

# State Debt Recovery Act 2018 No 11

[2018-11]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2021](#)
  - [State Revenue and Fines Legislation Amendment \(Miscellaneous\) Bill 2022](#)
- **Note**

Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 5 May 2021

# State Debt Recovery Act 2018 No 11



New South Wales

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# State Debt Recovery Act 2018 No 11



New South Wales

An Act to make provision for the recovery of State debts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *State Debt Recovery Act 2018*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**authorised officer** means a person employed in the Public Service to assist the Chief Commissioner in the exercise of functions under this Act who is authorised to exercise the function in relation to which the expression is used.

**Chief Commissioner** means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.

**debt notice** means:

(a) in relation to a tax debt—a debt notice under the *Taxation Administration Act 1996*, or

(b) in relation to a grant debt—a debt notice under the *First Home Owner Grant (New Homes) Act 2000*, the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011* or the *Small Business Grants (Employment Incentive) Act 2015*, or

(c) in relation to a referable debt—a debt notice within the meaning of section 14.

**debt recovery action**—see section 51.

**debt recovery agreement**—see section 20.

**debt recovery costs** means the debt recovery costs payable under a debt recovery



order, being:

- (a) the prescribed debt recovery costs, and
- (b) the Sheriff's additional costs (if any).

**Note—**

See Part 9.

**debt recovery guidelines**—see section 12.

**debt recovery order** means an order under section 35.

**debtor** means a person who:

- (a) is liable to pay a tax debt, a grant debt or a referable debt under a debt notice, or
- (b) is or may be liable to pay a State debt.

**garnishee order** means an order under section 55.

**grant debt**—see section 9.

**hardship review**—see section 68.

**Hardship Review Board** means the Hardship Review Board constituted under Part 7.

**identifying information**—see section 104.

**internal review** means a review under Division 4 of Part 3.

**pay** a debt or amount means to pay the debt 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.

**personal information** means personal information under the [Privacy and Personal Information Protection Act 1998](#) or personal information that is health information under the [Health Records and Information Privacy Act 2002](#).

**prescribed debt recovery costs** means the debt recovery costs prescribed under section 88.

**property seizure order** means an order under section 54.

**public authority**—see section 4.

**referable debt**—see section 7.

**referral date** in relation to a referable debt means the date on which the referable debt is referred by the responsible authority to the Chief Commissioner for the making

of a debt recovery order under this Act.

**referring officer** means:

- (a) in relation to a referable debt referred to in Schedule 1, the person specified in Column 2 of that Schedule opposite the referable debt concerned or a delegate of that person, or
- (b) in relation to any other referable debt, any person authorised under a debt recovery agreement relating to the referable debt to exercise the functions of a referring officer under this Act.

**responsible authority** for a referable debt means the public authority to which the referable debt is payable.

**Sheriff's additional costs** means the costs payable in respect of the Sheriff under section 89.

**State debt**—see section 6.

**statutory internal review** means any review or other procedure that is declared by another Act to be a statutory internal review for the purposes of this Act.

**tax debt**—see section 8.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#) and includes the Chief Commissioner.

**time to pay order** means an order under section 60.

**unpaid debt** includes a debt that has not been paid in full.

**vulnerable person** means a person who has a mental illness, has an intellectual disability or cognitive impairment, is homeless, is experiencing acute economic hardship or has a serious addiction to drugs, alcohol or volatile substances.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

#### **4 Public authority—meaning**

- (1) In this Act, a **public authority** means any public or local authority constituted by or under an Act, a Public Service agency or a NSW Government agency.
- (2) A public authority includes:

- (a) a body constituted or established by or under an Act of New South Wales, whether or not it represents the Crown, and
  - (b) a person exercising functions on behalf of a public authority, and
  - (c) a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of one or more public authorities, and
  - (d) any person or body declared by the regulations to be a public authority for the purposes of this Act.
- (3) A public authority does not include a State owned corporation, unless it is declared by the regulations to be a public authority for the purposes of this Act.
- (4) A public authority does not include any person or body excluded by the regulations.
- (5) In this Act, a reference to a fee, charge or other amount payable to a public authority includes a reference to a fee, charge or other amount that is charged or administered by the public authority and which, on recovery or payment, is payable to the Consolidated Fund.

## **Part 2 Chief Commissioner authorised to recover State debts**

### **5 Chief Commissioner may take action to recover State debts**

The Chief Commissioner may take debt recovery action as authorised by this Act for the purpose of recovering a State debt.

### **6 State debt—meaning**

A **State debt** is any of the following:

- (a) a referable debt,
- (b) a tax debt,
- (c) a grant debt.

### **7 Referable debt—meaning**

(1) A **referable debt** means:

- (a) a fee, charge or other amount payable that is specified in Schedule 1, or
- (b) a fee, charge or other amount that is declared to be a referable debt by order under subsection (2).

(2) The Chief Commissioner may, by order published on the NSW legislation website, declare any specified kind of fee, charge or other amount payable to the State or a specified public authority to be a referable debt.

- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply in relation to an order under subsection (2) in the same way as they apply to a statutory rule.
- (4) A referable debt does not include:
  - (a) a fine (within the meaning of the *Fines Act 1996*), or
  - (b) an amount of a kind excluded by the regulations.

## 8 Tax debt—meaning

A **tax debt** means a tax debt under the *Taxation Administration Act 1996*.

## 9 Grant debt—meaning

A **grant debt** means:

- (a) a grant debt under the *First Home Owner Grant (New Homes) Act 2000*, or
- (b) a rebate debt under the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*, or
- (c) a grant debt under the *Small Business Grants (Employment Incentive) Act 2015*.

