A penalty notice enforcement order is an order made by the Commissioner for the enforcement of the amount payable under a penalty notice.
- (2) A single order may be made for the enforcement of the amounts payable under 2 or more penalty notices.

#### **Note—**

Part 4 provides for the fine defaulter to be notified by the Commissioner of the enforcement order and of the enforcement action that may be taken if the outstanding balance of the amount payable under the penalty notice (and enforcement costs) is not paid within 28 days.

### **41 How are penalty notice enforcement orders made?**

The Commissioner may, on application by an appropriate officer for a penalty notice or the Commissioner's own initiative, make a penalty notice enforcement order.

### **42 When a penalty notice enforcement order may be made**

- (1) A penalty notice enforcement order may be made only if:
  - (a) a penalty notice has been served on a person in relation to a particular offence referred to in the order, and
    - (a1) any review to be conducted under Division 2A has been completed and the applicant has been notified of the outcome of the review, and
  - (b) a penalty reminder notice has been served on the person:
    - (i) after the end of the time specified in the penalty notice as the time within which the amount payable under the notice may be paid, or
    - (ii) if a review has been conducted under Division 2A, after that review, and
  - (c) the due date specified in the penalty reminder notice has passed, and

- (d) the full amount payable under the penalty notice had not been paid before the order is made, and
  - (e) the person has not, in accordance with this Part, declined to be dealt with under this Part, and
  - (f) a court attendance notice in relation to the offence has not been issued, and
  - (g) (Repealed)
  - (h) the facts as alleged in or referred to in the order constitute the offence.
- (1AA) The Commissioner may also make a penalty notice enforcement order, in respect of an amount owed by a person under a penalty notice, if the Commissioner:
- (a) receives an application by the person for a work and development order in relation to the amount, or
  - (b) receives an application for a time to pay order in relation to the amount from a person who is in receipt of a Government benefit, or
  - (c) receives an application for a time to pay order in relation to the amount and the application is for a combined payment arrangement.
- (1BB) The Commissioner must not make a penalty notice enforcement order referred to in subsection (1AA) unless the Commissioner decides to make the work and development order, or time to pay order, sought by the person.
- (1CC) On the making of an order under subsection (1AA):
- (a) the person who has been served with the penalty notice to which the order relates can no longer elect to have the matter dealt with by a court in accordance with section 23A or 36, and
  - (b) the decision to issue the penalty notice can no longer be reviewed under Division 2A.
- (1A) A penalty notice enforcement order may not be made later than:
- (a) if the applicable limitation period in relation to the offence is less than 12 months—12 months from when the offence was committed or is alleged to have been committed, or
  - (b) if the applicable limitation period in relation to the offence is 12 months or greater—the expiry of that limitation period, or
  - (c) if a review has been conducted under Division 2A and a penalty reminder notice has been served under section 24F (1)—42 days after service of that notice.

- (1B) If more than one date is applicable under subsection (1A), the later of those dates is the relevant date for the purposes of that subsection.
- (2) An application for a penalty notice enforcement order made by an appropriate officer must certify:
  - (a) that the matters specified in subsection (1) (other than subsection (1) (d)), or the relevant matters in subsection (1AA), are satisfied, and
  - (b) that the full amount payable under the penalty notice has not been paid, and
  - (c) that the period for making the order (as referred to in subsection (1A)) has not expired.
- (2A) The Commissioner may rely on the certificate for the purpose of making the order.
- (3) A penalty notice enforcement order may be made in the absence of, and without notice to, the person concerned.

#### **43 Form of penalty notice enforcement order**

- (1) A penalty notice enforcement order must specify the following matters:
  - (a) the fine defaulter's name, address and date of birth (if known),
  - (b) a description of the offence in respect of which each fine to which the order applies was imposed,
  - (c) the date on which the fine was imposed,
  - (d) the amount required to be paid, being the amount that remains to be paid under the penalty notice, together with specified enforcement costs.
- (2) Any amount recovered in consequence of the making of a penalty notice enforcement order (other than for enforcement costs) is to be dealt with in the same way as if the amount had been paid on the issue of the penalty notice.

#### **44 Enforcement costs under penalty notice enforcement order**

- (1) The regulations may prescribe the enforcement costs payable under a penalty notice enforcement order and an amount is not payable for enforcement costs unless it is so prescribed or is payable under section 76A (Sheriff's additional costs of taking enforcement action under this Division).
- (2) The following applies to any such enforcement costs:
  - (a) an amount may be prescribed as the enforcement costs payable to the Commissioner on the making of the order,
  - (b) an amount may be prescribed as the enforcement costs payable to Roads and

Maritime Services if any enforcement action is taken by Roads and Maritime Services under Division 3 of Part 4 before payment is made under the order,

(c) an amount may be prescribed as the enforcement costs payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 before payment is made under the order.

(3) Any amount recovered in consequence of the making of a penalty notice enforcement order is to be applied firstly towards enforcement costs payable under this section or section 76A and the balance towards the amount payable under the penalty notice.

#### **45 Effect of making, or of payment under, penalty notice enforcement order**

(1) If a penalty notice enforcement order is made in relation to an offence alleged to have been committed by a person:

(a) the person is not as a result taken to have been convicted of the offence, and

(b) the making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.

(2) If the full amount payable under a penalty notice enforcement order is paid or recovered, no person is liable for any further proceedings for the alleged offence concerned. This subsection ceases to apply if the order is duly withdrawn under this Part and the amount paid under the order is repaid.

(3) The payment of any amount payable under a penalty notice enforcement order is not an admission of liability for the purpose of and does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.

(4) Nothing in this section affects the operation of any provisions of Division 5 relating to the annulment of a penalty notice enforcement order or any provisions of Part 4 relating to the enforcement of a penalty notice enforcement order.

#### **46 Withdrawal of order**

(1) The Commissioner may, on application or the Commissioner's own initiative, withdraw a penalty notice enforcement order if satisfied that:

(a) a fine to which it applies has previously been the subject of a penalty notice enforcement order in respect of which any enforcement action has been taken, or

(b) the person named in the penalty notice enforcement order is not the same person as the person in respect of whom a fine to which the order applies was imposed,  
or

(c) the order relates to the owner of a vehicle or vessel, being a vehicle or vessel involved in an offence the subject of the fine at a time when the owner was not



the owner of the vehicle or vessel concerned, or

(d) the order was otherwise made in error.

(2) A penalty notice enforcement order must be withdrawn if application for its withdrawal is made by the appropriate officer who applied for the order.

**Note—**

Section 49A (5) also requires a penalty notice enforcement order to be withdrawn if an issuing agency determines that a penalty notice should be withdrawn following a review under section 49A.

(3) A penalty notice enforcement order may be withdrawn completely or only to the extent of some of the penalty notices to which it applies.

(4) If a penalty notice enforcement order is withdrawn completely:

(a) the order then ceases to have effect, and

(b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another penalty notice enforcement order or a court fine enforcement order, and

(c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable, and

(d) any amount that has been paid under the order is repayable to the person by whom it was paid.

(5) If a penalty notice enforcement order is withdrawn only to the extent of some of the penalty notices to which it applies:

(a) the order continues to have effect in respect of the remaining penalty notices to which it applies, and

(b) any amount that has been paid under the order is to be applied to payment of the remaining penalty notices to which it applies and any enforcement costs in respect of that order.

(6) The withdrawal of a penalty notice enforcement order does not prevent the making of a further order in respect of the penalty notice.

(7), (8) (Repealed)

**Note—**

The Commissioner may, instead of repaying an amount under this section, reallocate it towards the payment of other amounts payable by the person under fine enforcement orders (see section 122C).

#### **47 Regulations relating to orders**

The regulations may make provision for or with respect to the making or withdrawal of

penalty notice enforcement orders, including the following:

- (a), (b) (Repealed)
- (c) the form of any such order,
- (d) the manner of making any such order.

## **Division 5 Annulment of penalty notice enforcement orders**

### **48 Applications for annulment of orders**

- (1) An application may be made by or on behalf of any person for the annulment of a penalty notice enforcement order made against the person under Division 4.
- (2) (Repealed)
- (3) An application for annulment is to be made in writing to the Commissioner.
- (4) (Repealed)
- (5) A person may not, except with the leave of the Commissioner, make more than one application in relation to the same matter.
- (6) The regulations may make provision for or with respect to applications under this section (including application fees).

### **49 Determination of applications by Commissioner**

- (1) When dealing with an application for annulment, the Commissioner:
  - (a) must annul the penalty notice enforcement order if the Commissioner is satisfied that:
    - (i) the person was not aware that a penalty notice had been issued until the enforcement order was served, but only if the application was made within a reasonable time after that service, or
    - (ii) the person was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the penalty notice, but only if the application was made within a reasonable time after the person ceased being so hindered, or
    - (iii) the penalty reminder notice was, or both the penalty notice and the penalty reminder notice, in relation to a particular offence were, returned as being undelivered to its sender after being sent to the person at the person's recently reported address (within the meaning of section 126A) and notice of the enforcement order was served on the person at a different address, and
  - (b) may annul the penalty notice enforcement order if:

- (i) the Commissioner is satisfied that a question or doubt has arisen as to the person's liability for the penalty or other amount concerned, but only if the person had no previous opportunity to obtain a review of that liability, or
  - (ii) having regard to the circumstances of the case, the Commissioner is satisfied that there is other just cause why the application should be granted.
- (2) The Commissioner must not annul a penalty notice enforcement order under subsection (1) (b) (ii) if doing so is not permitted under, or would circumvent the restrictions in, subsection (1) (a) or (b) (i).
- (3) If the Commissioner annuls a penalty notice enforcement order under subsection (1) (a), the Commissioner must refer the matter to the Local Court unless:
  - (a) the person concerned does not dispute the person's liability to pay the amount payable under the penalty notice, and
  - (b) that amount was paid to the Commissioner at the time of making the application for the annulment of the order.
- (3A) For the avoidance of doubt, payment of the full amount under a penalty notice under subsection (3) results in there being no further liability for further proceedings for the offence to which the notice relates.
- (3B) If the Commissioner annuls a penalty notice enforcement order under subsection (1) (b), the Commissioner must refer the matter to the Local Court.

**Note—**

Section 51 provides that the Local Court is to hear and determine the alleged offence as if no penalty notice enforcement order had been made.

- (4) Applications for annulment are to be dealt with by the Commissioner in the absence of the parties, unless the Commissioner otherwise determines.
- (5) The Commissioner must give notice of the determination of an application for annulment to all parties interested or concerned.
- (6) The regulations may make provision for or with respect to the practice and procedure of the Commissioner when dealing with applications for annulment.
- (7) The Commissioner may, but is not required to, refund any application fee for an application for an annulment that is successful.
- (8) For the avoidance of doubt, the Commissioner may grant an application for annulment (and annul the penalty notice enforcement order) on the ground that the person was not aware that a penalty notice had been issued until the enforcement order was served even if section 126A (1) permitted the issue and service of a penalty reminder notice in relation to a particular offence referred to in the enforcement order or section

126A (2) permitted the making of the penalty notice enforcement order (or both).

#### **49A Review of penalty notice before annulment**

- (1) Before the Commissioner annuls a penalty notice enforcement order, the Commissioner is to seek a review of the decision to issue each penalty notice to which the penalty notice enforcement order applies if:
  - (a) the Commissioner has reason to suspect that the penalty notice should be withdrawn having regard to any of the matters set out in section 24E (2), and
  - (b) a review of the decision to issue the penalty notice has not been conducted under this section or Division 2A.
- (2) A review is to be conducted by the relevant issuing agency.
- (3) A review is to be dealt with in the absence of the parties, unless the issuing agency otherwise determines.
- (4) The issuing agency must notify the applicant for the annulment and the Commissioner of its determination on the review of the decision to issue the penalty notice.
- (5) If the issuing agency determines that a penalty notice should be withdrawn (in whole or in part), the Commissioner must withdraw the penalty notice enforcement order (in whole or in part) under section 46.
- (6) The Commissioner must, if a penalty notice is not withdrawn on review or there is no decision on a review within 42 days after referral for review, grant the application for annulment and annul the penalty notice enforcement order under section 49.
- (7) An issuing agency may enter into arrangements with another person or body (including the Commissioner) under which the functions of the issuing agency under this section are exercised by that person or body on behalf of the issuing agency.

#### **50 Appeal against refusal of application by Commissioner**

- (1) If the Commissioner refuses an application for annulment, the applicant may, not later than 28 days after notice is given of the refusal, lodge an application in writing with a registrar of the Local Court to have the original application determined by the Local Court.
- (2) The relevant registrar of the Local Court must, as soon as possible, give written notification to the applicant and the parties of the date, time and place on or at which the application is to be determined.
- (3) An application under this section may be determined by the Local Court in accordance with this Division and the Local Court may make any decision about the application that the Commissioner may have made.

- (4) The Local Court may proceed to determine an application despite any omission or error in the notice referred to in subsection (2) or its non-service if:
  - (a) the Local Court is satisfied that the applicant and the parties interested and concerned had knowledge of the date, time and place on or at which the application was to be determined and were not prejudiced by the omission, error or non-service, or
  - (b) the Local Court is satisfied that the applicant is avoiding service of the notice or cannot, after reasonable search and inquiry, be found.
- (5) The regulations may make provision for or with respect to applications under this section (including application fees).

#### **51 Proceedings for alleged offence if penalty notice enforcement order annulled**

- (1) If a penalty notice enforcement order is annulled by the Local Court (or is annulled by the Commissioner and referred to the Local Court), the Local Court is to hear and determine the matter as if no penalty notice enforcement order had been previously made.
- (2) If the Local Court annuls the penalty notice enforcement order, the Local Court may proceed either immediately or at a later sitting of the Court to hear and determine the matter.
- (3) (Repealed)
- (4) For the purposes of hearing and determining the matter, a court attendance notice in relation to each alleged offence to which the annulment of the penalty notice enforcement order relates is taken:
  - (a) to have been filed when the penalty notice enforcement order was made, and
  - (b) to have been filed by the appropriate officer for the penalty notice.

#### **52 Provisions relating to annulment of enforcement orders**

- (1) The Commissioner or the Local Court, if dealing with an application for annulment, may stay enforcement action under the penalty notice enforcement order subject to such terms and conditions as the Commissioner or Court thinks fit.
- (2) (Repealed)
- (3) An application may be made for the annulment of a penalty notice enforcement order completely or only to the extent of some of the penalty notices to which it applies.
- (4) If a penalty notice enforcement order is annulled completely:
  - (a) the order then ceases to have effect, and

- (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under another penalty notice enforcement order or a court fine enforcement order, and
  - (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are repayable, and
  - (d) any amount that has been paid under the order is repayable to the person by whom it was paid, unless the amount was paid to the Commissioner at the time of making an application for the annulment of the order under section 49 (1) (a).
- (5) If a penalty notice enforcement order is annulled only to the extent of some of the penalty notices to which it applies:
- (a) the order continues to have effect in respect of the remaining penalty notices to which it applies, and
  - (b) any amount that has been paid under the order is to be applied to payment of the remaining penalty notices to which it applies and any enforcement costs in respect of that order.
- (6), (6A) (Repealed)
- (7) If a penalty notice enforcement order is annulled, the period within which proceedings for an offence may be instituted in respect of the matter under section 179 of the [Criminal Procedure Act 1986](#) or any other Act commences on the date the order is annulled.

**Note—**

The Commissioner may, instead of repaying an amount under this section, reallocate it towards the payment of other amounts payable by the person under fine enforcement orders (see section 122C).

## **Division 6 Application of Part**

### **53 Application of penalty notice procedure to children**

- (1) This Part applies to a person of any age.
- (2) However, this Part does not apply to a person who is younger than 10 years or who, although 10 years or older, was younger than 10 years when the person is alleged to have committed the offence to which the relevant penalty notice relates.
- (3) This Part applies despite anything in the [Children \(Criminal Proceedings\) Act 1987](#), except that the provisions of this Part relating to the hearing or determination of an alleged offence on the annulment of a penalty notice enforcement order is subject to that Act.

#### **54 Part not to apply to certain forestry penalty notices**

This Part does not apply to or in relation to a penalty notice under section 85 of the [Forestry Act 2012](#) if the amount payable under the notice includes any resource acquisition fee within the meaning of that section.

#### **55 Regulations may exclude penalty notices from operation of Part**

The regulations may provide that this Part does not apply to or in relation to any specified class or description of penalty notices.

#### **56 Other provisions not affected**

The provisions of this Part are supplemental to, and do not derogate from, the provisions of any Act that relate to proceedings that may be taken in respect of offences that are or may be the subject of penalty notice enforcement orders.

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

#### **Division 1 Preliminary**

##### **57 Application and interpretation**

- (1) This Part applies to the enforcement of:
  - (a) a fine imposed by a court following the making of a court fine enforcement order, and
  - (b) the amount payable under a penalty notice following the making of a penalty notice enforcement order.
- (1A) Division 6 (Imprisonment) does not apply to a fine registered in New South Wales under Part 7 of the [Service and Execution of Process Act 1992](#) of the Commonwealth that is enforced in New South Wales as the registering State under that Act.
- (2) A court fine enforcement order or a penalty notice enforcement order is referred to in this Act as a ***fine enforcement order***.
- (3) The person liable to pay the fine under a fine enforcement order is referred to in this Act as the ***fine defaulter***.
- (4) In this Part, a reference to a ***fine*** includes a reference to any enforcement costs payable under the fine enforcement order and any other amount of a kind prescribed by the regulations.

##### **58 Summary of enforcement procedure**

- (1) The following is a summary of the enforcement procedure under this Part following the making of a fine enforcement order:

(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 (see Division 2).