## 10 Summary of debt recovery procedures

- (1) Generally, the procedure for recovery of a referable debt is as follows:
  - (a) the responsible authority for the referable debt may serve a debt notice for the referable debt on the debtor (see Part 3),
  - (b) if the referable debt is not paid within 7 days of the due date specified in the debt notice, the responsible authority for the referable debt may refer the debt to the Chief Commissioner for the making of a debt recovery order under this Act,
  - (c) the Chief Commissioner may then make a debt recovery order against the debtor (see Part 4),
  - (d) if the referable debt is not paid within 7 days of the due date specified in the notice of debt recovery order, the Chief Commissioner is authorised to take debt recovery action in respect of the debt under Part 6,
  - (e) the types of debt recovery action that can be taken are specified in Part 6.
- (2) Generally, the procedure for recovery of a tax debt or grant debt is as follows:
  - (a) the Chief Commissioner may serve a debt notice for the tax debt or grant debt on the debtor under the legislation under which the debt is incurred,
  - (b) if the debt is not paid within 7 days of the due date specified in the debt notice, the Chief Commissioner may then make a debt recovery order under this Act (see Part 4),

- (c) if the debt is not paid within 7 days of the due date specified in the notice of debt recovery order, the Chief Commissioner is authorised to take debt recovery action in respect of the debt under Part 6,
  - (d) the types of debt recovery action that can be taken are specified in Part 6.
- (3) For referable debts, at various stages of the debt recovery process the debtor is given an opportunity:
- (a) to obtain an internal review of the decision to recover the debt (see Part 3), or
  - (b) to elect to have the matter dealt with by a court (see Part 5), or
  - (c) to apply for hardship relief (see Part 7).
- (4) For tax debts and grant debts, an objection or review procedure is available under the legislation under which those debts are incurred. Those Acts also make provision for hardship relief.
- (5) For all State debts, the debtor may apply for a time to pay order (see Part 7).
- (6) This section is a summary of debt recovery procedures and does not affect the provisions of this or any other Act that it summarises.

#### **11 Debt recovery action cannot be taken against minors**

- (1) Despite any other provision of this Act, the taking of debt recovery action in respect of a State debt is not authorised if:
- (a) the debtor is a minor, or
  - (b) the State debt was incurred when the debtor was a minor.
- (2) If the Chief Commissioner ascertains that a debtor in relation to a State debt is a minor, the Chief Commissioner must revoke any debt recovery order made in relation to that State debt.
- (3) This section does not prevent the taking of debt recovery action against a person who is jointly and severally liable with a minor for a State debt.

#### **Note—**

Section 21 (1) of the [Interpretation Act 1987](#) defines a minor as an individual who is under the age of 18 years.

#### **12 Debt recovery guidelines**

- (1) The Minister may, by order, make guidelines (***debt recovery guidelines***) with respect to the following:
- (a) the exercise by the Chief Commissioner of the Chief Commissioner's functions

under this Act, including the following:

- (i) the making of debt recovery orders, and the taking of debt recovery action, in relation to vulnerable persons,
  - (ii) payment allocation between multiple State debts,
  - (b) the exercise, by the Commissioner of Fines Administration under the *Fines Act 1996*, of the Commissioner's functions under that Act with respect to State debts.
- (2) The Minister is to consult with the Attorney General about the debt recovery guidelines.
  - (3) The Minister is required to make the debt recovery guidelines public.
  - (4) The Chief Commissioner, and the Commissioner of Fines Administration under the *Fines Act 1996*, are required to comply with the debt recovery guidelines.
  - (5) The debt recovery guidelines must not be inconsistent with this Act or the regulations.

### **Part 3 Referable debts and initiation of debt recovery**

#### **Note—**

This Part applies only to referable debts. It sets out the steps that are preliminary to the making of a debt recovery order under Part 4. This includes provisions which require the responsible authority for the referable debt to serve on a debtor a debt notice for the referable debt before referring it to the Chief Commissioner for debt recovery action. For tax debts and grant debts, debt notices are issued by the Chief Commissioner under the legislation under which those debts are incurred.

### **Division 1 Debt notices**

#### **13 Responsible authority may serve debt notice for State debt**

A responsible authority for any referable debt that is unpaid may serve a debt notice on the person by whom the referable debt is payable.

#### **14 What is a debt notice**

- (1) A **debt notice** is a notice to the effect that the person to whom it is directed is required to pay a specified referable debt by a date specified in the notice.
- (2) The date must be a date that is at least 21 days after the debt notice is served on the person.
- (3) A debt notice must specify particulars of the referable debt, including any particulars required to be included in the debt notice by any other Act.
- (4) The debt notice must advise the person to whom it is directed:
  - (a) that, if the person does not pay the debt in full by the date specified for payment, the matter may be referred to the Chief Commissioner to take debt recovery

action under this Act and debt recovery costs may become payable by the person, and

(b) of the review options that are available in relation to the decision to recover the referable debt, and

(c) if the person can seek a time to pay order in respect of the referable debt, how an application for a time to pay order should be made.

(5) A debt notice may include any other information that the responsible authority considers it appropriate to include.

(6) A notice in relation to a referable debt is taken to be a debt notice if another Act declares that notice to be a debt notice for the purposes of this Act.

### **15 Revocation of debt notice**

(1) The responsible authority for a referable debt may revoke a debt notice.

(2) The responsible authority must not revoke a debt notice after the matter has been referred to the Chief Commissioner for the making of a debt recovery order, unless the referral is first revoked.

## **Division 2 Referral of debt to Chief Commissioner**

### **16 Referral of debt to Chief Commissioner**

(1) A responsible authority for a referable debt may refer the referable debt to the Chief Commissioner for the making of a debt recovery order if:

(a) the responsible authority has served a debt notice for the referable debt on the person by whom the referable debt is payable, and

(b) the referable debt has not been paid at the end of 7 days after the date for payment specified in the debt notice, and

(c) the referable debt remains unpaid.