(b) **Driver licence or vehicle registration suspension or cancellation**

If the fine is not paid within the period specified, Roads and Maritime Services suspends any driver licence, and may cancel any vehicle registration, of the fine defaulter. If the driver licence of the fine defaulter is suspended and the fine remains unpaid for 6 months, Roads and Maritime Services cancels that driver licence (see Division 3).

(c) **Civil enforcement**

If the fine defaulter does not have a driver 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 (see Division 4).

(d) **Community service order**

If civil enforcement action is not successful, a community service order is served on the fine defaulter (see Division 5).

(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).

(f) **Fines payable by corporations**

The procedures for fine enforcement (other than community service orders and imprisonment) apply to fines payable by corporations (see Division 7).

(g) **Fine mitigation**

A fine defaulter may seek further time to pay and the Commissioner may write off unpaid fines or make a work and development order in respect of the fine defaulter for the purposes of satisfying all or part of the fine. Applications for review may be made to the Hardship Review Board (see Division 8).

(2) This section does not affect the provisions of this Part that it summarises.



## **Division 2 Service of fine enforcement order**

### **59 Service on fine defaulter of notice of order**

As soon as practicable after a fine enforcement order is made, the Commissioner is to serve notice of the order on the fine defaulter.

### **60 What notice must say**

- (1) The notice of a fine enforcement order must inform the fine defaulter that:
  - (a) the order has been made, and
  - (b) the defaulter has until the final date specified in the notice to pay the fine and enforcement costs specified in the notice, and
  - (c) if the payment is not made by that final date, further enforcement action will be taken against the defaulter to enforce the fine in accordance with this Part and, in particular, that the defaulter will be liable without further notice to have any driver licence or vehicle registration suspended or cancelled or property seized and sold, and
  - (d) if the payment is not made by that final date, further enforcement costs will be payable (indicating, except as provided in subsection (1A), each amount of those costs and circumstances in which it is payable), and
  - (e) review options are available relating to the fine enforcement order, including withdrawal, annulment, time to pay and the writing off of fines.
- (1A) The notice of a fine enforcement order may (but need not) contain information relating to the enforcement costs payable under section 76A when the Sheriff is required to take enforcement action.
- (2) If there is an approved form for such a notice, the notice must be in that form.
- (3) The inclusion in the notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the notice.

### **61 Service of notice**

- (1) Notice of a fine enforcement order may be served on a person:
  - (a) personally, or
  - (b) by post, or
  - (c) by means of a document exchange, or
  - (d) by facsimile transmission or other electronic transmission, or

- (e) by any other manner prescribed by the regulations.
- (2) The address for service of any such notice of a court fine enforcement order includes the address for service of the person in connection with the proceedings in which the fine was imposed.
- (3) The address for service of any such notice of a penalty notice enforcement order includes:
  - (a) the address of the person shown on the relevant penalty notice or supplied by the person in connection with the service of the relevant penalty notice, or
  - (b) if the relevant penalty notice was served on the person in his or her capacity as owner or responsible person for a vehicle or owner of a vessel or was served by being left on a vehicle or vessel—the address shown in the records of Roads and Maritime Services or other public agency as the address of the owner or responsible person at the time the relevant penalty notice was served, or
  - (c) if the relevant penalty notice was served on the person in his or her capacity as the person driving or in charge of a vehicle or vessel—the address specified in a notice given under section 38 (1) (a) as the address of the person in charge of the vehicle or vessel at the time of the alleged offence, or
  - (d) the address provided for the person under section 117, 117AA or 117AB, if the Commissioner is satisfied that it is the most recent address available for the person.

## **62 Time for service of notices by post**

Despite any other provision of this Act, it is presumed that a notice of a fine enforcement order sent to a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period.

## **63 Final date for payment in notices**

- (1) The final date for payment in a notice of a fine enforcement order must be at least 21 days after it is served on the person.
- (2) Accordingly, a notice that is posted may specify a date that is at least 28 days after the penalty reminder notice is posted as the final date for making the payment concerned.

## **64 Extension of final date if notice takes more than 7 days**

- (1) If a notice is served on a person more than 7 days after it was posted, the notice is not invalid merely because it specifies as the final date a date that is less than 21 days after it was served on the person.

- (2) In such a case however, the final date is extended to a date that is 21 days after the notice was served and the notice is taken to specify that date as the final date.

### **Division 3 Driver licence or vehicle registration suspension or cancellation**

#### **65 When enforcement action taken under this Division**

- (1) Enforcement action is to be taken against a fine defaulter under this Division if:
- (a) the fine defaulter has not paid a fine as required by the notice of the fine enforcement order served on the fine defaulter, or
  - (b) the Commissioner has extended the time for payment of a fine, and the fine defaulter has not paid the fine by the extended due date, or
  - (c) the Commissioner has allowed the payment of a fine by instalments, and the fine defaulter has not paid every such instalment at the time specified by the Commissioner.
- (2) Roads and Maritime Services is to take that enforcement action when it is directed by the Commissioner to do so.
- (3) Despite subsections (1) and (2), enforcement action with respect to a fine defaulter's driver licence is not to be taken under this Division if:
- (a) the offence:
    - (i) in respect of which the fine concerned was imposed on the fine defaulter by a court, or
    - (ii) in respect of which the penalty notice from which the fine concerned arises was served on the fine defaulter,occurred while the fine defaulter was under the age of 18 years, and
  - (b) the offence is not a traffic offence.
- (3A) Despite subsections (1) and (2), enforcement action with respect to a fine defaulter's visitor driver privileges is not to be taken under this Division unless:
- (a) the fine defaulter is liable for 2 or more fines under fine enforcement orders, and
  - (b) the fines relate to traffic offences, and
  - (c) subsection (1) (a), (b) or (c) applies to each of those fines.
- (4) Roads and Maritime Services is to cease enforcement action when directed to do so by the Commissioner.

(4A) If Roads and Maritime Services has taken fine enforcement action against a fine defaulter who is granted a first extension of time under this Act for payment of the fine, and the fine defaulter pays 6 instalments in accordance with the extension of time:

- (a) the Commissioner must direct Roads and Maritime Services to cease the enforcement action, and
- (b) Roads and Maritime Services is to cease the enforcement action.

(4B) The Commissioner may direct Roads and Maritime Services to recommence enforcement action in respect of a fine defaulter referred to in subsection (4A) if the fine defaulter fails to pay any further instalment in accordance with the extension of time to pay.

(5) The Commissioner may direct Roads and Maritime Services to cease enforcement action under this Division even if a fine defaulter has not paid all outstanding fines under any fine enforcement order.

(6) In this section:

**traffic offence** means:

- (a) an offence arising under a provision of the following Acts in respect of the use, standing or parking of a motor vehicle:
  - (i) the road transport legislation (within the meaning of the [Road Transport Act 2013](#)) or the former road transport legislation (within the meaning of Part 2 of Schedule 4 to that Act),
  - (ii) the [Roads Act 1993](#),
  - (iii) the [Motor Vehicles \(Third Party Insurance\) Act 1942](#),
  - (iv) the [Recreation Vehicles Act 1983](#), or
- (b) an offence arising under a provision of any other law in respect of the standing or parking of a motor vehicle.

**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, enforcement action can be taken instead under Division 4 (Civil enforcement).

## **66 Suspension or cancellation of driver licence**

(1) Roads and Maritime Services must, without further notice, suspend any driver licence of a fine defaulter against whom it is required to take enforcement action for the balance of the period of the licence.

- (1A) Roads and Maritime Services must suspend the driver licence of a fine defaulter even if the Commissioner has:
- (a) granted an extension of time for the payment of the fine, or
  - (b) allowed the fine defaulter to pay the fine by instalments,
- after requiring Roads and Maritime Services to take enforcement action.
- (2) If the driver licence is suspended and:
- (a) where the Commissioner has granted the fine defaulter an extension of time for payment of the fine, the fine remains unpaid for at least 6 months after the extended due date, or
  - (b) where the Commissioner has allowed the payment of a fine by instalments, an instalment remains unpaid for at least 6 months, or
  - (c) in any other case, the fine concerned remains unpaid for at least 6 months,
- Roads and Maritime Services must, if the Commissioner so directs, cancel the licence.
- (3) Roads and Maritime Services is to remove the suspension of a driver licence if the Commissioner so directs.
- (3A) The obligation to suspend the driver licence of a fine defaulter under subsection (1) extends to any licence that is already suspended when enforcement action is required to be taken under this Division. Accordingly, if the period of suspension comes to an end before the expiry of the licence, Roads and Maritime Services is then to take action under subsection (1) to further suspend the licence if the Commissioner so directs.
- (4) The Commissioner (or Roads and Maritime Services on the Commissioner's behalf) may notify the fine defaulter of the enforcement action taken under this section, but a failure to notify the fine defaulter does not affect that action.
- (5) Despite the suspension or cancellation of a driver licence under this section, a court or Roads and Maritime Services may exercise a function under another Act to suspend or cancel the licence.

#### **66A Suspension of visitor driver privileges**

- (1) Roads and Maritime Services must suspend any visitor driver privileges of a fine defaulter against whom it is required to take enforcement action.
- (2) Roads and Maritime Services must suspend visitor driver privileges even if the Commissioner has, after requiring Roads and Maritime Services to take enforcement action:

- (a) granted an extension of time for the payment of the fine, or
  - (b) allowed the fine defaulter to pay the fine by instalments.
- (3) Roads and Maritime Services is to remove the suspension of visitor driver privileges if the Commissioner directs it to cease enforcement action in respect of the fine defaulter under this Division.
- (4) The statutory rules under the *Road Transport Act 2013* may make further provision for the suspension of visitor driver privileges in connection with fine enforcement orders.
- (5) This section does not limit the powers of Roads and Maritime Services in relation to visitor driver privileges under any other Act.

(6) In this section:

**visiting driver** means a person who:

- (a) does not hold a driver licence, and
- (b) holds a licence or permit to drive a motor vehicle issued in a place outside this jurisdiction.

**visitor driver privileges** means any exemption under road transport legislation (within the meaning of the *Road Transport Act 2013*) that confers authority on a visiting driver to drive a motor vehicle in this jurisdiction, even though the visiting driver does not hold a driver licence.

## **67 Cancellation of vehicle registration**

- (1) Roads and Maritime Services may, without further notice, cancel the registration of all or any motor vehicles of which a fine defaulter is the registered operator (or one of the registered operators) if:
- (a) it is required to take enforcement action against the fine defaulter but the fine defaulter does not hold a driver licence that is in force, and
  - (b) the cancellation of the registration of those motor vehicles is in accordance with any guidelines issued under section 120.
- (2) Roads and Maritime Services must cancel the registration of a vehicle in accordance with this section if the Commissioner so directs.
- (3) The Commissioner (or Roads and Maritime Services on the Commissioner's behalf) may notify the fine defaulter of the enforcement action taken under this section, but a failure to notify the fine defaulter does not affect that action.

## **68 Suspension of dealings with Roads and Maritime Services**

- (1) This section applies to a fine defaulter if:
  - (a) the driver licence or vehicle registration of the fine defaulter is suspended or cancelled under this Division, or
  - (b) Roads and Maritime Services is required to take enforcement action against the fine defaulter under this Division, but any such action to suspend or cancel the driver licence or vehicle registration of the fine defaulter is not available.
- (2) Roads and Maritime Services must, unless the Commissioner otherwise directs, refuse to exercise any of the following functions if this section applies to a fine defaulter:
  - (a) the issue of a driver licence to the fine defaulter or the renewal of the driver licence of the fine defaulter,
  - (b) the registration of a vehicle in the name of the fine defaulter or the renewal of the registration of a vehicle of which the fine defaulter is the registered operator (or one of the registered operators),
  - (c) the transfer to another person of the registration of a vehicle of which the fine defaulter is the registered operator (or one of the registered operators),
  - (d) the issue of a number plate to the fine defaulter,
  - (e) the testing of the fine defaulter for the purpose of the issue of a driver licence,
  - (f) the issue of an unregistered vehicle permit to the fine defaulter,
  - (g) 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*,
  - (h) the issue of trader's plates to the fine defaulter,
  - (i) the processing of a number plate exchange for the fine defaulter,
  - (j) the reservation of a particular number plate for the fine defaulter,
  - (k) the ordering of a particular number plate, or a particular design of number plate, for the fine defaulter,
  - (l) the testing of the fine defaulter to ascertain the fine defaulter's eligibility for a driver's licence,
  - (m) the booking of a driving test for the fine defaulter,
  - (n) the exercise of any other function of Roads and Maritime Services requested by the fine defaulter, being a function of a kind prescribed by the regulations for the

purposes of this section.

- (3) If Roads and Maritime Services refuses to exercise any such function, it must, as soon as practicable, notify the fine defaulter that it has refused to do so because the person is a fine defaulter.
- (3A) Roads and Maritime Services is not obliged to notify the fine defaulter of a refusal under subsection (3) if it has previously notified the fine defaulter of an earlier refusal under that subsection.
- (4) This section ceases to apply to a fine defaulter if the Commissioner so directs Roads and Maritime Services.
- (5) This section applies despite any obligation of Roads and Maritime Services to exercise a function that is imposed by or under any other Act.

#### **69 Interim restoration or reinstatement of licence or registration pending appeal etc**

- (1) A person may apply to Roads and Maritime Services for restoration or reinstatement of a driver licence suspended or cancelled, or vehicle registration cancelled, under this Division if:
  - (a) in the case of a penalty notice enforcement order—the person has lodged an application under Division 5 of Part 3 to have an application to annul the fine enforcement order concerned determined by the Local Court, or
  - (b) in the case of a court fine enforcement order—the person has lodged an appeal against the conviction or sentence in respect of which the fine concerned was imposed or the person has lodged an application under Part 2 of the *Crimes (Appeal and Review) Act 2001* to annul that conviction or sentence,and those proceedings have not been determined.
- (2) Roads and Maritime Services must issue the person with a driver licence or certificate of vehicle registration, as the case requires, by way of restoration or reinstatement of the driver licence or vehicle registration suspended or cancelled under this Division.
- (3) A driver licence or vehicle registration so restored or reinstated has effect, subject to this Act and the *Road Transport Act 2013*, until the date on which:
  - (a) the licence would have expired if the licence had not been suspended or cancelled, or
  - (b) the registration would have expired if the registration had not been cancelled.
- (4) Any such restored or reinstated licence or registration may be suspended or cancelled under this Act following the determination of the proceedings referred to in subsection (1) or in connection with a different fine payable by the person.



- (5) A licence or registration cannot be restored or reinstated under this section if the licence or registration was also suspended or cancelled for reasons that do not give rise to a right of restoration or reinstatement under this section.

#### **69A Interim restoration of visitor driver privileges**

- (1) A person may apply to Roads and Maritime Services for restoration of visitor driver privileges suspended under this Division if:
  - (a) in the case of a penalty notice enforcement order—the person has lodged an application under Division 5 of Part 3 to have an application to annul the fine enforcement order concerned determined by the Local Court and those proceedings have not been determined, or
  - (b) in the case of a court fine enforcement order—the person has lodged an appeal against the conviction or sentence in respect of which the fine concerned was imposed, or the person has lodged an application under Part 2 of the *Crimes (Appeal and Review) Act 2001* to annul that conviction or sentence, and those proceedings have not been determined.
- (2) In such a case, Roads and Maritime Services must restore visitor driver privileges by removing the suspension of visitor driver privileges.
- (3) Any restored visitor driver privileges may be suspended again under this Act following the determination of the proceedings referred to in subsection (1) or in connection with a different fine payable by the person.
- (4) Visitor driver privileges cannot be restored under this section if visitor driver privileges have ceased to apply to the person for some other reason under the road transport legislation.

#### **70 Effect of enforcement action on vehicle insurance**

- (1) A vehicle insurance policy is not terminated by the cancellation of the registration of the vehicle under this Division or the suspension or cancellation of the driver licence of the driver of the vehicle under this Division.
- (2) A claim under a vehicle insurance policy cannot be refused merely because the vehicle's registration is cancelled under this Division or the driver licence of the driver of the vehicle is suspended or cancelled under this Division.
- (3) This section has effect despite anything to the contrary in a vehicle insurance policy or any other agreement.
- (4) In this section, a **vehicle insurance policy** is a policy of insurance in respect of damage or loss caused by or arising out of the use or operation of a vehicle (other than a third-party policy within the meaning of the *Motor Accidents Compensation Act 1999*).

**Note—**

Section 14 of the [Motor Accidents Compensation Act 1999](#) provides that a third-party policy under that Act relating to personal injury is not cancelled by the cancellation of the registration of a motor vehicle under this Division.

## **Division 4 Civil enforcement**

### **71 When enforcement action taken under this Division**

- (1) Enforcement action is to be taken against a fine defaulter under this Division if the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter and:
  - (a) enforcement action is not available under Division 3 to suspend or cancel the driver licence or vehicle registration of the fine defaulter, or
  - (b) the fine remains unpaid even though any available enforcement action was taken under Division 3.
- (2) Enforcement action may be taken under this Division by means of a property seizure order, a garnishee order or a charge on land, or by all or any combination of those means.

**Note—**

If enforcement action under this Division has not been or is unlikely to be successful in satisfying the fine, enforcement action can be taken against the fine defaulter under Division 5 (Community service orders).

### **72 Order to seize property of fine defaulter**

- (1) The Commissioner may make an order for the seizure of the property of a fine defaulter for the purpose of levying the fine payable by the fine defaulter on that property. The order is called a **property seizure order**.

**Note—**

The [Interpretation Act 1987](#) defines property to include land as well as personal property.