(2) A responsible authority for a referable debt may also refer the referable debt to the Chief Commissioner for the making of a debt recovery order if:

(a) the responsible authority receives an application for time to pay in relation to the referable debt, and

(b) the debt recovery agreement between the Chief Commissioner and the responsible authority permits the responsible authority to refer time to pay matters to the Chief Commissioner.

(3) A responsible authority is not to refer a referable debt to the Chief Commissioner if

the responsible authority is conducting an internal review of the referable debt and the review is not complete.

### **17 How referral is made**

- (1) A referral is to be made by a referring officer acting on behalf of the responsible authority.
- (2) The referring officer may refer a referable debt to the Chief Commissioner for the making of a debt recovery order by giving the Chief Commissioner notice in writing of the referral.
- (3) The referral is to be made in accordance with any debt recovery agreement relating to the referable debt.
- (4) Subject to subsection (2), the referral may be made by post, document exchange, facsimile transmission or other electronic transmission.

### **18 Information to be provided on referral**

- (1) A referring officer must, for the purpose of enabling the taking of debt recovery action under this Act, provide the following information to the Chief Commissioner in relation to any referable debt that is referred to the Chief Commissioner:
  - (a) identifying information about the person by whom the debt is payable,
  - (b) particulars of the debt, including any particulars required to be provided under a debt recovery agreement,
  - (c) whether an internal review has been conducted in relation to the referable debt,
  - (d) any other information the referring officer is required to provide under any other Act or law,
  - (e) any other information of a kind prescribed by the regulations.
- (2) A requirement to provide identifying information is a requirement to provide so much of that identifying information as is known to the referring officer.

### **19 Revocation of referral**

- (1) A referring officer may at any time, by notice in writing to the Chief Commissioner, revoke the referral of a referable debt.
- (2) The Chief Commissioner is not to make a debt recovery order in relation to a referable debt if, before an order is made, the referring officer revokes the referral.

#### **Note—**

The Chief Commissioner must revoke a debt recovery order made in relation to a referable debt if the referral is revoked.



## **Division 3 Administrative arrangements relating to referable debts**

### **20 Debt recovery agreements**

- (1) The Chief Commissioner may enter into an agreement with a public authority (a **debt recovery agreement**) about the taking of debt recovery action under this Act in respect of fees, charges or other amounts payable to the public authority.
- (2) A debt recovery agreement may make provision for any or all of the following:
  - (a) the referral of fees, charges or other amounts to the Chief Commissioner for the taking of debt recovery action under this Act,
  - (b) the exercise by the Chief Commissioner of any of the public authority's functions in respect of the collection and recovery of fees, charges or other amounts payable to the public authority (including functions of the public authority under this Act),
  - (c) the payment of amounts recovered to the public authority, including provision for recovery of overpayments,
  - (d) the fees to be charged by the Chief Commissioner for the taking of debt recovery action under this Act, and the deduction of those fees from amounts recovered,
  - (e) other ancillary or related matters.
- (3) A debt recovery agreement must not be inconsistent with this Act.
- (4) A debt recovery agreement is subject to the debt recovery guidelines.
- (5) The Chief Commissioner may decline to take debt recovery action in respect of any referable debt that is not the subject of a debt recovery agreement.

### **21 Functions of responsible authority are limited after referral**

- (1) A responsible authority cannot do any of the following in respect of a referable debt after the referable debt is referred to the Chief Commissioner for debt recovery action under this Act:
  - (a) take or maintain proceedings to recover the referable debt,
  - (b) accept an amount in or towards payment of the referable debt,
  - (c) enter into any agreement with a person regarding payment of the referable debt,
  - (d) write off, waive payment of or reduce the referable debt or any accrued interest.
- (2) Subsection (1) applies on and from the referral date.
- (3) Subsection (1) does not affect the validity of anything done by the responsible

authority before the referral date.

- (4) Subsection (1) ceases to apply if the responsible authority revokes the referral of the referable debt to the Chief Commissioner.
- (5) This section is subject to the provisions of any debt recovery agreement between the responsible authority and the Chief Commissioner.
- (6) This section does not limit any function of the Chief Commissioner in respect of the referable debt (whether under this Act or under a debt recovery agreement).

## **22 Interest ceases to accrue on referral**

- (1) A responsible authority is not entitled to charge interest on a referable debt on or after the referral date for the referable debt.
- (2) Subsection (1) ceases to apply if the referral is revoked. However, the responsible authority cannot charge interest for the period between the referral date and the date the referral is revoked.
- (3) This section applies despite the provisions of any Act or law or agreement under which the responsible authority charges interest on a referable debt.
- (4) This section does not affect the charging of interest on a referable debt for which judgment has been given by a court.
- (5) This section does not affect Part 9.

### **Note—**

A referable debt, after it is referred to the Chief Commissioner, accrues interest under Part 9 if the debt is not paid by the due date for payment specified in a notice of debt recovery order. Judgment debts are charged with interest as provided for by the [Civil Procedure Act 2005](#).

## **23 Chief Commissioner may exercise functions of responsible authority**

- (1) The Chief Commissioner may, if authorised to do so by a debt recovery agreement, exercise on behalf of a responsible authority any of the functions of the responsible authority under this Act.
- (2) A reference in this Act to the Chief Commissioner acting on behalf of a responsible authority is a reference to the Chief Commissioner exercising functions on behalf of the responsible authority as authorised by a debt recovery agreement.

## **Division 4 Internal reviews**

### **Note—**

For grant debts, an objection and review procedure is available under the Act under which that debt is incurred.

For tax debts, an objection and review procedure is available under Part 10 of the [Taxation Administration Act 1996](#).