- (2) The Commissioner may make a property seizure order only if satisfied that enforcement action is authorised against the fine defaulter under this Division.
- (3) The order may be made in the absence of, and without notice to, the fine defaulter.
- (4) The order is to be directed to the Sheriff, and provided to the Sheriff by the Commissioner for execution.
- (5) (Repealed)
- (6) A property seizure order operates as a writ for the levy of property issued by the Local Court under Part 8 of the [Civil Procedure Act 2005](#) and, for that purpose, the Commissioner is taken to be the judgment creditor.

- (7) If the Sheriff is required to execute a property seizure order and a writ of execution issued by a court or to execute more than one property seizure order, the priority to be accorded to their execution is as follows:
  - (a) a property seizure order is to be executed before a writ of execution (even if the writ was issued before the order),
  - (b) property seizure orders are to be executed in the order in which they were received by the Sheriff (unless the Sheriff is directed by the Commissioner to execute them in a different order).
- (8) The Sheriff is to return a property seizure order to the Commissioner if the order has not been executed within 12 months after it was made. The Commissioner is to cancel an order so returned, but nothing in this subsection prevents the issue of a further order in the matter.
- (9) The Sheriff or other person executing a property seizure order is to cease executing the order if the order is cancelled under section 77.

### **73 Order to garnishee debts, wages or salary of fine defaulter**

- (1) The Commissioner may make an order that all debts due and accruing to a fine defaulter from any person specified in the order are attached for the purposes of satisfying the fine payable by the fine defaulter (including an order expressed to be for the continuous attachment of the wage or salary of the fine defaulter). The order is called a ***garnishee order***.
- (2) The Commissioner may make a garnishee order only if satisfied that enforcement action is authorised against the fine defaulter under this Division.
- (3) The order may be made in the absence of, and without notice to, the fine defaulter.
- (4) The order operates as a garnishee order made by the Local Court under Part 8 of the [Civil Procedure Act 2005](#) and, for that purpose:
  - (a) the Commissioner is taken to be the judgment creditor, and
  - (b) an instalment order under section 107 of that Act includes an order under this Act by the Commissioner for the payment of a fine by instalments, and
  - (c) such other modifications as are prescribed by the regulations have effect.
- (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.
- (6) An order served electronically pursuant to subsection (5):

- (a) if served after 5.00pm on any day, is taken (subject to paragraph (b)) to have been served on the next day, and
- (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.

#### **74 Registration of fine enforcement order as charge on land**

- (1) The Commissioner may apply to the Registrar-General for registration of a fine enforcement order in relation to any land owned by the fine defaulter (including any land owned jointly with another person).
- (2) An application may not be made under this section unless the amount payable under the order (or the total amount payable under the orders) to which the application relates exceeds \$1,000 or such other amount as is prescribed by the regulations.
- (3) An application under this section must define the land to which it relates.
- (4) The Registrar-General must, on application under this section and lodgment of a copy of the fine enforcement order, register the order in relation to the land in such manner as the Registrar-General thinks fit.
- (5) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the Commissioner of the amount payable under the order.
- (6) Such a charge ceases to have effect in relation to the land:
  - (a) on registration of the cancellation of the charge under section 77, or
  - (b) on the sale or other disposition of the property with the consent of the Commissioner, or
  - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.
- (7) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act.
- (8) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (6).
- (9) If:
  - (a) such a charge is created on land of a particular kind and the provisions of any law

of the State provide for the registration of title to, or charges over, land of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (6), taken to have notice of the charge.

(10) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

## **75 Examination of fine defaulter**

- (1) The Commissioner may issue an order (an **order for examination**) under this section for the purpose of enabling enforcement action to be taken under this Division.
- (2) An order for examination may be directed:
  - (a) if the fine defaulter is a natural person—to the fine defaulter, or
  - (b) if the fine defaulter is a corporation—to an officer or former officer of the corporation.
- (3) An order for examination:
  - (a) is to require the person to whom it is directed to attend before the Commissioner or other specified authorised officer, or before a specified officer of a court, at the place specified in the order, and
  - (b) is to require the person to so attend on a day and at a time specified in the order and thereafter as required by the Commissioner or officer to be orally examined as to the fine defaulter's property and other means of satisfying the fine and generally as to the fine defaulter's financial circumstances, and
  - (c) may require the person to produce to the Commissioner or officer, at any such examination, any document or other thing in the person's possession or control that tends to show the fine defaulter's true financial circumstances.
- (4) An order for examination is to be served personally on the person to whom it is directed.
- (5) A person is not bound to produce any document or other thing that is not specified or sufficiently described in the order for examination or that the person would not be bound to produce on a subpoena for production in the Supreme Court.
- (6) An order for examination may not be issued to a person if that person has previously attended an examination within the previous 3 months pursuant to an order for examination under this section.

- (7) An examination under this section may be adjourned:
  - (a) by the Commissioner, in a case where a person is required to attend before the Commissioner or other specified authorised officer, or
  - (b) by a specified officer of a court, in a case where a person is required to attend before the specified officer.
- (8) The Commissioner, authorised officer or specified officer of the court (as the case requires) must notify the person concerned of the time and place for the adjourned examination.
- (9) The Commissioner may, instead of issuing an order for examination, request the fine defaulter by notice to supply the relevant information for the purpose of enabling enforcement action to be taken under this Division. An order for examination may be issued if the notice is not complied with.

#### **75A Enforcement of order for examination**

- (1) If a person who is issued with an order for examination fails to attend in accordance with the order, the Commissioner may issue a warrant for the apprehension of the person and for the person to be brought before the Commissioner or other specified authorised officer, or before a specified officer of a court, for examination in accordance with this section.
- (2) Any such warrant of apprehension:
  - (a) may not be issued unless the Commissioner is satisfied that the order for examination was duly served on the person, and
  - (b) may not be issued until at least 14 days after the person was notified (in the manner required for the service of a fine enforcement order) that a warrant will issue if the person does not attend for examination in accordance with this section, and
  - (c) is to be directed to the Sheriff and may be executed by the Sheriff or by the Sheriff's officers or by any court bailiffs authorised by the Sheriff, and
  - (d) may be executed with the assistance of any police officer.
- (3) The Commissioner may report the following matters to the Supreme Court or the District Court for determination:
  - (a) a failure to attend in accordance with an order for examination,
  - (b) a refusal, without reasonable excuse, to give evidence on oath or affirmation after attending for examination,
  - (c) the giving of false information at an examination,

(d) a failure, without reasonable excuse, to produce any document or thing required to be produced by an order for examination.

(4) The court to which the matter is referred may deal with the matter as if it were a contempt of that court.

#### **76 Power of entry to execute property seizure order**

(1) The person executing a property seizure order may, at any reasonable time of the day or night, enter any premises for the purposes of executing the order.

(2) Subsection (1) does not authorise any such person to enter any part of premises used only for residential purposes without the permission of the occupier of the premises or the authority of a search warrant under this section.

(3) Any such person may apply to an authorised officer for the issue of a search warrant if the person believes on reasonable grounds that there may be property liable to seizure under the property seizure order in any premises.

(4) An authorised officer to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any person who is executing the property seizure order to enter the premises and seize property in the premises in accordance with that or any other property seizure order.

(5) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(6) Without affecting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:

(a) may accompany a person executing a search warrant, and

(b) may take all reasonable steps to assist the person in the exercise of the person's functions under this section.

(7) This section does not authorise a person to seize property under any warrant of execution or order (other than a property seizure order) while the person is in premises in pursuance only of the authority conferred by this section.

(8) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**premises** includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not).

### **76A Sheriff's additional costs of taking enforcement action under this Division**

- (1) The costs and expenses reasonably incurred by the Sheriff in taking enforcement action under this Division and approved by the Commissioner are enforcement costs payable by the fine defaulter under the fine enforcement order.
- (2) The amount of those costs and expenses is to be determined in accordance with the scale applicable to the enforcement of judgment debts under the *Civil Procedure Act 2005*, but is to be reduced by any amount prescribed under section 16 (2) (c) or 44 (2) (c) as payable to the Consolidated Fund.
- (3) For the purposes of this section, the Commissioner has the functions of the registrar of the relevant court with respect to the approval of those costs and expenses.
- (4) Enforcement costs recoverable under this section are payable to the Sheriff and not to the Consolidated Fund.
- (5) The power of the Local Court to review a decision of a registrar of the court in respect of any such enforcement costs applies to a decision of the Commissioner under this section.

**Note—**

Enforcement costs payable under a fine enforcement order form part of the fine—see section 57 (4).

### **77 Cancellation of property seizure, garnishee order or charge on land**

- (1) A property seizure order, garnishee order or charge on land under this Division is cancelled on the service of a community service order on the fine defaulter under Division 5 for the enforcement of the fine concerned.
- (2) A property seizure order, garnishee order or charge on land under this Division is cancelled on the payment of the fine concerned.

**Note—**

The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123.

- (3) The Commissioner may cancel a property seizure order, garnishee order or charge on land at any time for any good reason.
- (4) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge.

## **Division 5 Community service orders**

### **78 When orders may be made**

Enforcement action may be taken against a fine defaulter under this Division if:



- (a) the fine defaulter has not paid the fine as required by the notice of the fine enforcement order served on the fine defaulter, and
- (b) enforcement action under Division 4 has not been or is unlikely to be successful in satisfying the fine.

### **79 Making of community service order against fine defaulter**

- (1) The Commissioner may make a community service order requiring a fine defaulter to perform community service work in order to work off the amount of the fine that remains unpaid.
- (2) The Commissioner may make the order only if satisfied that enforcement action is authorised against the fine defaulter under this Division.
- (3) The Commissioner is not to make an order if satisfied that the person is not capable of performing work under an order or is otherwise not suitable to be engaged in such work.
- (4) The order may be made in the absence of, and without notice to, the fine defaulter.
- (5) The order may be made before the execution of a warrant under Division 4 and in anticipation that enforcement action may not be successful under that Division in satisfying the fine. The order is not to be served if that enforcement action is successful.
- (6) Subject to this Division:
  - (a) Divisions 1 and 4 of Part 7 (other than sections 92 and 93) of the *Crimes (Sentencing Procedure) Act 1999*, and
  - (b) Part 5 of the *Crimes (Administration of Sentences) Act 1999* and any regulations made for the purposes of that Part,

apply to a community service order under this section in the same way as they apply to a community service order under section 8 of the *Crimes (Sentencing Procedure) Act 1999*.

- (6A) Subject to this Division, section 11 of the *Children (Community Service Orders) Act 1987* applies to a community service order under this Act requiring a fine defaulter to perform community service work in relation to a graffiti offence within the meaning of that Act in the same way as it applies to a community service order under that Act.

**Note—**

Section 11 of the *Children (Community Service Orders) Act 1987* requires a community service order to require the offender to perform graffiti clean up.

- (7) In the application of the provisions referred to in subsections (6) and (6A) to a community service order under this section, a reference in those provisions to a court

is taken to be a reference to the Commissioner.

(8) A community service order is to be in the approved form.

#### **80 Service and notice of order**

- (1) As soon as practicable after making a community service order under this Division, the Commissioner must cause a copy of the order and written notice of the order to be served on the fine defaulter.
- (2) The notice must be in the approved form and must include the following information:
  - (a) the place at which, or person to whom, the fine defaulter must present himself or herself, in person, for the purpose of enabling the administration of the order to be commenced,
  - (b) the period within which the fine defaulter must present himself or herself.
- (3) Three copies of the notice must be served on the fine defaulter.
- (4) The fine defaulter must sign 3 copies of the notice in the presence of the person by whom it was served. Of the copies:
  - (a) one is to be kept by the fine defaulter, and
  - (b) one is to be served by the person who served the notice on the fine defaulter on the Commissioner of Corrective Services or the Director-General of the Department of Juvenile Justice, whichever is appropriate, and is to be kept by the Commissioner or Director-General, as appropriate, and
  - (c) one is to be served by that person on, and kept by, the Commissioner.
- (5) A community service order is not invalidated by a failure to comply with this section or section 80A.

#### **80A Provisions relating to service of orders and notice**

- (1) The community service order and notice may be served on the fine defaulter only in accordance with the directions of the Commissioner.
- (2) The order and 3 copies of the notice are to be served personally on the fine defaulter by the Sheriff or the Sheriff's officers or by a court bailiff authorised by the Sheriff.
- (3) The person who serves a community service order under this Division is required to explain the order to the fine defaulter on whom it is served.
- (4) The explanation is to be given in a language likely to be understood by the fine defaulter and is to include information 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.

### **81 Number of hours of community service work**

- (1) The number of hours of community service work, specified in a community service order made under this Division, to be served by the fine defaulter is to be calculated at the rate of 1 hour for each \$15 of the amount of the fine that remains unpaid.
- (2) The number of hours specified in any one order must not exceed 300 hours (in the case of an adult) or 100 hours (in the case of a child). The fine defaulter may be subject to more than one order under this Division at any one time.
- (3) The number of hours specified in any one order is additional to any number of hours of community service work required to be performed by any other order under this Division or otherwise than under this Division. Accordingly, the total number of hours that a person may be required to perform at any one time under another Act does not apply to any hours required to be worked by an order under this Division.
- (3A) In the case of a person who is a child at the time a community service order is made under this Division, community service work may be performed concurrently for the purposes of that order and for the purposes of any other community service order made under this Division or otherwise than under this Division.
- (4) The regulations may increase the amount of \$15 mentioned in this section and section 83. If the regulations do so, the reference to the amount of \$15 in those sections is to be construed as a reference to that increased amount.
- (5) In this section:

**adult** means a person who is of or above the age of 18 years.

**child** means a person who is under the age of 18 years.

### **82 Satisfaction of orders by payment**

If a fine defaulter who is subject to a community service order under this Division duly pays the fine (or the unsatisfied balance of the fine having regard to the number of hours of community service work already performed) the order is taken to be satisfied.

**Note—**

The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123. The amount of the fine includes enforcement costs—see section 57 (4).

### **83 Satisfaction of fine by community service**

- (1) When a fine defaulter who is subject to a community service order under this Division duly complies with the order, the fine concerned is taken to be satisfied.
- (2) When a fine defaulter who is subject to a community service order under this Division duly serves part of the number of hours of community service work to be served under the order, the fine concerned is taken to be satisfied by the amount calculated at the rate of \$15 for each hour of community service work actually served.

### **84 Suspension of orders during imprisonment or detention**

- (1) If a fine defaulter who is subject to a community service order under this Division is imprisoned while the order is in force, the order is suspended during that period of imprisonment. The period that the order is to be in force is extended, and not reduced, by the period that the order is suspended.
- (2) A fine defaulter is imprisoned for the purposes of this section if the fine defaulter is:
  - (a) in a correctional centre on remand or pursuant to a sentence of imprisonment, or
  - (b) in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*) on remand or pursuant to a detention order.

### **85 Provisions relating to orders**

- (1) An appeal does not lie in respect of the making of a community service order under this Division or the failure to make such an order.
- (2), (3) (Repealed)

**Note—**

Provisions of the *Children (Community Service Orders) Act 1987* apply to the order if the fine defaulter is a person to whom that Act applies. In any other case, provisions of Part 5 of the *Crimes (Administration of Sentences) Act 1999* apply to the order.

### **86 Revocation of community service order**

- (1) The Commissioner may revoke a community service order made under this Division if satisfied that the fine defaulter who is subject to the order has failed, without reasonable excuse, to comply with the order or the requirements imposed with respect to the order by or under the *Crimes (Administration of Sentences) Act 1999* or the *Children (Community Service Orders) Act 1987* as the case requires.
- (2) The Commissioner is not to revoke an order under subsection (1) unless the relevant assigned officer (within the meaning of that Act) has reported the breach to the Commissioner. The Commissioner may decide not to revoke an order following the report of a breach of the order to the Commissioner.

- (3) The Commissioner may revoke a community service order made under this Division if satisfied, following a report by the assigned officer, that the fine defaulter is not capable of performing work under the order or is otherwise not suitable to be engaged in such work.
- (4) The Commissioner may, when revoking an order, also revoke other community service orders that have been made against the fine defaulter.
- (5) Notice of the revocation is to be served on the fine defaulter. The notice may be served in the same way as notice of a fine enforcement order may be served.
- (6) The fine defaulter may, within the time specified in the notice, apply in writing to the Commissioner for a review of the revocation. The Commissioner may, if satisfied that the order was not breached or that the breach should be excused, reverse the decision to revoke the community service order.
- (7) The revocation of a community service order does not take effect:
  - (a) until the expiry of the period during which an application for review of the revocation may be made, or
  - (b) if an application for review is duly made—unless and until the application is refused.
- (8) The revocation of an order (or the review of any such revocation) may be made or held in the absence of, and without notice to, the fine defaulter.
- (9) A decision of the Commissioner under this section is (subject to this section) final and is not subject to appeal.

## **Division 6 Imprisonment**

### **87 Imprisonment following breach of community service order**

- (1) After a community service order is revoked under section 86 (1), the Commissioner may by warrant commit the fine defaulter to a correctional centre to be kept there according to the terms of the warrant for the period of imprisonment calculated in accordance with this Division, unless the fine defaulter sooner pays the relevant outstanding fine.
- (2) A single warrant may commit the fine defaulter for 2 or more periods of imprisonment if 2 or more community service orders made against the fine defaulter have been revoked.
  - (2A) A warrant:
    - (a) must be in the approved form, and

- (b) is sufficient authority for any police officer to convey the fine defaulter to the correctional centre identified in the warrant, and
- (c) is sufficient authority for the governor of the correctional centre to keep the fine defaulter in his or her custody for the period of imprisonment calculated in accordance with this Division.

(3) This section is subject to the other provisions of this Division.

### **88 The “relevant outstanding fine”**

- (1) For the purposes of this Division, the **relevant outstanding fine** at any time is the amount of the fine under the relevant fine enforcement order that remains unpaid at that time.

**Note—**

The amount of the fine includes enforcement costs—see section 57 (4).

- (2) In calculating the amount remaining unpaid, account is to be taken of any satisfaction of the fine by service under a community service order under Division 5 or by service of any part of the period of imprisonment under this Division.

**Note—**

The writing off of the fine or the remission of the fine also operates as payment for the purpose of cancelling enforcement action—see sections 101 and 123.

### **89 Intensive correction order**

- (1) A fine defaulter who is committed to a correctional centre by warrant under this Division may apply to the Commissioner of Corrective Services for an order that the fine defaulter’s period of imprisonment be served under an intensive correction order. An application may be made in anticipation of the issue of a warrant.
- (2) The Commissioner of Corrective Services may, on an application under this section, order that the fine defaulter serve the period of imprisonment under a warrant under this Division as imprisonment under an intensive correction order.
- (3) A fine defaulter is not eligible to serve a period of imprisonment under an intensive correction order:
- (a) if the period of imprisonment is less than the minimum period determined in the guidelines under section 120 as appropriate to be served under an intensive correction order, or
  - (b) if the fine defaulter is remanded to or imprisoned in a correctional centre (including as a periodic detainee), or
  - (c) if the fine payable by the fine defaulter is for an offence committed while serving a

period of imprisonment under an intensive correction order, or

(d) if an earlier intensive correction order (whether under this Act or the *Crimes (Sentencing Procedure) Act 1999*) has been revoked because the fine defaulter has failed to serve a sentence of imprisonment in accordance with the requirements of the order, or

(e) in any other circumstances prescribed by the regulations.

(4) On making an order under this section, the warrant committing the fine defaulter to a correctional centre is subject to the terms of the order.

(5) The decision whether or not to grant an application under this section is at the discretion of the Commissioner of Corrective Services, and no appeal lies against a decision not to grant an application in a particular case.

(6) The Commissioner of Corrective Services is to serve notice on the Commissioner of Fines Administration of the making or revocation of an order under this section.

(7) The Commissioner of Fines Administration may replace the original warrant in respect of which the order was made with a fresh warrant in connection with the outstanding fine at the time.

(8) Subject to this section:

(a) Division 1 of Part 5, section 67 and Divisions 3 and 4 (other than sections 72 and 73) of Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, and

(b) Parts 3 and 7 of the *Crimes (Administration of Sentences) Act 1999*, and regulations made under those Parts,

apply to an intensive correction order under this Division in the same way as they apply to an intensive correction order under section 7 of the *Crimes (Sentencing Procedure) Act 1999*.

(9) In the application of those provisions to an intensive correction order under this section, a reference in those provisions to a court is taken to be a reference to the Commissioner of Corrective Services.

(10) The functions of the State Parole Authority under Part 7 of the *Crimes (Administration of Sentences) Act 1999* with respect to the revocation of intensive correction orders are, in relation to an intensive correction order under this Division, to be exercised by the Commissioner of Corrective Services.

#### **89A Service and notice of intensive correction order**

(1) As soon as practicable after making an intensive correction order under this Division, the Commissioner of Corrective Services must cause a copy of the order and written

notice of the order to be served on the fine defaulter and the Commissioner of Fines Administration.

- (2) The notice must be in the approved form and must include the following information:
  - (a) the office of Corrective Services NSW to which the fine defaulter must report,
  - (b) the date on which, and the time at which, the fine defaulter is first to report to that office of Corrective Services NSW.
- (3) Two copies of the notice must be served on the fine defaulter.
- (4) The fine defaulter must sign 2 copies of the notice in the presence of the person by whom it was served. Of the copies:
  - (a) one is to be kept by the fine defaulter, and
  - (b) one is to be served by that person on, and kept by, the Commissioner of Corrective Services.
- (5) An order under section 89 is not invalidated by a failure to comply with this section or section 89B.

#### **89B Provisions relating to service**

- (1) The intensive correction order and notice may be served on the fine defaulter only in accordance with the directions of the Commissioner of Corrective Services.
- (2) The order and 2 copies of the notice are to be served personally on the fine defaulter by the Sheriff or the Sheriff's officers or by a court bailiff authorised by the Sheriff.
- (3) The person who serves an intensive correction order under this Division is required to explain the order to the fine defaulter on whom it is served.
- (4) The explanation is to be given in a language likely to be understood by the fine defaulter and is to include information 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 period of imprisonment served under the order.

#### **90 Calculation of period of imprisonment under warrant**

- (1) The period of imprisonment for the purposes of a warrant under this Division is to be calculated on the basis of the amount of the relevant outstanding fine, as follows:



- (a) the period is to be 1 day for each \$120 (or part of \$120) of the relevant outstanding fine,
- (b) the period is not to be less than 1 day,
- (c) the period is not to exceed 3 months.

(2) (Repealed)

(3) The regulations may increase the amount of \$120 mentioned in this section and section 91. If the regulations do so, the references to the amount of \$120 in this section and section 91 are to be construed as references to that increased amount.

### **91 Satisfaction of fine by imprisonment**

- (1) When a fine defaulter duly serves the total period of imprisonment under a warrant under this Division, the fine concerned is taken to be satisfied.
- (2) When a fine defaulter duly serves part of the period of imprisonment under a warrant under this Division, the fine concerned is then taken to be satisfied by the amount calculated at the rate of \$120 for each day actually served.

### **92 Special provision relating to children**

- (1) A fine defaulter cannot be committed to a correctional centre or a detention centre by a warrant under this Division if the person:
  - (a) was under 18 years of age when the offence concerned was committed, and
  - (b) was under 21 years of age at the time the person was charged with the offence or issued with a penalty notice (as the case requires).
- (2) If a further fine enforcement order is made against the fine defaulter and the person was 18 years of age or older at the time the offence concerned was committed, the fine defaulter may be committed to a correctional centre in respect of the earlier fine enforcement order despite subsection (1) if the fine defaulter is committed to a correctional centre in respect of that further fine enforcement order.

### **93 Terms under warrants to be served consecutively**

- (1) If a fine defaulter is committed to 2 or more terms of imprisonment by one or more warrants of commitment under this Division, the terms are to be served consecutively, not concurrently.
- (2) (Repealed)

### **94 Terms under warrants to be served concurrently with other non-fine default**

### **imprisonment**

- (1) A term of imprisonment (or consecutive terms) for which a fine defaulter has been committed by a warrant under this Division may be served concurrently with any imprisonment of the fine defaulter arising otherwise than by any such warrant.
- (2) (Repealed)

### **95 Execution of warrant**

- (1) If the fine defaulter who is committed to a correctional centre by a warrant under this Division is already in a correctional centre, the warrant may be executed by the officer in charge of the correctional centre or a person authorised by that officer. The warrant is executed by serving a copy of the warrant on the fine defaulter.
- (2) Notice is not required to be given to a fine defaulter of the proposed execution of a warrant under this Division.
- (3) However, a police officer executing a warrant under this Division may, in accordance with guidelines issued under section 120 or (subject to any such guidelines) issued by the Commissioner of Police, delay the execution of the warrant to enable the fine defaulter to pay the relevant outstanding fine or seek the cancellation of the warrant.
- (4) A police officer is to cease executing a warrant under this Division if the fine defaulter pays the relevant outstanding fine (whether to the police officer or in any other manner authorised by this Act).
- (5) The Commissioner of Fines Administration may cancel a warrant issued under this Division if the Commissioner considers that it is appropriate to do so.

### **96 Discharge from custody**

A fine defaulter is to be discharged from the correctional centre to which the fine defaulter has been committed by a warrant under this Division if the fine defaulter duly pays the relevant outstanding fine, unless in the correctional centre in respect of another matter.

#### **Note—**

The relevant outstanding fine is progressively reduced by service of part of the period of imprisonment—see section 88.

### **97 Regulations as to warrants**

The regulations may make provision for or with respect to warrants under this Division, including:

- (a) the form of any such warrants, or
- (b) the execution of any such warrants.

## Division 7 Bodies corporate

### 98 Application of civil and other enforcement procedures

Enforcement action under this Part extends to a fine enforcement order in respect of a fine defaulter that is a body corporate, other than enforcement action under Division 5 (Community service orders) and Division 6 (Imprisonment).

### 99 Modification of enforcement procedures

If the fine defaulter is a body corporate, enforcement action may be taken under Division 4 (Civil enforcement) before or without taking enforcement action under Division 3 (Driver licence or vehicle registration suspension or cancellation).

## Division 8 Fine mitigation

### Subdivision 1 Work and development orders

#### 99A Definitions

In this Subdivision:

**approved organisation** means a person or body approved for the time being by:

- (a) the Director-General of the Department of Attorney General and Justice, or
- (b) a member of staff of the Department of Attorney General and Justice to whom the Director-General of that Department has delegated the power to approve a person or body under this definition.

**approved person**, in relation to a work and development order, means:

- (a) an approved organisation, or
- (b) if the work and development order involves medical or mental health treatment, a health practitioner qualified to provide that treatment and enrolled for the time being in accordance with the guidelines.

**guidelines** means guidelines issued under section 99I.

**health practitioner** means:

- (a) a registered medical practitioner, or
- (b) a registered psychologist, or
- (c) a nurse.

**work and development order** means an order made under this Subdivision requiring a person to do any one or more of the following in order to satisfy all or part of a fine:

- (a) undertake unpaid work for, or on behalf of, an approved organisation (but only with the agreement of that organisation),
- (b) undergo medical or mental health treatment in accordance with a health practitioner's treatment plan,
- (c) undertake an educational, vocational or life skills course,
- (d) undergo financial or other counselling,
- (e) undergo drug or alcohol treatment,
- (f) if the person is under 25 years of age, undertake a mentoring program.

**99B Making an order**

- (1) A work and development order may be made by the Commissioner with respect to a person in relation to all or part of an unpaid fine if:
  - (a) a fine enforcement order has been made with respect to the person in relation to the fine, and
  - (b) the person:
    - (i) has a mental illness, or
    - (ii) has an intellectual disability or cognitive impairment, or
    - (iii) is homeless, or
    - (iv) is experiencing acute economic hardship, or
    - (v) has a serious addiction to drugs, alcohol or volatile substances, and
  - (c) a community service order is not in force against the fine defaulter in respect of the fine, and
  - (d) an application is made in accordance with this Subdivision.
- (2) An application for an order is to:
  - (a) be made to the Commissioner by or on behalf of the person, and
  - (b) be supported by each approved person who is to supervise the person in complying with the order, and
  - (c) set out the grounds for making the order, the activities that are proposed to be carried out under the order and a proposed time for the completion of those activities.
- (2A) If the application for the order is in relation to a person who has a serious addiction

to drugs, alcohol or volatile substances but does not satisfy any of the other criteria referred to in subsection (1) (b), the only activities that the person may be required to carry out under the order are counselling and drug or alcohol treatment.

- (3) An application may be made in anticipation of a fine enforcement order being made with respect to the person in relation to the fine.
- (4) If the regulations prescribe a maximum number of work and development orders that may be made in any particular period, the Commissioner is not to make an order during that period if satisfied that the number of such orders will exceed the number prescribed (even if directed to do so by the Hardship Review Board under section 101B (6)).
- (5) If the Commissioner determines to make an order, the order is to be made in such terms as are agreed between the Commissioner, the applicant and each approved person.
- (6) An order is to specify:
  - (a) the value of the activities that are to be undertaken under the order for the purposes of satisfying the fine to which the order relates, and
  - (b) the nature of any unpaid work that may be required under the order.
- (7) No enforcement action is to be taken against a person under this Part in respect of a fine to which a work and development order relates while the order is in force.

**99BA Assessments of eligibility for orders and keeping of records**

- (1) An application for a work and development order may include an assessment by the approved person or persons supporting the application as to whether the person for whom the order is sought meets any of the criteria specified in section 99B (1) (b).
- (2) If such an assessment is included in the application, the Commissioner is to rely on that assessment when deciding whether to make the work and development order unless the Commissioner has reason to believe that the assessment should not be relied on.
- (3) If an approved person supports an application for a work and development order or includes in such an application an assessment of eligibility for the order, the approved person is to keep records of the supporting evidence for the application or the assessment of eligibility in accordance with the guidelines.
- (4) The Commissioner may, at any time, require the approved person or persons who supported the application or made the assessment to provide all or specified types of that supporting evidence.
- (5) Despite section 99I, the Commissioner may waive a requirement that an application

for a work and development order or an assessment of eligibility for a work and development order be supported by a particular type of evidence if the Commissioner considers the circumstances of the case warrant it.

**99C Variation or revocation of order**

- (1) The Commissioner may vary or revoke a work and development order:
  - (a) if requested to do so by or on behalf of the person subject to the order, or
  - (b) if satisfied that the person subject to the order has failed, without reasonable excuse, to comply with the order, or
  - (c) if of the opinion that information provided in, or in connection with, the application for the order is false or misleading in a material particular, or
  - (d) if of the opinion that information provided in, or in connection with, a report provided to the Commissioner by an approved person who is supervising the person subject to the order is false or misleading in a material particular, or
  - (e) if of the opinion that the person subject to the order does not meet, or no longer meets, any of the criteria referred to in section 99B (1) (b) specified in the application for the order as a ground for the making of the order, or
  - (f) if of the opinion that an approved person who is supervising compliance with the order is unable to continue with that supervision or is in breach of any of the approved person's obligations under this Subdivision, or
  - (g) if of the opinion that the person who is supervising compliance with the order is no longer an approved person.
- (2) The Commissioner is not to take action under subsection (1) (b) unless the Commissioner has taken reasonable steps to consult with the person subject to the order and each approved person in relation to the order.
- (3) An order ceases to be in force when it is revoked.

**99D No appeal except to Hardship Review Board**

Except as provided by section 101B, an appeal does not lie in respect of the making of, the failure to make or the varying or revocation of, a work and development order.

**99E Satisfaction of order**

- (1) If a person subject to a work and development order:
  - (a) complies with the order, the fine, or the part of the fine, to which the order relates is taken to be satisfied, or

(b) pays the fine (or the unsatisfied balance of the fine having regard to the activities already undertaken under the order), the order is taken to be satisfied.

(2) If a person subject to a work and development order complies with some but not all of the activities required by the order, the fine, or the part of the fine, to which the order relates is taken to be satisfied by the value of the activities that have been undertaken at the rate or rates set out in the order.

### **99F Civil liability**

(1) In this section:

**person involved**, in relation to unpaid work under a work and development order, includes any person (including a corporation):

(a) for whose benefit that work is performed, or

(b) who directs or supervises that work, specifies its terms or conditions or controls it,  
or

(c) who owns or occupies the premises or land on which that work is performed,

but does not include the person by whom the work is performed.

(2) No act or omission of a person by whom unpaid work under a work and development order is performed gives rise to civil liability on the part of any person involved in that work if the act or omission occurs in the course of that work.

(3) No act or omission of a person involved in unpaid work under a work and development order gives rise to civil liability to the person by whom the work is performed on the part of the person so involved if the act or omission occurs in the course of that work.

(4) A civil action that would, but for subsection (2) or (3), lie against a person involved in unpaid work lies instead against the Crown.

(5) Subsections (2) and (4) do not apply to an act or omission if it was, or was a necessary part of, an act or omission that was expressly required by the person involved in that work but was not necessary to carry out the work specified in the work and development order.

(6) Subsections (3) and (4) do not apply to an act or omission if:

(a) the work concerned was not work specified in the work and development order, or

(b) the act or omission concerned was, or was a necessary part of, an act or omission intended to cause injury, loss or damage.

(7) It is a term of a work and development order that the person subject to the order

must disclose as soon as possible to the Commissioner and to each approved person:

- (a) any medical, physical or mental condition of which the person is aware (being a condition of a kind that the person is aware substantially increases the risk to the person of injury in performing work of any kind), and
- (b) any substantial change in that condition.

(8) The Commissioner may, on behalf of the Crown, settle any action that lies against the Crown because of this section, and may do so on such terms as the Commissioner thinks fit.

### **99G Persons performing work under orders not workers**

A person who undertakes unpaid work under a work and development order is not to be taken to be employed by, or in a contract of services with, the Crown or any other person and is not:

- (a) a worker for the purposes of the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998*, the *Annual Holidays Act 1944* or the *Long Service Leave Act 1955*, or
- (b) an employee (however described) for the purposes of the *Industrial Relations Act 1996* or any other Act or law.

### **99H Delegation by approved persons**

An approved person (other than an individual) may delegate any of the approved person's functions under this Subdivision with respect to a work and development order to an officer or employee, other than this power of delegation.