## 24 Responsible authority may conduct review

- (1) The responsible authority for a referable debt may conduct a review of the referable debt.
- (2) A responsible authority may conduct a review under this Division:
  - (a) if an application for a review is made by or on behalf of the person served with a debt notice for the referable debt, or
  - (b) on the initiative of the responsible authority.
- (3) A review under this Division is an **internal review**.

## 25 Debts for which internal review is available

- (1) An internal review is available in respect of any referable debt for which a debt notice has been served, other than an excluded debt.
- (2) Each of the following debts is an **excluded debt**:
  - (a) a referable debt for which there is a statutory internal review,
  - (b) any other referable debt that is declared by an Act to be an excluded debt for the purposes of this Division.

### Note—

For ambulance fees, a statutory internal review is available under Part 6 of Chapter 5A of the [Health Services Act 1997](#).

## 26 Application for internal review

- (1) An application for an internal review may be made by or on behalf of a person if the person is served with a debt notice for a referable debt.
- (2) An application for an internal review:
  - (a) is to be made in writing to the responsible authority for the referable debt, and
  - (b) is to include the mailing address of the applicant and the grounds on which the review is sought (including supporting information or evidence).
- (3) An application for an internal review may be made even if:
  - (a) a debt recovery order has been made against the person in relation to the referable debt, or
  - (b) the whole or part of the referable debt has been paid.
- (4) An application for an internal review may be made to the Chief Commissioner if a debt recovery order has been made for the referable debt or if the Chief Commissioner

served the debt notice on behalf of the responsible authority.

- (5) The Chief Commissioner is to refer the application to the responsible authority, unless the Chief Commissioner is conducting the review on behalf of the responsible authority.
- (6) An application for an internal review may be made no later than the date specified for payment in a debt recovery order relating to that referable debt.
- (7) For the purposes of this Act, a person duly applies for an internal review if the person applies for the internal review in accordance with this section.
- (8) The regulations may make provision for or with respect to applications for internal reviews.

## **27 Circumstances in which review is to be conducted**

- (1) If a person duly applies for an internal review, the responsible authority must review the decision to recover the referable debt.
- (2) A responsible authority is not required to conduct an internal review:
  - (a) if an internal review has already been conducted in relation to the referable debt under this Division, or
  - (b) if the applicant has failed to provide sufficient supporting information or evidence to conduct the review, or
  - (c) in such other circumstances as may be prescribed by the regulations.
- (3) The responsible authority may determine the procedure for an internal review.

## **28 Request for additional information**

- (1) Before or during the conduct of an internal review, the responsible authority may, by notice in writing served on an applicant, request additional information from the applicant.
- (2) The additional information must be provided by the applicant to the responsible authority within 28 days of service of the request.
- (3) If the information is not provided within the time specified, the responsible authority:
  - (a) may refuse to conduct, or may terminate, an internal review, or
  - (b) may conduct the internal review without that information.

## **29 Mandatory suspension of debt recovery action for timely review application**

- (1) If an application for an internal review is made before the earliest referral date for the

referable debt, the following applies during the review period:

- (a) the responsible authority must not refer the referable debt to the Chief Commissioner for the making of a debt recovery order,
  - (b) the requirement to pay the referable debt under the debt notice is suspended.
- (2) The earliest referral date is the date that is 7 days after the due date for payment of the referable debt specified in the debt notice for the referable debt.
- (3) The review period is the period starting on (and including) the day on which the application is received by the responsible authority and ending on (and including) the day on which notice of the outcome of the review application is served on the person who sought the review.

**Note—**

Notice served by post is taken to be served on the person 7 days after it is sent, unless the person establishes otherwise.

- (4) After conducting the review or deciding not to conduct the review, the responsible authority must extend the time to pay the referable debt by setting a new due date that is at least 7 days after the end of the review period.
- (5) Subsection (4) does not apply if:
- (a) the responsible authority decides to withdraw the debt notice for the referable debt, or
  - (b) the due date for the referable debt falls more than 7 days after the end of the review period.

### **30 Discretionary suspension of debt recovery action in other cases**

A responsible authority that conducts an internal review on an application made after a referable debt has been referred to the Chief Commissioner for the making of a debt recovery order may, at its discretion, request the Chief Commissioner to suspend debt recovery action in respect of the referable debt.

### **31 Actions to be taken after review**

- (1) After conducting an internal review, the responsible authority may:
- (a) confirm the debt notice, with or without changing the payment arrangements for the referable debt, or
  - (b) revoke the debt notice.
- (2) The responsible authority must change the payment arrangements for a referable debt by reducing the amount payable if the amount of the debt was overstated on the debt notice.

- (3) The responsible authority must change the payment arrangements for a referable debt in any other circumstances required by this Act or the regulations.
- (4) The responsible authority must revoke the debt notice:
  - (a) if the applicant is not liable for the referable debt (including if the issue of the debt notice involved a mistake of identity), or
  - (b) in any circumstances prescribed by the regulations.
- (5) If the responsible authority revokes a debt notice, the responsible authority must, if the matter has already been referred to the Chief Commissioner for the making of a debt recovery order, revoke the referral.
- (6) If a debt notice is revoked because of a mistake of identity, the responsible authority may serve a new debt notice for the referable debt on a person who is liable for payment of the debt.
- (7) The regulations may provide for other circumstances in which a new debt notice can be served.

### **32 Change of payment arrangements**

- (1) The responsible authority may, after conducting a review under this Division, change the payment arrangements for a referable debt by:
  - (a) reducing the amount payable, or
  - (b) extending the time to pay, or
  - (c) permitting the debt to be paid by instalments or reducing instalments.
- (2) The responsible authority must change the payment arrangements if required to do so by this Division.
- (3) Otherwise, a decision to change the payment arrangements is at the discretion of the responsible authority.
- (4) The responsible authority changes the payment arrangements for a referable debt by serving notice in writing of the change on the person who has been served with a debt notice for the referable debt.
- (5) Any debt notice served on the person before notice of the change is taken to be amended in accordance with the changed payment arrangements.
- (6) If the responsible authority permits payment of a referable debt by instalments and an instalment of the referable debt is not paid by a due date for payment of the instalment, the remaining instalments immediately become payable.

- (7) The responsible authority must not change payment arrangements for a referable debt after the referable debt has been referred to the Chief Commissioner for the making of a debt recovery order, unless the referral is first revoked.

**Note—**

The Chief Commissioner must withdraw a debt recovery order made in relation to a referable debt if the referral is revoked.

### **33 Notice of outcome of application**

- (1) The responsible authority is to give an applicant for an internal review notice in writing of the outcome of the application as soon as practicable after the review is completed.
- (2) A reference in this Act to the outcome of an application includes a reference to a decision not to conduct a review on an application.

### **34 Chief Commissioner exercising functions of responsible authority**

- (1) A reference in this Division to the responsible authority includes a reference to the Chief Commissioner acting on behalf of the responsible authority.
- (2) If the Chief Commissioner conducts an internal review on behalf of a responsible authority, a requirement to revoke a referral of a referable debt to the Chief Commissioner is satisfied if the Chief Commissioner revokes the debt recovery order made as a result of that referral.

## **Part 4 Debt recovery orders**

**Note—**

A debt recovery order is the pre-cursor to the taking of debt recovery action under Part 6.

### **Division 1 Debt recovery orders**

#### **35 What is a debt recovery order**

- (1) The Chief Commissioner may make an order for the recovery of a State debt (a ***debt recovery order***).
- (2) A single order may be made for the recovery of 2 or more State debts payable by a person.
- (3) A debt recovery order may be made in the absence of, and without notice to, the debtor.
- (4) The Chief Commissioner may make, but is not required to make, a debt recovery order if a State debt to which it is to apply has previously been the subject of a debt recovery order in respect of which any debt recovery action has been taken.

### **36 When order can be made—referable debts**

- (1) The Chief Commissioner may make a debt recovery order in respect of a referable debt if the responsible authority for the referable debt refers the referable debt to the Chief Commissioner for the making of a debt recovery order.
- (2) The Chief Commissioner is not required to inquire into whether this Act authorises a matter to be referred to the Chief Commissioner for the making of a debt recovery order.
- (3) If the Chief Commissioner serves a debt notice in relation to a referable debt on behalf of a responsible authority, it is not necessary for the debt to be referred to the Chief Commissioner for the making of a debt recovery order.
- (4) However, the Chief Commissioner is not to make a debt recovery order unless the matter could have been referred to the Chief Commissioner if the responsible authority had served the debt notice.

### **37 When order can be made—tax debts and grant debts**

The Chief Commissioner may make a debt recovery order in respect of a tax debt or grant debt if:

- (a) the person by whom the debt is payable has been served with a debt notice for the State debt, and
- (b) the debtor does not pay the State debt within 7 days of the time for payment specified in the notice, and
- (c) the State debt remains unpaid.

## **Division 2 Form and notice of debt recovery order**

### **38 Content of debt recovery order**

A debt recovery order must specify the following matters:

- (a) the debtor's name and address,
- (b) the debtor's date of birth (if known),
- (c) a description of the matter in respect of which the State debt is payable,
- (d) the date or dates on which the State debt became payable under the debt notice,
- (e) the amount required to be paid, being the amount of the State debt that remains to be paid, together with specified debt recovery costs.



### **39 Service on debtor of notice of order**

As soon as practicable after a debt recovery order is made, the Chief Commissioner is to serve notice of the order on the debtor.

### **40 What notice must say**

- (1) The notice of a debt recovery order must inform the debtor of the following:
  - (a) that the order has been made,
  - (b) that the debtor has until the final date specified in the notice to pay the State debt and debt recovery costs specified in the notice,
  - (c) that, if the payment is not made by that final date, debt recovery action will be taken against the debtor to recover the State debt in accordance with this Act,
  - (d) that, if the payment is not made by that final date, further debt recovery costs will be payable (indicating, except as provided by subsection (2), the amount of those costs and the circumstances in which they are payable),
  - (e) of the interest that is payable or that may become payable on the State debt if it is not paid by that final date,
  - (f) of the types of debt recovery actions that can be taken under this Act,
  - (g) of the review options that are available relating to the debt recovery order, including time to pay and hardship,
  - (h) of any special arrangements for vulnerable persons,
  - (i) that, if the State debt is a referable debt, the person can elect to have the matter dealt with by a court,
  - (j) that, if the person elects to have the matter dealt with by a court and the judgment of the court is favourable to the Chief Commissioner, the person may be required to pay the State's costs in the proceedings.
- (2) The notice of a debt recovery order may (but need not) contain information relating to the Sheriff's additional costs.
- (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.

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

- (1) The final date for payment in a notice of a debt recovery 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 notice of the debt recovery order is posted as the final date for making the payment concerned.

#### **42 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.

#### **43 Amendment of debt recovery order**

- (1) The Chief Commissioner may, on the application of the person liable to pay a State debt or on the Chief Commissioner's own initiative, amend a debt recovery order to correct an error.
- (2) An amendment is to be made by notice in writing served on the debtor in the same way as the notice of the debt recovery order.
- (3) An amendment cannot increase the amount payable under the order.
- (4) The Chief Commissioner must give the debtor written notice of the amendment as soon as practicable after amending the debt recovery order.
- (5) An amendment made to a debt recovery order does not affect the validity of anything done before that amendment in relation to the State debt.

### **Part 5 Election to have matter dealt with by court—referable debts**

#### **44 Election to have referable debt dealt with by court**

- (1) A debtor who is served with notice of a debt recovery order for a referable debt may, by notice in writing to the Chief Commissioner, elect to have the referable debt dealt with by a court.
- (2) A person cannot make that election if judgment for the debt has already been obtained from a court.