### **99I Work and development guidelines**

- (1) The Minister administering the *Crimes (Sentencing Procedure) Act 1999* may issue guidelines (not inconsistent with this Act or the regulations under this Act) for or with respect to work and development orders.
- (2) Without limiting subsection (1), the guidelines may make provision for or with respect to the following matters:
  - (a) determining the eligibility of a person for a work and development order,
  - (b) the supporting evidence required in relation to any aspect of eligibility for a work and development order,
  - (c) the keeping of any such supporting evidence and any other documentation in relation to the carrying out of activities under work and development orders,
  - (d) the value of the activities that are to be undertaken under a work and



development order for the purposes of satisfying the fine to which the order relates,

- (e) the manner of making an application for a work and development order,
  - (f) the requirements for obtaining approval as an approved organisation,
  - (g) the enrolment of health practitioners as approved persons,
  - (h) the revocation of the approval of approved organisations or enrolment of health practitioners as approved persons,
  - (i) the conditions to be complied with and the requirements to be met by approved persons, including (but not limited to) requirements for the auditing of documentation required to be kept by approved persons and for the furnishing of reports on the carrying out of activities under work and development orders.
- (3) The Commissioner, approved persons and other persons exercising functions under this Subdivision are required to comply with the guidelines. However, a failure to comply with a guideline does not affect the validity of any proceedings, decision, order or warrant.
- (4) Nothing in subsection (3) prevents action being taken under this Subdivision to revoke a work and development order or the approval of an approved organisation or enrolment of a health practitioner as an approved person.
- (5) The guidelines are to be prepared in consultation with the Minister administering Part 8.
- (6) The guidelines:
- (a) may be amended or replaced, and
  - (b) are to be published on the NSW legislation website.

### **99J Regulations**

- (1) The regulations may make provision for or with respect to work and development orders.
- (2) (Repealed)

## **Subdivision 2 Time to pay and writing off fines**

### **100 Time to pay**

- (1) After a fine enforcement order is made and before a community service order is issued in the matter, an application for time to pay the fine may be made to the Commissioner by the fine defaulter.

- (1A) However, an application for time to pay a fine may be made before a fine enforcement order is made by:
- (a) a person who is in receipt of a Government benefit, or
  - (b) a person who seeks a combined payment arrangement.
- (2) The Commissioner may, by order, allow further time to pay the fine if satisfied the application is genuine and it appears expedient to do so.
- (3) The Commissioner may:
- (a) extend the time for payment of the whole fine, or
  - (b) allow the fine to be paid by instalments of such amounts, and at such times, as the Commissioner specifies.
- (3A) In particular, the Commissioner may allow a person to pay the fine in instalments, as a regular direct debit, if the Commissioner:
- (a) is satisfied that adequate arrangements are in place for such a regular payment to be made, and
  - (b) agrees to the fine being paid in this manner.
- (4) If an instalment of a fine is not paid by the due date, the remaining instalments then become due and payable unless the Commissioner otherwise orders.
- (4A) An order allowing further time to pay a fine may be amended or revoked by a further order made on the application of the person liable to pay the fine or on the Commissioner's own initiative.
- (4B) An order under this section may be made in relation to more than one fine and may provide for a combined payment arrangement.
- (5) Further enforcement action under this Part is suspended if an application for time to pay is granted and payment of the fine is made in accordance with the order of the Commissioner.
- (6) However, the Sheriff is not required to return any property seized under a property seizure order under Division 4, and a charge on land created under that Division need not be cancelled, until the fine is paid.
- (7) In this section, a **combined payment arrangement** means an arrangement for the payment of a fine or an amount payable under a penalty notice in conjunction with payment of another fine for which a fine enforcement order has been made.

### **101 Unpaid fines may be written off**

- (1) After a fine enforcement order is made and before a community service order is issued in the matter, an application to have the fine written off may be made to the Commissioner by the fine defaulter.
- (1A) The Commissioner may, on the application of a fine defaulter or at the Commissioner's own discretion, write off, in whole or in part, an unpaid fine:
  - (a) if satisfied that, due to any or all of the financial, medical or personal circumstances of the fine defaulter:
    - (i) the fine defaulter does not have sufficient means to pay the fine and is not likely to have sufficient means to pay the fine, and
    - (ii) enforcement action under Division 4 has not been or is unlikely to be successful in satisfying the fine, and
    - (iii) the fine defaulter is not suitable to be subject to a community service order under Division 5, or
  - (b) in accordance with guidelines issued under section 120.
- (1B) The Commissioner must write off, in whole or in part, an unpaid fine if directed to do so by the Hardship Review Board.
- (2) Guidelines issued under section 120 are to extend to fine defaulters who do not have the means to pay the fine or sufficient property for civil enforcement and who are not suitable to undertake work under a community service order.
- (3) Any part of an unpaid fine that is written off is taken to have been paid for the purpose of cancelling enforcement action under this Act.
- (4) Despite subsection (3), any part of an unpaid fine that is written off under this section may be reinstated and enforcement action may be recommenced by the Commissioner in respect of the fine defaulter at any time within 5 years after it is written off if:
  - (a) a further fine enforcement order is made against the fine defaulter, or
  - (b) the Commissioner is satisfied that the fine defaulter has sufficient means to pay the fine, that enforcement action is likely to be successful in satisfying the fine or that the fine defaulter is suitable to be subject to a community service order.

## **Subdivision 3 Hardship Review Board**

### **101A Hardship Review Board**

- (1) There is to be a Hardship Review Board consisting of:

- (a) the Director-General of the Department of Finance and Services, and
  - (b) the Secretary of the Treasury, and
  - (c) the Director-General of the Department of Attorney General and Justice.
- (2) A member of the Hardship Review Board may appoint a person to act in the place of the member at meetings of the Board.
- (3) An acting member, while so acting, has the functions of, and is taken to be, a member of the Hardship Review Board.

**101B Reviews by Hardship Review Board**

- (1) The Hardship Review Board may, on an application by or on behalf of a fine defaulter, review a decision by the Commissioner with respect to the following:
- (a) the making of, the failure to make or the varying or revocation of, a work and development order,
  - (b) the making of, or the failure to make, a time to pay order,
  - (c) the writing off or the failure to write off, the whole or part of, an unpaid fine.
- (2) A fine defaulter may not make more than one application under this section in relation to the same fine.
- (3) The Hardship Review Board may determine the procedure for a review and may conduct a review in the absence of the parties.
- (4) The Commissioner may suspend enforcement action against a fine defaulter who makes an application under this section but is not required to do so unless given a direction under this section.
- (5) The Hardship Review Board may direct that enforcement action under this Part against a fine defaulter be suspended pending its review, if it thinks it appropriate in the circumstances.
- (6) On a review, the Hardship Review Board may direct the Commissioner to do any one or more of the following in respect of the fine defaulter on such terms as the Board may direct:
- (a) make, revoke or vary a work and development order,
  - (b) make, revoke or vary a time to pay order,
  - (c) write off, in whole or in part, an unpaid fine.
- (7) The Hardship Review Board may give a direction under this section if it thinks it is appropriate to do so having regard to the circumstances of the fine defaulter and the

matters set out in section 99B, 100 or 101 (1A) (a) and the guidelines issued under section 120, as the case requires.

### **101C Disclosure of information by Hardship Review Board**

The Hardship Review Board, a member of the Board, or a person otherwise engaged in the administration of this Subdivision, may disclose to the Commissioner, or any other person engaged in the administration of this Act, information obtained in the administration of this Subdivision.

## **Division 9 Miscellaneous**

### **102 Disposition of money paid by or recovered from fine defaulters**

- (1) Any fine paid by a fine defaulter after the making of a fine enforcement order is payable to the Commissioner.
- (2) However, with the approval of the Commissioner, any fine paid to another person or body may be directly credited to the Consolidated Fund or other account, or retained, in accordance with this or any other Act or law.

#### **Note—**

Fines include enforcement costs—see section 57 (4).

### **102A Liability of minors for enforcement costs**

- (1) The Commissioner must waive the payment by a fine defaulter of any enforcement costs in respect of a fine enforcement order, other than the fee for the issue of a fine enforcement order, if the offence:
  - (a) in respect of which the fine concerned was imposed on the fine defaulter by a court, or
  - (b) in respect of which the penalty notice from which the fine concerned arises was served on the defendant,occurred while the fine defaulter was under the age of 18 years.
- (2) Subsection (1) does not apply in respect of a fine enforcement order if one or more subsequent fine enforcement orders are made against the fine defaulter in respect of an offence that occurred when the fine defaulter was of or above the age of 18 years.

### **103 Electronic transmission of documents**

- (1) The following directions, orders and warrants under this Part may be transmitted electronically to the persons to whom they are given or directed:
  - (a) a direction of the Commissioner to Roads and Maritime Services under Division 3,

- (b) a property seizure order or warrant of apprehension directed to the Sheriff under Division 4,
  - (b1) a garnishee order or order for examination under Division 4, or a summons requiring a garnishee under such a garnishee order to show cause, given to the Sheriff for service,
  - (c) a community service order given to the Sheriff for service under Division 5,
  - (d) a warrant of commitment to a correctional centre directed to a police officer or other officer under Division 6.
- (2) For the purpose of executing any such order or warrant, the Sheriff or other officer to whom the order or warrant is so transmitted is to cause a copy of the order or warrant to be converted into written form and to be endorsed with the following words:

This document has been transmitted electronically by the Commissioner of Fines Administration in accordance with section 103 of the *Fines Act 1996*.

#### **104 Power of person executing order or warrant to demand name and address**

- (1) The Sheriff or other person executing an order or warrant under this Part may require a person whom the Sheriff or other person suspects on reasonable grounds to be the fine defaulter to state his or her full name and residential address and to produce evidence of his or her identity.
- (2) A person is not required to comply with such a requirement unless the person was warned on that occasion that a failure to comply is an offence.
- (3) A person who, without reasonable excuse, fails to comply with such a requirement is guilty of an offence.

Maximum penalty: 10 penalty units.

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

#### **105 Definitions**

In this Part:

**conviction** means a conviction or order entered or made (before or after the commencement of this Part) in proceedings for an offence, including a penalty notice enforcement order or similar order.

**fine** includes:

- (a) a pecuniary penalty, pecuniary forfeiture and pecuniary compensation, and
- (b) fees, charges and costs payable by a body corporate under an order made in

proceedings in which the conviction was entered in respect of the body corporate.

**New South Wales fine** means a fine payable under a conviction of a New South Wales court (including a fine payable under a penalty notice enforcement order under this Act).

**reciprocating court** means a court, or a court included in a class of court, declared under section 106 to be a reciprocating court or a class of reciprocating courts.

**relevant officer** of a reciprocating court means the registrar or other corresponding officer of the court.

**State** includes a Territory.

#### **106 Declaration of reciprocating court**

Where another State has laws providing for enforcement in that State of a New South Wales fine against a body corporate, the regulations may:

- (a) declare a court that exercises criminal jurisdiction in that State to be a reciprocating court, or
- (b) declare a class of courts that exercise criminal jurisdiction in that State to be a class of reciprocating courts.

#### **107 Enforcement of fine imposed by reciprocating court**

(1) Where, under a conviction of a reciprocating court, a fine is payable by a body corporate having or appearing to have property in New South Wales and the Commissioner receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the fine, accompanied by:

- (a) a copy, certified by the relevant officer to be correct, of the conviction, and
- (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid,

the Commissioner is required:

- (c) to register the certified copy of the conviction, and
- (d) to note, on the certified copy, the date of registration.

(2) On registration of a conviction:

- (a) the conviction is, for the purposes of this Part, taken to be a conviction of a New South Wales court, and
- (b) the Commissioner is required to make a fine enforcement order under this Act for the purpose of recovering the amount specified as unpaid in the certificate relating to conviction.

- (3) Where a request is made under this section in respect of a fine payable under a conviction of a reciprocating court and the Commissioner, after the request, receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or in part of the amount of the fine:
  - (a) the Commissioner must record particulars of the payment, and
  - (b) the payment is, for the purposes of enforcement action under this Act, taken to be payment in pursuance of the fine enforcement order made under this section.
- (4) The Commissioner is required to remit to the relevant officer of the reciprocating court concerned the amount of any fine recovered in pursuance of a fine enforcement order made under this section.
- (5) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court is taken to have been so signed unless the contrary is proved.

#### **108 Enforcement of New South Wales fine by reciprocating court**

- (1) Where another State has laws providing for enforcement in that State of a New South Wales fine against a body corporate, the Commissioner may (on the Commissioner's own behalf or on behalf of the registrar of a New South Wales court) send a request in writing to the relevant officer of the reciprocating court for the enforcement of the New South Wales fine.
- (2) Any amount received from a reciprocating court by the Commissioner or the registrar of a court in satisfaction of the whole or part of a New South Wales fine is to be applied as if the amount had been paid to the Commissioner or registrar by the body corporate by which the fine was payable in satisfaction of the whole or part of the fine.
- (3) If:
  - (a) a request has been made under subsection (1), and
  - (b) an amount is received by the Commissioner (otherwise than from the relevant officer of the reciprocating court to whom the request was made) in satisfaction of the whole or part of the fine,

the Commissioner is required, as soon as practicable, to notify that relevant officer of the amount of the payment.

### **Part 5A Interstate fine enforcement**



## Division 1 General

### 108A Definitions

(1) In this Part:

**another jurisdiction** means a jurisdiction other than New South Wales.

**discharged**, in relation to an interstate fine or part of such a fine, means discharged because of payment, remission, pardon or otherwise.

**interstate fine** means a monetary penalty that is payable by a person under an order in force under the law of another jurisdiction for any one or more offences, or alleged offences, against the law of that jurisdiction, and includes:

- (a) any costs (including expenses or disbursements) payable by the person under the order, and
- (b) such other amounts (if any) as may be prescribed by the regulations.

**interstate fine enforcement authority** for an interstate fine means a court, Government Department or other agency (or an officer of a court, Government Department or other agency) that is responsible for the enforcement of the fine in the originating jurisdiction.

**interstate fine enforcement order** means an order under section 108C.

**jurisdiction** means a State or Territory.

**NSW fine** means a fine for which New South Wales is the originating jurisdiction.

**NSW fine enforcement order** means a fine enforcement order in relation to a NSW fine.

**offender**, in relation to an interstate fine or NSW fine, means the person on whom the fine was imposed.

**order** includes:

- (a) a verdict or judgment, and
- (b) a notice requiring the payment of a fine for an offence or alleged offence.

**originating jurisdiction** means the jurisdiction in which the order under which a fine or interstate fine is payable was made.

**participating jurisdiction** means another jurisdiction:

- (a) in which NSW fine enforcement orders are enforceable under the laws of that jurisdiction, or

- (b) that is prescribed by the regulations to be a participating jurisdiction for the purposes of this Part.

**this jurisdiction** means New South Wales.

- (2) If a provision of this Part confers a function on the originating jurisdiction for an interstate fine, that function may be exercised by:
  - (a) an interstate fine enforcement authority for the interstate fine, or
  - (b) any other body or person that the Commissioner is satisfied is authorised to exercise the function on behalf of the originating jurisdiction.

References to the originating jurisdiction are to be construed accordingly.

### **108B Relevant connection of offender with a jurisdiction**

For the purposes of this Part, an offender has a **relevant connection** with a jurisdiction if the offender has any one or more of the following connections with the jurisdiction:

- (a) the offender is resident in the jurisdiction,
- (b) the offender holds a licence or permit to drive a motor vehicle issued in the jurisdiction,
- (c) the offender has debts due and accruing in the jurisdiction in respect of which a garnishee order could be made,
- (d) the offender has a motor vehicle that is registered in the jurisdiction,
- (e) the offender has property that is located in the jurisdiction,
- (f) the offender has such other connection with the jurisdiction as may be prescribed by the regulations.

## **Division 2 Enforcement of interstate fines in NSW**

### **108C Power to make interstate fine enforcement orders**

- (1) The Commissioner may make an order (an **interstate fine enforcement order**) for the enforcement of an interstate fine in this jurisdiction.
- (2) An interstate fine enforcement order may be made in relation to an interstate fine only if:
  - (a) the originating jurisdiction for the interstate fine is a participating jurisdiction, and
  - (b) a request for the order has been duly made under this Part by the interstate fine enforcement authority for the interstate fine, and

- (c) Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth does not apply to the fine.

**Note—**

Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth permits certain interstate fines imposed by courts to be registered in New South Wales and enforced in the same way as NSW court imposed fines. Accordingly, court fine enforcement orders can be made in relation to registered fines under Division 3 of Part 2 (see section 14). This Part provides for the enforcement of interstate fines to which Part 7 of the Commonwealth Act does not apply, such as administrative fines.

- (3) A single order may be made for the enforcement of 2 or more interstate fines payable by a person.
- (4) An interstate fine enforcement order may be made in the absence of, and without prior notice to, the person liable to pay the interstate fine.
- (5) The Commissioner must not make an interstate fine enforcement order unless the originating jurisdiction for the fine, or a person or body acting on its behalf, is required (whether because of statutory duty, agreement or otherwise) to notify the Commissioner if the fine is partially or fully paid in the originating jurisdiction.

**108D Effect of interstate fine enforcement order**

- (1) Part 4 (Fine enforcement action) applies to the enforcement of an interstate fine following the making of an interstate fine enforcement order in the same way as it applies to a NSW fine following the making of a NSW fine enforcement order.
- (2) For that purpose:
- (a) a reference in that Part to a fine enforcement order includes a reference to an interstate fine enforcement order, and
- (b) a reference in that Part to a fine includes a reference to an interstate fine and the enforcement costs payable under the interstate fine enforcement order.
- (3) Part 8 applies to an interstate fine the subject of an interstate fine enforcement order or a request for an interstate fine enforcement order as if:
- (a) a reference to a fine included a reference to the interstate fine, and
- (b) a reference to a fine defaulter included a reference to the offender in relation to the interstate fine, and
- (c) a reference to a fine enforcement order included a reference to an interstate fine enforcement order.
- (4) Parts 4 and 8 apply with any other modifications provided for by this Part or the regulations.