#### **45 Deadline for court election**

- (1) An election to have a referable debt dealt with by a court is to be made before the deadline for a court election.
- (2) For the purposes of this Act, the ***deadline for a court election*** is:
  - (a) the date for payment of the referable debt specified in a debt recovery order, or

(b) the date that is 28 days after the date notice of the outcome of an internal review or a statutory internal review in relation to the referable debt is served on the person,

whichever is the later.

(3) The Chief Commissioner may, by notice in writing to a debtor, accept an election made after the deadline for a court election if:

(a) the Chief Commissioner has not yet commenced debt recovery action in respect of the referable debt, or

(b) the Chief Commissioner is satisfied that the debtor was not aware that a debt recovery order had been made, but only if the election is made within a reasonable time after service of the debt recovery order, or

(c) the Chief Commissioner is satisfied that the debtor was hindered by accident, illness, misadventure or other cause from taking action in relation to the debt recovery order, but only if the election is made within a reasonable time after the person ceased being so hindered.

(4) For the purposes of this Act, a debtor duly elects to have a referable debt dealt with by a court if:

(a) the debtor makes an election to have the referable debt dealt with by a court on or before the deadline for a court election, or

(b) the debtor makes an election to have the referable debt dealt with by a court after the deadline for a court election and the Chief Commissioner accepts the election under this section.

(5) An election is made when notice of the election is served on the Chief Commissioner.

#### **46 Internal review to be conducted**

(1) If a debtor duly elects to have a referable debt dealt with by a court, and an internal review has not been conducted in relation to the referable debt, the Chief Commissioner is to arrange for an internal review to be conducted.

(2) The Chief Commissioner must not take proceedings in a court for the recovery of the referable debt unless the debt notice for the referable debt is confirmed following that review.

(3) This section applies only if an internal review is available in respect of the referable debt.

#### **47 Debt recovery order to be revoked**

(1) If a debtor duly elects to have a referable debt dealt with by a court, the Chief

Commissioner must revoke the debt recovery order relating to that referable debt to the extent that it relates to that referable debt.

- (2) This section does not prevent the Chief Commissioner from making a further debt recovery order if the Chief Commissioner obtains judgment against the person for payment of the debt, or any part of the debt, from a court of competent jurisdiction.

#### **48 Chief Commissioner may obtain judgment for referable debt**

- (1) The Chief Commissioner may take proceedings in a court of competent jurisdiction to recover a referable debt that has been referred to the Chief Commissioner as a debt owed to the Chief Commissioner.
- (2) If the Chief Commissioner obtains judgment for the debt, the Chief Commissioner may:
  - (a) make a debt recovery order for the amount for which judgment was obtained (including any costs payable under the judgment), and
  - (b) take debt recovery action under that order in respect of the amount in the circumstances authorised by this Act.
- (3) If the Chief Commissioner makes a debt recovery order in respect of the debt, the Chief Commissioner cannot take action for the enforcement of the judgment under Part 8 of the *Civil Procedure Act 2005* unless the debt recovery order is revoked.
- (4) Subsection (3) does not limit the Chief Commissioner's functions under Part 6.

#### **49 Chief Commissioner entitled to costs if judgment for debt is obtained from a court**

- (1) If a debtor duly elects to have a referable debt dealt with by a court, and the Chief Commissioner obtains a judgment from a court in the matter that is favourable to the Chief Commissioner, the court is to award the Chief Commissioner costs in respect of the claim unless it appears to the court that some other order should be made as to the whole or part of the costs.
- (2) An order or judgment is favourable to the Chief Commissioner if it requires the debtor to pay to the Chief Commissioner the whole of the amount specified in the debt notice or such part of that amount that has not yet been paid (disregarding any amount awarded by the court for interest or costs).
- (3) This section does not apply to a debt notice that is revoked.

## Part 6 Debt recovery actions

### Division 1 General

#### 50 When debt recovery action is authorised

The Chief Commissioner is authorised to take debt recovery action in respect of a State debt only if:

- (a) the Chief Commissioner makes a debt recovery order in relation to the State debt and serves notice of the order on the debtor, and
- (b) the debtor does not pay the State debt as required by the notice, and
- (c) the State debt remains unpaid 7 days after the due date specified in the notice.

#### 51 Debt recovery action—meaning

The Chief Commissioner takes **debt recovery action** by exercising any of the functions conferred on the Chief Commissioner by this Part.

#### 52 More than one type of debt recovery action can be taken

The Chief Commissioner may take any or all, or any combination, of debt recovery actions, subject to this Act.

#### 53 Debt recovery guidelines

The Chief Commissioner's functions under this Part are subject to the debt recovery guidelines.

### Division 2 Principal debt recovery actions

#### 54 Property seizure order

- (1) The Chief Commissioner may make an order (a **property seizure order**) for the seizure of the property of a debtor for the purpose of recovering the State debt payable by the debtor.

**Note—**

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

- (2) A property seizure order is to be directed to the Sheriff and provided to the Sheriff by the Chief Commissioner for execution.
- (3) 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 Chief Commissioner is taken to be the judgment creditor.
- (4) 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, priority to their execution is to be given in the order in which they are received by the Sheriff, subject to subsection (5).

- (5) The Chief Commissioner may direct the Sheriff to give priority to a property seizure order over another property seizure order, regardless of the order in which they are received by the Sheriff.
- (6) A property seizure order under the *Fines Act 1996* takes priority over a property seizure order under this Act.
- (7) The Sheriff is to return a property seizure order to the Chief Commissioner if the order has not been executed within 12 months after it was made or if the Sheriff is satisfied that the order is not capable of execution. The Chief Commissioner is to cancel an order so returned, but nothing in this subsection prevents the making of a further order in the matter.
- (8) The Sheriff or other person executing a property seizure order is to cease executing the order if the order is revoked by the Chief Commissioner.
- (9) A property seizure order remains in force until revoked under this Act.