**108E Request for interstate fine enforcement order**

- (1) The originating jurisdiction for an interstate fine may request the Commissioner to make an interstate fine enforcement order in relation to the fine if:
  - (a) the liability of the offender to pay the fine has not been fully discharged, and
  - (b) there is reason to believe that the offender has a relevant connection with this jurisdiction.
- (2) The request must:
  - (a) be made in writing, and
  - (b) include all information required by the Commissioner to make an interstate fine enforcement order.
- (3) A request for the making of an interstate fine enforcement order may be made by post, facsimile or other electronic transmission, or by any other method approved by the Commissioner.
- (4) A single request may be made for more than one interstate fine, in which case this section applies to each of the fines to which that request relates.
- (5) A request may not be made under this section in relation to an interstate fine if:
  - (a) action to enforce the fine is being taken in another jurisdiction, or
  - (b) Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth applies to the fine.

**108F Form of interstate fine enforcement order**

An interstate fine enforcement order must specify the following matters:

- (a) the offender's name, address and date of birth (if known),
- (b) a description of the offence, or alleged offence, in respect of which each fine to which the order applies was imposed,
- (c) the originating jurisdiction and the name of the interstate fine enforcement authority that requested the making of the order,
- (d) the date on which the fine was imposed,
- (e) the amount required to be paid, being the amount of the fine that remains to be paid, together with specified enforcement costs payable in this jurisdiction.

**108G Amendment or withdrawal of request for interstate fine enforcement order**

- (1) The originating jurisdiction for an interstate fine may, at any time, by notice in writing

to the Commissioner, request the Commissioner to amend or withdraw an interstate fine enforcement order for the interstate fine.

- (2) The request may be given by post, facsimile or other electronic transmission, or by any other method approved by the Commissioner.
- (3) The request must include all information required by the Commissioner to amend or withdraw the order.
- (4) A request may be made whether or not the interstate fine has been paid.
- (5) A notice given to the Commissioner by the originating jurisdiction for an interstate fine to the effect that a fine has been partially or fully paid in the originating jurisdiction is taken:
  - (a) to be a request for amendment of any interstate fine enforcement order that applies to the fine (if the fine has been partially paid), or
  - (b) to be a request for the withdrawal of an interstate fine enforcement order that applies to the fine or, if the order relates to more than one fine, for the partial withdrawal of the order as it relates to that particular fine (if the fine has been fully paid).

**108H Amendment or withdrawal of interstate fine enforcement orders**

- (1) The Commissioner may (and, if requested by the originating jurisdiction for the interstate fine, must) amend an interstate fine enforcement order:
  - (a) to reduce the amount that is payable under the order to recognise payments made in the originating jurisdiction to partially discharge the fine, or
  - (b) to otherwise correct an error.
- (2) The Commissioner may withdraw an interstate fine enforcement order if satisfied that:
  - (a) the liability of the offender to pay an interstate fine to which the order applies has been fully discharged (otherwise than by payment to the Commissioner), or
  - (b) the person named in the order is not the same person as the person in respect of whom a fine to which the order applies was imposed, or
  - (c) the order was otherwise made in error.
- (3) An interstate fine enforcement order may be completely withdrawn or partially withdrawn to the extent that it applies to a particular fine.
- (4) An interstate fine enforcement order must be withdrawn, or partially withdrawn, in accordance with any request for withdrawal made by the originating jurisdiction for the interstate fine.

- (5) The Commissioner is to provide written confirmation to the originating jurisdiction that an interstate fine enforcement order has been withdrawn or amended in accordance with a request duly made by that jurisdiction.

**108I Effect of amendment or withdrawal of interstate fine enforcement orders**

- (1) If an interstate fine enforcement order is amended:
- (a) the order continues to have effect in its amended form, and
  - (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under the order (as amended), a NSW fine enforcement order or another interstate fine enforcement order, and
  - (c) any amount that has already been paid under the order is taken to have been paid under the order (as amended), and
  - (d) any excess amount paid is repayable to the person by whom it was paid.
- (2) If an interstate fine enforcement order is withdrawn completely:
- (a) the order then ceases to have effect, and
  - (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under a NSW fine enforcement order or another interstate fine enforcement order, and
  - (c) enforcement costs are not payable under the order, and
  - (d) any excess amount paid is repayable to the person by whom it was paid.
- (3) If an interstate fine enforcement order is partially withdrawn to the extent that it applies to a particular fine:
- (a) the order continues to have effect in respect of the remaining interstate fines to which it applies, and
  - (b) any excess amount paid is repayable to the person by whom it was paid.
- (4) The withdrawal of an interstate fine enforcement order does not prevent the making of a further order in respect of the interstate fine.
- (5) In this section, an **excess amount paid** is any amount paid in excess of the total of the following:
- (a) the enforcement costs (if any) payable under the interstate fine enforcement order,
  - (b) the amounts payable under any NSW fine enforcement orders in force in relation to the offender,

- (c) if the interstate fine enforcement order is amended or partially withdrawn, the amount payable under the order as in force after its amendment or partial withdrawal.

**108J Enforcement costs payable under interstate fine enforcement orders**

- (1) The following enforcement costs are payable under an interstate fine enforcement order:
  - (a) any amounts prescribed by the regulations as enforcement costs for interstate fine enforcement orders,
  - (b) the costs and expenses referred to in section 76A (Sheriff's additional costs of taking enforcement action under this Division).
- (2) The following applies to any such enforcement costs:
  - (a) an amount may be prescribed as the enforcement costs payable to the Commissioner on the making of the order,
  - (b) an amount may be prescribed as the enforcement costs payable to Roads and Maritime Services if any enforcement action is taken by Roads and Maritime Services under Division 3 of Part 4 before payment is made under the order,
  - (c) an amount may be prescribed as the enforcement costs payable into the Consolidated Fund if any enforcement action is taken by the Sheriff or other official under Division 4 of Part 4 before payment is made under the order.

**108K Application of amounts recovered**

- (1) Any amount recovered as a consequence of the making of an interstate fine enforcement order is to be applied as follows:
  - (a) firstly, towards enforcement costs payable under the interstate fine enforcement order,
  - (b) secondly, towards the amount payable under any NSW fine enforcement orders in force in relation to the offender,
  - (c) thirdly, towards the amount payable under the interstate fine to which the interstate fine enforcement order applies.
- (2) The Commissioner and an interstate fine enforcement authority for an interstate fine to which an interstate fine enforcement order applies may enter into arrangements for the payment to the authority or its nominee of any amounts that are payable under this section towards the interstate fine.
- (3) Section 121 (Fines payable into Consolidated Fund) does not apply in relation to any amount payable under this section towards the interstate fine.

#### **108L Modifications to application of Part 4**

Part 4 applies in relation to an interstate fine subject to the following modifications:

- (a) Division 6 (Imprisonment) of that Part does not apply in relation to an interstate fine,
- (b) section 69 applies in relation to an interstate fine enforcement order as if a reference to an appeal against conviction or sentence included a reference to an appeal against, or an application for the review of, the interstate fine under the law of the originating jurisdiction,
- (c) the amount of costs and expenses payable as enforcement costs in this jurisdiction under section 76A is to be reduced by any amount prescribed under section 108J (2) (c) as payable to the Consolidated Fund,
- (d) section 101 is to be read as if a reference to the writing off of a fine were limited to the writing off of the enforcement costs for the issue of an interstate fine enforcement order,
- (e) section 101B (1) (c) is to be read as if it were limited to the writing off, or the failure to write off, the whole or part of, the enforcement costs for the issue of an interstate fine enforcement order.

#### **Division 3 Enforcement of NSW fine enforcement orders in participating jurisdictions**

##### **108M Commissioner may request enforcement of NSW fine enforcement order**

- (1) The Commissioner is authorised:
  - (a) to make a request in accordance with the law of a participating jurisdiction for the enforcement in that jurisdiction of a NSW fine enforcement order, and
  - (b) to request the amendment or withdrawal of enforcement action in that jurisdiction in accordance with the law of the participating jurisdiction, and
  - (c) to exercise the functions of a fine enforcement officer under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth.
- (2) The Commissioner may make a request for the enforcement of a NSW fine enforcement order in a participating jurisdiction only if:
  - (a) the liability of the offender to pay the NSW fine to which the NSW fine enforcement order applies has not been fully discharged, and
  - (b) the Commissioner is satisfied that enforcement action under this Act has not been successful or is likely to be unsuccessful, and
  - (c) there is reason to believe that the offender has a relevant connection with the



participating jurisdiction, and

- (d) no other enforcement action is being taken in relation to the order in any other participating jurisdiction.
- (3) Subsection (2) does not affect any additional requirements that apply to a request for registration of a fine under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth.
- (4) The Commissioner may enter into arrangements with a participating jurisdiction for the payment to the Commissioner or the Commissioner's nominee of any amounts that are recovered in that jurisdiction in the enforcement of a NSW fine enforcement order.
- (5) Any amount recovered as a consequence of the enforcement in another jurisdiction of a NSW fine enforcement order (other than for enforcement costs) is to be dealt with as if the amount was paid on the imposition of the NSW fine.
- (6) For the purposes of this section, a request for registration of a NSW fine in another jurisdiction under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth is taken to be a request for enforcement of a NSW fine enforcement order.

**108N Enforcement action in this jurisdiction prohibited during interstate enforcement action**

- (1) The Commissioner is not to take any further action under this Act in relation to the enforcement of a NSW fine enforcement order in this jurisdiction if the Commissioner has requested enforcement action in a participating jurisdiction or the fine has been registered in another jurisdiction under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth.
- (2) However, the Commissioner may take further action in relation to the enforcement of the NSW fine enforcement order:
  - (a) if the NSW fine ceases to be a registered fine under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth (in the case of enforcement action authorised in a participating jurisdiction because the fine was a registered fine under Part 7 of that Act), or
  - (b) if the participating jurisdiction, or a person or body acting on its behalf, provides written notice to the Commissioner that the participating jurisdiction has ceased enforcement action in that jurisdiction in relation to the order (in any other case).
- (3) This section has effect despite anything to the contrary in this Act.

### **108O Notification of payments made in this jurisdiction**

The Commissioner must notify a participating jurisdiction of any payment made in this jurisdiction in relation to a NSW fine:

- (a) after the Commissioner requests enforcement action in relation to the fine in the participating jurisdiction, or
- (b) after the fine is registered in that jurisdiction under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth.

## **Division 4 Miscellaneous**

### **108P Relationship with Part 5**

The provisions of this Part are in addition to, and do not derogate from, the provisions of Part 5.

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

### **109 Application**

- (1) This Part applies to the enforcement of payment of the following (referred to in this Part as ***ancillary money orders***):
  - (a) any witnesses' expenses payable by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer,
  - (b) any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer,
  - (c) any monetary forfeiture or monetary compensation made or awarded by a court in proceedings for an offence,
  - (d) any other amounts payable under an order of a court of a kind prescribed by the regulations,but does not apply to the enforcement of payment of any amount that is a fine within the meaning of section 4.
- (2) In this section, ***proceedings for an offence*** includes:
  - (a) proceedings for an apprehended violence order, and
  - (b) proceedings on appeal in respect of proceedings for an offence.

### **109A Payment of ancillary money orders**

Division 2 of Part 2 applies to the payment of ancillary money orders in the same way as it applies to the payment of fines.

### **110 Enforcement as civil judgments**

- (1) Subject to section 109A, an ancillary money order is enforceable as if it were a judgment for the payment of that amount under the [Civil Procedure Act 2005](#).
- (2) The order may be entered in the records of the Local Court as a judgment given in the Local Court for a debt due to the person to whom the payment is required to be made by that order.
- (3) The order may be so entered even though the order was made by a court that is not the Local Court or the amount ordered to be paid exceeds the jurisdictional limit of the Local Court.
- (4) The method of enforcement provided by this section does not affect any other remedy for enforcement provided by any other Act or law.

## **Part 7 Enforcement of bail agreements**

### **111 Definitions**

In this Part:

***appeal*** means:

- (a) an application to the Local Court to have a forfeiture order set aside duly made under Part 3 of Schedule 2 to the [Bail Act 2013](#), or
- (b) an appeal to the District Court against the Local Court's determination of an objection to a forfeiture order or of an application to set aside a forfeiture order duly made under Part 4 of Schedule 2 to the [Bail Act 2013](#).

***forfeited bail money*** means unpaid bail money the subject of a forfeiture order under Schedule 2 to the [Bail Act 2013](#).

***forfeited bail security*** means bail security given in relation to bail money the subject of a forfeiture order under Schedule 2 to the [Bail Act 2013](#).

### **112 Enforcement of forfeited bail money**

- (1) Part 4 (Fine enforcement action) applies to forfeited bail money as if the amount payable were a fine imposed by a court for an offence.
- (2) The application of that Part is subject to the following:
  - (a) the Commissioner is to make a court fine enforcement order for the purposes of

taking enforcement action (being a form of order that is appropriate to the circumstances of the case),

- (b) enforcement costs are not payable on the making of the order,
- (b1) if the Commissioner is served with a copy of an appeal in relation to forfeited bail money, action under Part 4 may not be commenced or continued until proceedings on the application or appeal are finally determined,
- (c) all other necessary or prescribed modifications to the application of that Part apply.

#### **112A Enforcement of forfeited bail security**

- (1) Section 72 applies to a forfeited bail security as if the bail money in relation to which it is given were a fine imposed by a court for an offence.
- (2) The application of that section is subject to the following:
  - (a) if the Commissioner is served with a copy of an appeal in relation to the bail money for which the forfeited bail security is given, action under section 72 may not be commenced or continued until proceedings on the application or appeal are finally determined,
  - (b) all other necessary or prescribed modifications to the application of that section apply.

### **Part 8 Administration**

#### **113 Commissioner of Fines Administration**

- (1) There is to be a Commissioner of Fines Administration.
- (2) The Commissioner is to be employed in the Public Service.
- (3) In any Act, or any instrument made under an Act, a reference to the Commissioner of Fines Administration is a reference to the person employed in the Public Service to exercise the functions of the Commissioner.

#### **114 Functions of Commissioner**

- (1) The Commissioner has the functions conferred or imposed on the Commissioner by or under this or any other Act.
- (2) The Commissioner:
  - (a) may enter into arrangements with persons who issue penalty notices, or on whose behalf penalty notices are issued, for or with respect to such penalty notices, including but not limited to:

- (i) amending such penalty notices to correct minor errors, and
  - (ii) reviewing or withdrawing such penalty notices, and
  - (iii) refunding amounts paid under such penalty notices, and
  - (iv) the receipt, recovery and collection of amounts payable under such penalty notices, and
- (b) may receive, recover and collect, and may otherwise deal with, those amounts in accordance with those arrangements, and
- (c) may do all such things as may be necessary or convenient for the exercise of the functions referred to in paragraphs (a) and (b), including:
- (i) the issuing of court attendance notices, and
  - (ii) the demanding and recovering of fees and charges with respect to the provision of services.
- (3) The Commissioner has the function of administering the following:
- (a) the making of fine enforcement orders,
  - (b) the taking of enforcement action against fine defaulters under this Act,
  - (c) the write off policy for outstanding fines,
  - (d) the receipt and collection of fines.

### **115 Use of name "State Debt Recovery"**

- (1) The Commissioner may, in the exercise of functions under this Act, use the name "State Debt Recovery".
- (2) Legal proceedings may be taken by or against the Commissioner in the name "State Debt Recovery".
- (3) The Commissioner may authorise the use of the name "State Debt Recovery" for any other purpose.
- (4) A person must not take proceedings or carry on any other activity under the name "State Debt Recovery" unless authorised to do so by or under this Act.  
Maximum penalty: 10 penalty units.
- (5) A person who takes proceedings in the name of "State Debt Recovery" is taken to be authorised to take those proceedings, in the absence of evidence to the contrary.
- (6) This section does not prevent proceedings from being taken by or against the

Commissioner under the Commissioner's title.

### **116 Employees**

- (1) Persons may be employed in the Public Service to assist the Commissioner in the exercise of his or her functions.
- (2) The Commissioner may engage consultants or contractors to assist the Commissioner in the exercise of his or her functions.

### **116A Delegation**

- (1) The Commissioner may delegate to any person employed in the Public Service any function of the Commissioner under this Act, other than this power of delegation.
- (2) The Commissioner may delegate to any person any of the following functions of the Commissioner:
  - (a) the function of serving notice of an order under section 59,
  - (b) the function of notifying a fine defaulter of enforcement action under section 66,
  - (c) the function of serving (but not issuing) an order for examination.

### **116B Exercise of enforcement functions**

- (1) An enforcement function may be exercised by the Commissioner or by any person employed in the Public Service who is authorised by the Commissioner to exercise that function.
- (2) A person authorised to exercise enforcement functions is an **authorised officer** for the purposes of this Act.
- (3) The Commissioner and any authorised officers have, in the exercise of enforcement functions, the same protection and immunities as officers of a court.
- (4) In this section, **enforcement function** means a function of the Commissioner of making or issuing an order or warrant under this Act.

### **116C Personal liability**

- (1) A matter or thing done or omitted by the Commissioner, an authorised officer or any other person engaged in the administration of this Act does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the Commissioner, authorised officer or other person so acting personally to any action, liability, claim or demand.
- (2) Any liability that would, but for subsection (1), attach to a person, attaches instead to the State.

### **117 Access to information held by police and government agencies**

- (1) Police officers or other members of the NSW Police Force and government agencies are authorised and required to provide the Commissioner, on request, with available information about the criminal record, address, property, date of birth or driver licence number of a fine defaulter for the purposes of the Commissioner taking action against the person to enforce payment of a fine.
- (1A) Police officers or other members of the NSW Police Force and government agencies are authorised and required to provide the Commissioner, on request, with available 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.
- (2) In this section, **government agency** includes:
  - (a) Roads and Maritime Services, and
  - (b) a State owned corporation.

### **117AA Access to information held by employers**

The Commissioner is authorised to obtain information about the address and employment details of a fine defaulter from an employer or past employer of the fine defaulter for the purposes of the enforcement of a garnishee order (within the meaning of section 73).

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

- (1) A credit reporting agency is authorised to disclose to the Commissioner, on written request, relevant information about a fine defaulter contained in the person's credit information file for the purposes of the Commissioner taking action against the person to enforce payment of a fine.
- (2) In this section:

**credit information file** and **credit reporting agency** have the same meanings as in the *Privacy Act 1988* of the Commonwealth (the **Privacy Act 1988**).

**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).

**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:

- (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.

### **117A Disclosure of information by Commissioner**

- (1) The Commissioner, or any other person engaged in the administration of this Act, may disclose personal information obtained in relation to a person in the administration or execution of this Act:
  - (a) in connection with the administration or execution of this Act (including for the purpose of the imposition, administration or enforcement of a fine), or
    - (a1) to a tax officer (within the meaning of the *Taxation Administration Act 1996*) for the purposes of the administration or execution of a taxation law (within the meaning of that Act), including for the purpose of any legal proceedings arising out of a taxation law or a report of any such proceedings, or
    - (a2) to a person engaged in the administration or execution of the following laws for the purposes of the administration or execution of those laws (including for the purpose of any legal proceedings arising out of any of those laws or a report of any such proceedings):
      - (i) the *First Home Owner Grant Act 2000* or a corresponding law of another State or a Territory,
      - (ii) the *Unclaimed Money Act 1995*, or
  - (b) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates, or
  - (c) in the case of information obtained in relation to a fine defaulter:
    - (i) to a government agency that is a prosecuting authority in relation to the offence concerned or on whose behalf the offence was prosecuted, or
    - (ii) to a government agency on whose behalf the penalty notice for the offence concerned was issued, or
    - (iii) to the Hardship Review Board, or
    - (iv) to an officer or agency of a participating jurisdiction (within the meaning of Part 5A) in connection with a request for the enforcement of, or the enforcement of, a fine enforcement order in that jurisdiction, or



(v) to an interstate fine enforcement authority (within the meaning of Part 5A), or other officer or agency of an originating jurisdiction for an interstate fine (within the meaning of that Part), in connection with a request for an interstate fine enforcement order, or

(d) as authorised or required by or under any other Act.

(2) Without limiting subsection (1) (a), personal information may be disclosed to an employer or past employer of a fine defaulter for the purposes of the administration, enforcement or execution of a garnishee order (within the meaning of section 73).

(3) Information may be disclosed to an agency referred to in subsection (1) (c) (i) or (ii) only if the disclosure is reasonably necessary to monitor the status of outstanding fines.

(3A) A tax officer who has obtained personal information under subsection (1) (a1) may disclose that information, in accordance with section 82 of the *Taxation Administration Act 1996*, as if that information had been obtained under or in relation to the administration of a taxation law.

(4) In this section:

**personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

### **117B Confidentiality**

(1) A person engaged in the administration of this Act must not disclose any personal information obtained in relation to any person in the administration or execution of this Act except as authorised or required by this Act or any other Act or law.

Maximum penalty: 100 penalty units.

(2) In this section:

**personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

### **118 Registration of fine enforcement orders**

The Commissioner is to register each fine enforcement order made, and to record details of payment of the fine and the taking of enforcement action.

## **Part 9 Miscellaneous**

### **119 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**120 Guidelines on exercise of functions under this Act**

- (1) The Minister may issue guidelines (not inconsistent with this Act or the regulations) with respect to the following:
  - (a) the exercise by the Commissioner of the Commissioner's functions under this Act (including writing off unpaid fines, the issue of fine enforcement orders or community service orders and the taking of other enforcement action under this Act),
  - (b) the exercise by registrars of courts of their functions under this Act (including the determination of time for payment of fines imposed by courts),
  - (c) the exercise by Roads and Maritime Services, the Sheriff and other persons of their functions under this Act in connection with the taking of enforcement action,
  - (d) the exercise by the Commissioner of Corrective Services of the function under this Act of making an order that a fine defaulter serve a period of imprisonment under an intensive correction order.
- (2) The Minister is required to make the guidelines public. However, the Minister is not required to make public the guidelines on writing off unpaid fines.
- (3) The guidelines are required to be complied with. However, a failure to comply with a guideline does not affect the validity of any proceedings, decision, order or warrant.
- (4) The regulations may make provision for or with respect to the issue and publication of the guidelines.
- (5) In this section, ***fine enforcement order*** includes an interstate fine enforcement order (within the meaning of Part 5A) and ***fine*** includes an interstate fine the subject of such an order.

**121 Fines payable into Consolidated Fund** (cf [Fines and Penalties Act 1901](#) sec 5 (1))

- (1) A fine or other penalty imposed or authorised to be imposed by or under any Act is, when recovered, payable into the Consolidated Fund.
- (2) This section is subject to the provisions of any other Act (whether enacted before or after this Act).

**Note—**

**Penalty** is defined in the [Interpretation Act 1987](#) to include forfeiture or punishment.

**122 Payment of share of fine to prosecutor** (cf [Fines and Penalties Act 1901](#) sec 5 (3))

- (1) This section applies where:
  - (a) the Act imposing or authorising the imposition of a fine or other penalty does not

make any provisions for its application when recovered, and

(b) the prosecutor is not a police officer.

- (2) The court before which proceedings are taken to recover any such fine or other penalty may direct that such portion of it (not exceeding one-half) is to be paid to the prosecutor.
- (3) For the purposes of this section, ***fine*** does not include an amount of the kind referred to in section 4 (1) (e) or (f).

**122A Payment of law enforcement officers' costs and expenses**

- (1) This section applies in respect of proceedings for an offence that are brought by a law enforcement officer.
- (2) The court before which such proceedings are brought may, when making an order of the kind referred to in section 4 (1) (e) or (f), direct the amount to which the order relates be paid to the law enforcement officer (or to the law enforcement agency on whose behalf the proceedings were brought) in full or in such portion as may be determined by the court.
- (3) This section has effect despite section 121.

**122B Payment of penalty notice amounts received on behalf of others**

- (1) Despite section 121 and subject to subsection (2), any amount payable under a penalty notice received, recovered or collected by the Commissioner under arrangements entered into with a person under section 114 (2) may be paid by the Commissioner to the person concerned in accordance with those arrangements.
- (2) The Commissioner may, in accordance with the arrangements concerned, deduct or retain from any amount paid or to be paid to a person under subsection (1) the Commissioner's fee or payment in relation to the penalty notices and amounts concerned.

**122C Reallocation of overpayments**

- (1) The Commissioner may reallocate any overpayment made by a person under a fine enforcement order towards the payment of amounts payable under any other fine enforcement order that is in force in relation to the person (instead of refunding the overpayment).
- (2) The Commissioner must notify the person concerned of the reallocation and of the right to apply for a refund of an inadvertent overpayment.
- (3) A person who makes an inadvertent overpayment may apply to the Commissioner for a refund of that overpayment.

- (4) The Commissioner must, on application by a person who has made an inadvertent overpayment that has been reallocated, revoke the decision to reallocate and refund the overpayment.
- (5) A failure by the Commissioner to give notice as required by this section does not affect the validity of a reallocation.
- (6) In this section:

***fine enforcement order*** includes an interstate fine enforcement order (within the meaning of Part 5A).

***inadvertent overpayment*** means an overpayment made otherwise than as a result of the withdrawal or annulment of a fine enforcement order.

***overpayment*** means any amount paid by a person under a fine enforcement order (including any amount paid towards enforcement costs) that, but for this section, would be repayable to the person (including because the fine enforcement order is withdrawn or annulled).

### **123 Remission of fines or other penalties**

- (1) The Governor may remit, in whole or in part, any fine or other penalty imposed on a convicted offender under any Act.
- (2) Without limiting subsection (1), the Royal prerogative of mercy may be extended to a person imprisoned for the non-payment of a pecuniary fine or other penalty even though it was payable in whole or in part to a person other than the Crown.
- (3) A fine that is remitted is taken to have been paid for the purpose of cancelling enforcement action under this Act.
- (4) This section extends to all fines and other penalties (including an order for the payment of compensation by a person found guilty of an offence).

#### **Note—**

**Penalty** is defined in the [Interpretation Act 1987](#) to include forfeiture and punishment and accordingly is not limited to the payment of money.

### **124 Royal prerogative preserved**

Nothing in this Act limits or affects in any manner the Royal prerogative of mercy or any entitlement of a prisoner to be discharged or released from prison under any other Act.

### **125 Abolition of imprisonment as primary enforcement action for fine default**

- (1) A person is not liable to be committed to a correctional centre for a failure to pay a fine or other penalty by the due date.

- (2) However, a fine defaulter is liable to be committed to a correctional centre in accordance with this Act for a failure to comply with a community service order served on the fine defaulter under this Act.

**126 Abolition of recovery by distress** (cf *Justices Act 1902* sec 82)

- (1) A fine, or any other order for the payment of money made by a Magistrate, is not to be levied by distress.
- (2) This section does not affect civil enforcement action authorised by this Act or any other Act.

**126A Penalty notices and penalty reminder notices sent to recently reported address and returned to sender**

- (1) Despite sections 25 and 26, a penalty reminder notice may be issued to and served on a person even if the penalty notice to which it relates was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the appropriate officer concerned has received some other evidence that the penalty notice was not served on the person.
- (2) Despite section 42 (1), a penalty notice enforcement order may be made in relation to an offence even if the penalty notice or a penalty reminder notice (or both) in relation to the offence was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the Commissioner has received some other evidence that the penalty notice was not served on the person.
- (3) In this section, **recently reported address**, in relation to a penalty notice or penalty reminder notice sent to a person, means:
- (a) if, at the time the offence concerned is alleged to have been committed:
- (i) an address was duly supplied by the person to an appropriate officer in response to a request for that address, and
- (ii) the person had a legal obligation to supply the address to that officer, unless paragraph (b) applies—the address so supplied, or
- (b) if, after an address was supplied to an appropriate officer in accordance with paragraph (a), the records of Roads and Maritime Services in relation to a current driver licence or vehicle registration were altered to show a different address for the person—that address, or
- (c) in any other case—an address shown in the records of Roads and Maritime Services in relation to a current driver licence or vehicle registration as the address of the person.

**Note—**

Before any enforcement action can be taken in relation to a penalty notice, notice of the relevant penalty notice enforcement order must be served on the person concerned: see sections 59, 65 and 71. The Commissioner must annul a penalty notice enforcement order if satisfied that the person concerned was not aware that a penalty notice had been issued until the enforcement order was served on the person: see section 49.

**127 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be disposed of summarily before the Local Court.

**128 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.
- (3) The regulations may make provision for or with respect to the waiver, postponement or refund of any costs or fees payable under this Act.

**129 Repeals**

The following Acts are repealed:

*Fines and Penalties Act 1901 No 16*

*Community Service Orders (Fine Default) Amendment Act 1987 No 264*

**130 (Repealed)**

**131 Savings, transitional and other provisions**

Schedule 3 has effect.

**132 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Part 10

### 133-137 (Repealed)

### Schedule 1 Statutory provisions under which penalty notices issued

(Section 20)

[Animal Diseases \(Emergency Outbreaks\) Act 1991](#), section 71A  
[Apiaries Act 1985](#), section 42A  
[Assisted Reproductive Technology Act 2007](#), section 64  
[Associations Incorporation Act 2009](#), section 93  
[Barangaroo Delivery Authority Act 2009](#), section 45  
[Biofuels Act 2007](#), section 29  
[Building Professionals Act 2005](#), section 92  
[Casino Control Act 1992](#), section 168A  
[Centennial Park and Moore Park Trust Act 1983](#), section 24  
[Children \(Education and Care Services\) National Law \(NSW\)](#), section 291  
[Children \(Education and Care Services\) Supplementary Provisions Act 2011](#), section 291 of the National Law Alignment Provisions  
[Classification \(Publications, Films and Computer Games\) Enforcement Act 1995](#), section 61A  
[Commercial Agents and Private Inquiry Agents Act 2004](#), section 28  
[Companion Animals Act 1998](#), section 92  
[Contaminated Land Management Act 1997](#), section 92A  
[Conveyancers Licensing Act 2003](#), section 158  
[Court Security Act 2005](#), section 29  
[Crimes \(Administration of Sentences\) Act 1999](#), section 97  
[Criminal Procedure Act 1986](#), section 333  
[Crown Lands Act 1989](#), section 162  
[Dangerous Goods \(Road and Rail Transport\) Act 2008](#), section 48  
[Deer Act 2006](#), section 33  
[Electricity \(Consumer Safety\) Act 2004](#), section 47  
[Electricity Supply Act 1995](#), section 103A  
[Energy and Utilities Administration Act 1987](#), section 46A  
[Environmental Planning and Assessment Act 1979](#), section 127A  
[Exhibited Animals Protection Act 1986](#), section 46A  
[Explosives Act 2003](#), section 34  
[Fair Trading Act 1987](#), section 67  
[Firearms Act 1996](#), section 85A  
[Fisheries Management Act 1994](#), section 276  
[Fitness Services \(Pre-paid Fees\) Act 2000](#), section 16  
[Food Act 2003](#), section 120  
[Forestry Act 2012](#), section 85  
[Futures Industry \(New South Wales\) Code](#), section 149  
[Game and Feral Animal Control Act 2002](#), section 57  
[Gaming and Liquor Administration Act 2007](#), section 46  
[Gaming Machines Act 2001](#), section 203  
[Gene Technology \(GM Crop Moratorium\) Act 2003](#), section 35  
[Graffiti Control Act 2008](#), section 16

Heavy Vehicle National Law (NSW), section 591  
Hemp Industry Act 2008, section 45  
Home Building Act 1989, section 138A  
Hunter Water Act 1991, section 31A  
Impounding Act 1993, section 36  
Inclosed Lands Protection Act 1901, section 10  
Industrial Relations Act 1996, section 396 (including as applied to and for the purposes of Part 2 of the *Industrial Relations (Child Employment) Act 2006* by section 16 of that Act)  
Jury Act 1977, section 64  
Jury Act 1977, section 66  
Law Enforcement (Powers and Responsibilities) Act 2002, section 235  
Liquor Act 2007, section 150  
Local Government Act 1993, section 314 or 679  
Lord Howe Island Act 1953, section 37B  
Marine Parks Act 1997, section 38  
Marine Safety Act 1998, section 126  
Maritime Services Act 1935, section 30D  
Meat Industry Act 1978, section 76A  
Mining Act 1992, section 378K  
Motor Dealers and Repairers Act 2013, section 158  
National Parks and Wildlife Act 1974, section 160  
Native Vegetation Act 2003, section 43  
Non-Indigenous Animals Act 1987, section 27A  
Noxious Weeds Act 1993, section 63  
Parliamentary Electorates and Elections Act 1912, section 120C  
Parramatta Park Trust Act 2001, section 30  
Passenger Transport Act 1990, section 59  
Pawnbrokers and Second-hand Dealers Act 1996, section 26  
Pesticides Act 1999, section 76  
Petroleum (Onshore) Act 1991, section 137A  
Photo Card Act 2005, section 34  
Plant Diseases Act 1924, section 19  
Plantations and Reafforestation Act 1999, section 62  
Ports and Maritime Administration Act 1995, section 100  
Prevention of Cruelty to Animals Act 1979, section 33E  
Property, Stock and Business Agents Act 2002, section 216  
Protection of the Environment Operations Act 1997, section 224  
Public Health (Tobacco) Act 2008, section 50  
Radiation Control Act 1990, section 25A  
Registered Clubs Act 1976, section 66  
Residential Parks Act 1998, section 149  
Retail Leases Act 1994, section 16P  
Retirement Villages Act 1999, section 184  
Road Transport Act 2013, Division 3 of Part 7.3  
Road Transport (General) Act 2005, Part 5.3  
Roads Act 1993, section 243  
Royal Botanic Gardens and Domain Trust Act 1980, section 22B  
Rural Fires Act 1997, section 131



[Security Industry Act 1997](#), section 45A  
[Smoke-free Environment Act 2000](#), section 20A  
[Sporting Venues Authorities Act 2008](#), section 38  
[Sporting Venues \(Invasions\) Act 2003](#), section 12  
[State Sports Centre Trust Act 1984](#), section 20B  
[Stock \(Chemical Residues\) Act 1975](#), section 15A  
[Stock Diseases Act 1923](#), section 200  
[Stock Foods Act 1940](#), section 32A  
[Stock Medicines Act 1989](#), section 60A  
[Summary Offences Act 1988](#), section 29, 29A or 29B  
[Swimming Pools Act 1992](#), section 35  
[Sydney Cricket and Sports Ground Act 1978](#), section 30A  
[Sydney Harbour Foreshore Authority Act 1998](#), section 43A  
[Sydney Olympic Park Authority Act 2001](#), section 79  
[Sydney Water Act 1994](#), section 50  
[Sydney Water Catchment Management Act 1998](#), section 65  
[Tow Truck Industry Act 1998](#), section 89  
[Transport Administration Act 1988](#), section 117  
[Unlawful Gambling Act 1998](#), section 52  
[Valuers Act 2003](#), section 42  
[Veterinary Practice Act 2003](#), section 101  
[Water Industry Competition Act 2006](#), section 82  
[Water Management Act 2000](#), section 365  
[Weapons Prohibition Act 1998](#), section 42  
[Western Sydney Parklands Act 2006](#), section 48  
[Workplace Injury Management and Workers Compensation Act 1998](#), section 246  
[World Youth Day Act 2006](#), section 55

## **Schedule 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 131)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

[Fines Amendment Act 1997](#)

[Fines Amendment Act 1998](#)

[State Revenue Legislation Further Amendment Act 2003](#) (to the extent that it amends this Act)

*Fines Amendment Act 2004*

*State Revenue Legislation Amendment Act 2005*

*Fines Amendment (Payment of Victims Compensation Levies) Act 2006*

*Fines Amendment Act 2008*

*Fines Further Amendment Act 2008*

*Road Transport Legislation Amendment (Miscellaneous Provisions) Act 2009* (to the extent that it amends this Act)

*Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* (to the extent that it amends this Act)

*Fines Amendment (Work and Development Orders) Act 2011*

*Fines Amendment Act 2012*

any Act that amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Amnesty period for existing fine defaulters**

- (1) During the amnesty period:
  - (a) a warrant of commitment may not be issued under the *Justices Act 1902* for non-payment of an amount of money, and
  - (b) any such warrant that has been issued but not executed before the commencement of the amnesty period is not to be executed.
- (1A) This clause does not apply to the issue or execution of any such warrant of commitment in relation to a person who, at the time the warrant is issued or

executed, is a convicted inmate within the meaning of the *Correctional Centres Act 1952* or a person subject to control within the meaning of the *Children (Detention Centres) Act 1987*.