## 55 Garnishee order

- (1) The Chief Commissioner may make an order (a ***garnishee order***) that all debts due and accruing to a debtor from any person specified in the order are attached for the purposes of satisfying the State debt payable by the debtor (including an order expressed to be for the continuous attachment of the wage or salary of the debtor).
- (2) A garnishee 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 Chief 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 Chief Commissioner for the payment of a State debt by instalments.
- (3) 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.
- (4) An order served electronically pursuant to subsection (3):
  - (a) if served after 5 pm 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.

(5) A garnishee order remains in force until revoked under this Act.

#### **56 Registration of debt recovery order as charge on land**

- (1) The Chief Commissioner may apply to the Registrar-General for registration of a debt recovery order in relation to any land owned by the debtor (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 debt recovery 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 Chief Commissioner of the amount payable under the order.
- (6) Such a charge ceases to have effect in relation to the land:
  - (a) when the Registrar-General registers the cancellation of the charge on the application of the Chief Commissioner, or
  - (b) on the sale or other disposition of the property with the consent of the Chief 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) A person who purchases or otherwise acquires land after the registration of the charge is, for the purposes of subsection (6), taken to have notice of the charge if:
  - (a) the provisions of any law of the State provide for the registration of title to, or

charges over, land of the kind to which the charge applies, and

(b) the charge is registered in accordance with that law.

(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.

### **Division 3 Ancillary functions**

#### **57 Power to require information, records and attendance**

- (1) The Chief Commissioner may, by notice served on a person, require the person to do any one or more of the following:
  - (a) provide to the Chief Commissioner (either orally or in writing) information that is described in the notice,
  - (b) produce to the Chief Commissioner a record in the person's custody or control that is described in the notice,
  - (c) attend and give evidence before the Chief Commissioner or an authorised officer at a place and time that is reasonable in the circumstances.
- (2) Information, records or evidence may be required under this section for the following purposes only:
  - (a) enabling debt recovery action to be taken under this Act,
  - (b) ascertaining the debtor's financial circumstances, including the debtor's property and other means of satisfying a State debt.
- (3) A notice may be directed:
  - (a) if the debtor is a natural person—to the debtor, or
  - (b) if the debtor is a corporation—to an officer or former officer of the corporation.
- (4) The Chief Commissioner may require information or evidence that is not given orally to be provided in the form of, or verified by, a statutory declaration.
- (5) The Chief Commissioner may require evidence that is given orally to be given on oath or by affirmation and for that purpose the Chief Commissioner or an authorised officer may administer an oath or affirmation.
- (6) The Chief Commissioner may make a recording, by such means as the Chief Commissioner determines, of the evidence given orally by a person.
- (7) A person is not bound to produce any document or other thing that is not specified or sufficiently described in the notice or that the person would not be bound to produce on a subpoena for production in the Supreme Court.



- (8) A notice must not require the attendance of a person if the person has previously attended before the Chief Commissioner or an authorised officer in accordance with a requirement under this section in connection with the matter within the previous 3 months.
- (9) A person who, without reasonable excuse, fails to comply with a notice under this section within such period as is specified in the notice or any extended period as the Chief Commissioner may allow is guilty of an offence.

Maximum penalty (subsection (9)): 100 penalty units in the case of a corporation or 10 penalty units in any other case.

### **58 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).

#### **59 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 debtor to state the person's full name and residential address and to produce evidence of the person's 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 7 Time to pay and hardship**

#### **Division 1 Time to pay**

##### **60 Time to pay order**

- (1) The Chief Commissioner may, on application by or with the consent of a debtor, make an order (a **time to pay order**) allowing further time to pay a State debt.
- (2) A time to pay order may be made:
  - (a) after a debt recovery order is made, or
  - (b) in conjunction with the making of a debt recovery order.

**Note—**

Section 16 enables a responsible authority to refer a referable debt to the Chief Commissioner for the making of a debt recovery order if the debtor has applied to the responsible authority for the referable debt for time to pay.

- (3) A time to pay order may:
  - (a) extend the time for payment of the whole State debt, or
  - (b) allow the State debt to be paid by instalments of such amounts, and at such times, as are specified in the order.
- (4) In particular, a time to pay order may allow a person to pay the State debt in instalments, as a regular direct debit, if the Chief Commissioner:

- (a) is satisfied that adequate arrangements are in place for such a regular payment to be made, and
  - (b) agrees to the State debt being paid in this manner.
- (5) If an instalment of a State debt is not paid by the due date, the remaining instalments then become due and payable unless the Chief Commissioner otherwise orders.
- (6) A time to pay order may be made in relation to more than one State debt and may provide for a combined payment arrangement (meaning an arrangement for the payment of a State debt in conjunction with payment of another State debt for which a debt recovery order has been made).

### **61 Amendment of time to pay order**

- (1) The Chief Commissioner may amend a time to pay order by a further order made on the application of the person liable to pay the State debt or on the Chief Commissioner's own initiative.
- (2) Without limiting subsection (1), the Chief Commissioner may, on the Chief Commissioner's own initiative, amend a time to pay order by extending the arrangements under the order to payment of another State debt for which a debt recovery order has been made against the debtor.
- (3) The Chief Commissioner must give the debtor written notice of the amendment as soon as practicable after amending the time to pay order.
- (4) On being given notice by the debtor that the debtor does not agree to an amendment made under subsection (2), the Chief Commissioner must amend the time to pay order to remove the extension to the other State debt.
- (5) An amendment made to a time to pay order does not affect the validity of anything done before that amendment in relation to the State debt or any other State debt.