- (2) This clause does not prevent the making of a community service order in respect of any such warrant of commitment.
- (3) Nothing in this clause prevents arrangements being made by the registrar of a court or the State Debt Recovery Office in accordance with this Act for time to pay an existing fine. Any such arrangements made do not affect any suspension or cancellation of a driver licence or vehicle registration.
- (4) This clause has effect despite anything to the contrary in the *Justices Act 1902* or any other Act.
- (5) In this clause:

**amnesty period** means the period after the commencement of this clause and before the commencement of clause 3.

**Note—**

See section 2 of this Act for provisions relating to the commencement of this clause and clause 3.

### **3 Act applies to existing fines**

- (1) This Act extends, subject to this Schedule, to a fine imposed by a court before the commencement of this clause or an amount payable under a penalty notice issued before the commencement of this clause.
- (2) For the purposes of this Schedule, any such fine or amount is called an **existing fine**.

### **4 Court fine provisions**

- (1) The time for payment of an existing fine imposed by a court is not affected by section 7 and a notice of such an existing fine need not be given under section 9.
- (2) However, sections 10 and 11 apply to any such existing fine. The registrar of a court may allow further time to pay such a fine under those sections even though the time for payment of the fine has been fixed by the court.
- (3) A court fine enforcement order may be made by the State Debt Recovery Office for an existing fine, whether or not an application is made under this Act for the order.

### **5 Penalty notice provisions**

- (1) A penalty notice for the purposes of this Act includes a penalty notice within the meaning of Part 4B of the *Justices Act 1902* immediately before its repeal by this Act.
- (2) A courtesy letter issued under the *Justices Act 1902* in respect of an existing fine is

taken to be a penalty reminder notice issued under this Act.

- (3) An enforcement order issued under section 100L of the *Justices Act 1902* in respect of an existing fine and in force immediately before the commencement of this clause is taken to be a penalty notice enforcement order under this Act.
- (4) For the purpose only of enabling a penalty notice enforcement order to be made under Division 4 of Part 3 in relation to an existing fine, the offence referred to in section 42 (1) (g) is taken to have been committed, or alleged to have been committed, when that Division commenced.
- (5) A penalty notice served on a person in accordance with section 18B of the *Traffic Act 1909*, being a penalty notice in respect of which, as at the commencement of this clause:
  - (a) the amount payable under the notice has not been paid, and
  - (b) a courtesy letter has been sent to the person in accordance with section 100J of the *Justices Act 1902* and the person has not, as referred to in that section, declined to be dealt with under Division 2 of Part 4B of that Act, and
  - (c) no notice has been served under section 18C of the *Traffic Act 1909*,

is taken to be a penalty notice enforcement order under this Act and may, subject to Division 5 of Part 3 of this Act, be enforced accordingly.

## **5A (Repealed)**

## **6 Existing warrants of commitment**

- (1) The State Debt Recovery Office may cancel a warrant of commitment issued under the *Justices Act 1902* for non-payment of an amount of money (being a warrant that was not executed immediately before the commencement of this clause) and may make a fine enforcement order under this Act in respect of the fine concerned.
- (2) The State Debt Recovery Office is not required to serve a copy of any such fine enforcement order on the fine defaulter or to give the fine defaulter any further time to pay the fine before enforcement action is taken under Part 4 of this Act.
- (3) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made.
- (4) A person who is, on the commencement of this clause, serving a period of imprisonment under a warrant of commitment issued under the *Justices Act 1902* for non-payment of an amount of money is taken to be serving that period of imprisonment under a warrant issued under this Act.

## **7 Existing suspension or cancellation of driver licences or vehicle registration**

Any driver licence or vehicle registration that has been suspended or cancelled under section 18C of the *Traffic Act 1909* before the repeal of that section by this Act is taken to be a driver licence or vehicle registration suspended or cancelled under Division 3 of Part 4 of this Act.

## **8 Existing community service orders and orders for periodic detention**

- (1) A community service order made on application under section 89C of the *Justices Act 1902* and in force immediately before the commencement of this clause is taken to be a community service order made under section 79 of this Act.
- (2) An order for periodic detention made on application under section 89D of the *Justices Act 1902* and in force immediately before the commencement of this clause is taken to be an order for periodic detention made under section 89 of this Act.
- (3) If any such community service order or order for periodic detention is revoked, the State Debt Recovery Office may make a fine enforcement order under this Act in respect of the fine concerned.
- (4) The State Debt Recovery Office is not required to serve a copy of any such fine enforcement order on the fine defaulter or to give the fine defaulter any further time to pay the fine before enforcement action is taken under Part 4 of this Act.
- (5) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made.

## **9 Existing forfeited recognizances and bail**

- (1) The Sheriff is to transmit to the State Debt Recovery Office particulars of all forfeited recognizances and bail that are entered on a copy of an Estreat Roll on the commencement of this clause and that have not been recovered before that commencement.
- (2) Part 7 of this Act applies to those forfeited recognizances and bail as if they had been transmitted to the State Debt Recovery Office under the *Forfeited Recognizances and Bail Act 1954*.
- (3) The State Debt Recovery Office is not required to serve a copy of any fine enforcement order made in respect any such forfeited recognizance or bail on the fine defaulter or to give the fine defaulter any further time to pay the amount due before enforcement action is taken under Part 4 of this Act.
- (4) The State Debt Recovery Office may take enforcement action under Part 4 of this Act in respect of such a fine enforcement order at any time after the order is made.

## 10 Reciprocal enforcement of fines against bodies corporate

- (1) A conviction registered, a notification received or a writ of execution issued, under Part 8 of the *Criminal Procedure Act 1986*, before the commencement of this clause is taken to be registered, received or issued under Part 5 of this Act.
- (2) Until regulations are made under section 106 of this Act, courts or classes of courts declared by order in the Gazette under section 26 of the *Criminal Procedure Act 1986* immediately before the repeal of that section by this Act are taken to be declared by the regulations under section 106 of this Act.

## Part 3 Provisions consequent on enactment of *State Revenue Legislation Further Amendment Act 2003*

### 11 Service level deeds

The Treasurer and the Director of the State Debt Recovery Office are taken to be parties to each service level deed in force as at 1 October 2003 and entered into by the Commissioner of Police, or otherwise by or on behalf of the Infringement Processing Bureau within NSW Police, for or with respect to the processing of penalty notices.

### 12 Construction of references to the Infringement Processing Bureau

A reference in any instrument made before the commencement of this clause to the Manager, Infringement Processing Services of the Police Service, the Infringement Processing Bureau within the Police Service or a person employed in the Infringement Processing Bureau is taken to be a reference to:

- (a) if the reference is made in relation to the issuing or processing of a penalty notice, a person employed in the Office of State Revenue in the Treasury and authorised by the Chief Commissioner of State Revenue for the purposes of Part 3 of this Act, or
- (b) if the reference is made otherwise than in relation to the issuing of a penalty notice, the State Debt Recovery Office,

subject to the regulations.

## Part 4 Provisions consequent on enactment of *Fines Amendment Act 2004*

### 13 Definition

In this Part:

**amending Act** means the *Fines Amendment Act 2004*.

### 14 Application of section 37A

Section 37A, as inserted by the amending Act, does not apply in relation to an offence

that was committed or is alleged to have been committed before the commencement of that section.

### **15 Application of amendment to section 42**

Section 42, as in force before its amendment by the amending Act, continues to apply to a penalty notice enforcement order that is proposed to be made in relation to an offence that was committed or is alleged to have been committed before the commencement of the amendment as if that section had not been so amended.

### **16 Application of amending Act to fine enforcement orders**

- (1) Except as provided by clause 15, this Act, as amended by the amending Act, applies to enforcement orders made after the commencement of this clause, whether or not the offence concerned occurred before, on or after that commencement.
- (2) Except as provided by subclause (3) and clause 17, the amendments made by the amending Act to this Act do not apply to or in respect of fine enforcement orders made before the commencement of this clause.
- (3) This Act, as amended by the amending Act, applies to applications made after the commencement of this clause for the withdrawal or annulment of fine enforcement orders, whether or not the enforcement orders were made before, on or after that commencement.

### **17 Reviews by Hardship Review Board**

Section 101B, as inserted by the amending Act, extends to decisions of the State Debt Recovery Office made before the commencement of this clause to refuse an application by a fine defaulter for time to pay or to have a fine written off.

## **Part 5 Provisions consequent on enactment of [Fines Amendment \(Payment of Victims Compensation Levies\) Act 2006](#)**

### **18 Validation of enforcement of certain fines**

A compensation levy enforced, before the amendment of this Act by the [Fines Amendment \(Payment of Victims Compensation Levies\) Act 2006](#), by means of an action that would have been authorised by this Act if this Act as so amended had been in force when the levy was enforced, is taken to have been validly enforced.

## **Part 6 Provisions consequent on enactment of [Fines Further Amendment Act 2008](#)**

### **19 Definition**

In this Part:

**amending Act** means the *Fines Further Amendment Act 2008*.

## 20 Internal review

A person may apply for a review under Division 2A of Part 3 of a decision to issue a penalty notice in respect of a penalty notice issued before the commencement of that Division, if the application for review is made after that commencement and before the date for payment under any penalty reminder notice served on the person in respect of the offence to which the penalty notice relates.

## 21 Work and development orders

A person may apply for a work and development order under Subdivision 1 of Division 8 of Part 4 in respect of an amount owing before the commencement of that Subdivision.

## 22 Write off of fines

Sections 101 and 101B, as amended by the amending Act, extend to a fine imposed before the commencement of those amendments.

## Part 7 Provisions consequent on enactment of **Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010**

### 23 Savings for periodic detention orders

- (1) This Act (and the regulations under this Act) as in force immediately before the enactment of the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* continue to apply to and in respect of:
  - (a) a periodic detention order made under Division 6 of Part 4 and in force immediately before the substitution of section 89 by that Act,
  - (b) a periodic detention order made under Division 6 of Part 4 after the substitution of section 89 by that Act and pursuant to subclause (2).
- (2) An application by a fine defaulter under section 89 that is pending immediately before the substitution of that section by the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* is to be dealt with and determined as if that Act had not been enacted.
- (3) A reference in a section of this Act to any provision of the *Crimes (Sentencing Procedure) Act 1999* or the *Crimes (Administration of Sentences) Act 1999* is, for the purposes of the continued application of that section under subclause (1), to be read as a reference to the provision as in force immediately before the commencement of any amendment of the provision by the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*.

## Part 8 Provision consequent on enactment of **Road Transport**



## Legislation Amendment (Offender Nomination) Act 2012

### 24 Application of amendment to section 38

Section 38 (3) (as amended by the *Road Transport Legislation Amendment (Offender Nomination) Act 2012*) applies in relation to vehicle or vessel offences committed (or alleged to have been committed) on or after the day on which the amendment to that subsection commences.

## Part 9 Provisions consequent on enactment of Fines Amendment Act 2012

### 25 Definition

In this Part:

**amending Act** means the *Fines Amendment Act 2012*.

### 26 Application of amendments

- (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.
- (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.

## Part 10 Provisions consequent on enactment of Victims Rights and Support Act 2013

### 27 Enforcement of compensation levy

A compensation levy to which section 18 applied immediately before the amendment of that section by the *Victims Rights and Support Act 2013* may continue to be enforced as if that section had not been amended.

## Part 11 Provisions consequent on enactment of Fines Amendment Act 2013

### 28 Definition

In this Part:

**amending Act** means the *Fines Amendment Act 2013*.

### 29 Abolition of State Debt Recovery Office

- (1) The State Debt Recovery Office is abolished on the substitution of section 113 by the

amending Act.

- (2) On the abolition of the State Debt Recovery Office, the following provisions have effect:
- (a) a reference in any Act, in any instrument made under any Act or in any document of any kind to the State Debt Recovery Office or a predecessor of the State Debt Recovery Office is (subject to the regulations) to be read as, or as including, a reference to the Commissioner,
  - (b) any act, matter or thing done or omitted to be done by, to or in respect of the State Debt Recovery Office is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Commissioner,
  - (c) all proceedings pending by or against the State Debt Recovery Office are taken to be proceedings pending by or against the Commissioner,
  - (d) the assets, rights and liabilities of the State Debt Recovery Office vest in the Crown,
  - (e) the assets vest in the Crown by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (f) the Commissioner, on behalf of the Crown, has all the entitlements and obligations of the State Debt Recovery Office in relation to the assets, rights and liabilities that the State Debt Recovery Office would have had but for the abolition, whether or not those entitlements and obligations were actual or potential at the time the vesting takes effect.
- (3) An arrangement of a kind referred to in section 114 (1A) (as in force before the substitution of that section by the amending Act) and in effect immediately before the abolition of the State Debt Recovery Office is taken, on that abolition, to be an arrangement with the Commissioner.

- (4) In this clause:

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

### 30 Visitor driver privileges

The amendments made to Division 3 of Part 4 by the amending Act extend to fine enforcement orders made before the commencement of those amendments.

### 31 Early enforcement arrangements

The amendments made to sections 13, 14, 42 and 100 by the amending Act extend to fines that were imposed, or amounts payable under penalty notices that were issued, before the commencement of those amendments.

### 32 Appropriate officers

A person who, immediately before the amendment made to section 22 by the amending Act, was authorised as an appropriate officer for the purposes of Part 3 by the Chief Commissioner of State Revenue is taken, on the commencement of that amendment, to have been authorised as an appropriate officer for the purposes of Part 3 by the Commissioner of Fines Administration.

### 33 Interstate fine enforcement

- (1) An interstate fine enforcement order may be made under Part 5A, as inserted by the amending Act, in relation to the following interstate fines only:
  - (a) an interstate fine imposed after the commencement of that Part (a **post-commencement interstate fine**),
  - (b) an interstate fine imposed before the commencement of that Part that is related to a post-commencement interstate fine,
  - (c) an interstate fine imposed before the commencement of that Part that is a serious interstate fine.
- (2) An interstate fine imposed before the commencement of Part 5A is **related** to a post-commencement interstate fine if:
  - (a) the fines are imposed on the same offender, and
  - (b) the fines are imposed by orders in the same jurisdiction, and
  - (c) the liability of the offender to pay the post-commencement interstate fine has not been fully discharged.
- (3) An interstate fine is a **serious interstate fine** if an interstate fine enforcement authority in relation to the fine certifies that the fine is a serious fine in the originating jurisdiction:
  - (a) because of the value of the fine, or
  - (b) because of the nature or seriousness of the conduct in relation to which the fine

was imposed, or

(c) because the fine is not the first fine imposed on the offender in relation to the kind of offence, or alleged offence, for which it was imposed, or

(d) for any other reason.

(4) Division 3 of Part 5A extends to a NSW fine enforcement order made before the commencement of that Division.

### **34 Trial period for enforcement of restitution orders**

(1) The repeal of Part 10, as inserted by the amending Act, at the end of the trial period provided for by that Part does not affect the operation of Part 10 or any regulations under Part 10 in respect of a restitution order that is enforceable under the trial.

(2) Part 10, and the regulations under Part 10, continue to apply in relation to such a restitution order as if that Part had not been repealed.

## **Part 12 Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2014**

### **35 Definition**

In this Part:

**amending Act** means the *Crimes (Administration of Sentences) Amendment Act 2014*.

### **36 Validation of certain deductions and enforcement of certain fines**

(1) A victims support levy enforced, before the amendment of this Act by the amending Act, by means of a deduction from remuneration earned by an offender as a participant in an external work release program is taken to have been validly enforced if it would have been validly enforced had this Act as so amended (and any relevant provision to which it refers) then been in force with any necessary modification.

(2) A deduction for the purposes of enforcing a victims support levy made before the amendment of this Act by the amending Act from remuneration earned by an offender as a participant in an external work release program is taken to have been validly made at the time it was made if it would have been validly made had this Act as so amended (and any relevant provision to which it refers) then been in force with any necessary modification.

(3) Accordingly, no compensation is payable in respect of such a deducted amount or in respect of interest that may have accrued on such a deducted amount had it not been deducted.

(4) In this clause:

**external work release program** has the same meaning as in section 7A of the *Crimes (Administration of Sentences) Act 1999*, but extends to a corresponding program under the former *Correctional Centres Act 1952*.

- (5) A reference in this clause to a victims support levy extends to include a reference to a compensation levy payable under Part 5 of the former *Victims Support and Rehabilitation Act 1996* or Part 6A of the former *Victims Compensation Act 1987*.