### **62 Revocation of time to pay order**

- (1) The Chief Commissioner may revoke a time to pay order by a further order made on the application of the person liable to pay the State debt or on the Chief Commissioner's own initiative.
- (2) The Chief Commissioner must give the debtor written notice of the revocation as soon as practicable after the order is made.

### **63 Time to pay order taken to be refused**

The Chief Commissioner is taken to have refused to make a time to pay order if an application for the order is duly made to the Chief Commissioner and the Chief Commissioner does not determine the application within 30 days of it having been made

to the Chief Commissioner.

## **Division 2 Powers of Chief Commissioner in hardship cases**

### **64 Power to revoke debt recovery order (referable debts)**

The Chief Commissioner may, on application by a debtor, revoke a debt recovery order in respect of the whole or part of an unpaid referable debt if satisfied that, due to any financial, medical or personal circumstances of the debtor:

- (a) the debtor does not have sufficient means to pay the State debt and is not likely to have sufficient means to pay the State debt, and
- (b) debt recovery action has not been or is unlikely to be successful in satisfying the State debt.

#### **Note—**

Part 8 provides for the cancellation of debt recovery action following the revocation of a debt recovery order.

### **65 Garnishee order refunds in case of hardship**

- (1) The Chief Commissioner may, on the Chief Commissioner's own initiative or on the application of a debtor, refund all or part of an amount paid to the Chief Commissioner under a garnishee order if the Chief Commissioner thinks it appropriate to do so on the ground of hardship experienced by the debtor or a dependant of the debtor because of payments under the garnishee order.
- (2) A refund does not affect the liability of the debtor for any debt that is the subject of the garnishee order, including for any amount refunded to the debtor.

### **66 Functions of Hardship Review Board not affected**

This Part does not limit the functions of the Hardship Review Board in respect of a State debt under this or any other Act.

## **Division 3 Hardship Review Board**

### **67 Hardship Review Board**

- (1) There is to be a Hardship Review Board consisting of:
  - (a) the Secretary of the Department of Finance, Services and Innovation, and
  - (b) the Secretary of the Treasury, and
  - (c) the Secretary of the Department of 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.

## **68 Functions of Hardship Review Board**

- (1) The Hardship Review Board may conduct a review (a **hardship review**) in relation to any of the following decisions:
  - (a) a decision by the Chief Commissioner to make or refuse to make a time to pay order,
  - (b) a decision by the Chief Commissioner to refuse to revoke a debt recovery order in respect of the whole or part of a referable debt under Division 2.
- (2) The Hardship Review Board has any other functions that are conferred on it by this or any other Act.
- (3) The Hardship Review Board may exercise its functions under this Act in conjunction with any functions that the Board may exercise under the *Taxation Administration Act 1996* or the *Fines Act 1996*.

### **Note—**

For tax debts, the *Taxation Administration Act 1996* enables the Hardship Review Board to waive the payment of all or part of a tax debt payable by a person in hardship cases, if authorised by a taxation law (within the meaning of that Act).

For grant debts, the Chief Commissioner has power to write off or remit a liability for payment of the debt in hardship cases under the Acts under which those debts are incurred.

## **69 Applications for review**

- (1) The Hardship Review Board may conduct a hardship review if an application is made by or on behalf of the debtor for the review.
- (2) The debtor must be a natural person.
- (3) A debtor may not make more than one application under this section in relation to the same State debt, unless the Hardship Review Board is satisfied that new material facts or circumstances have been disclosed to the Board that:
  - (a) were not previously disclosed, and
  - (b) could not, by the exercise of reasonable diligence, have been previously disclosed.

## **70 Review procedure**

- (1) The Hardship Review Board may determine the procedure for a hardship review.
- (2) A hardship review may be conducted in the absence of the parties.

### **71 Suspension of debt recovery action**

- (1) The Hardship Review Board may direct that debt recovery action under this Act against a debtor be suspended pending its review if it thinks it appropriate in the circumstances.
- (2) The Hardship Review Board may revoke that direction at any time.
- (3) The Chief Commissioner may suspend debt recovery action against a debtor who makes an application under this section but is not required to do so unless given a direction under this section.

### **72 Powers of Hardship Review Board following review**

- (1) The Hardship Review Board may:
  - (a) affirm a decision of the Chief Commissioner that the Board has power to review, or
  - (b) direct the Chief Commissioner to change any decision that the Board has power to review, or
  - (c) exercise any other functions it is authorised to exercise under any other Act that confers functions on the Hardship Review Board.
- (2) 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 debtor.
- (3) The Chief Commissioner must give effect to any direction of the Hardship Review Board.
- (4) A decision that is made by the Chief Commissioner in accordance with the direction of the Hardship Review Board is not subject to review by the Hardship Review Board.

### **73 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 Part or any other statutory provisions that confer functions on the Hardship Review Board, may disclose to the Chief Commissioner or any other person engaged in the administration of this Act or any other Act that confers functions on the Hardship Review Board, information obtained in connection with the exercise of the Board's functions.

### **74 Refunds to be given if required by Board**

The Chief Commissioner is to refund any money already paid or recovered to the extent necessary to give effect to a decision of the Hardship Review Board under this Part.

## **Part 8 Suspension and cancellation of debt recovery action**

### **Division 1 Preliminary**

#### **75 Review—meaning**

In this Part:

**review** means:

- (a) in relation to a tax debt—an objection under the *Taxation Administration Act 1996* to the Chief Commissioner’s decision to require the person to pay the tax debt or a review by the Civil and Administrative Tribunal of that decision, or
- (b) in relation to a grant debt—an objection under the Act under which the grant debt is incurred to the Chief Commissioner’s decision to require the person to pay the grant debt or a review by the Civil and Administrative Tribunal of that decision, or
- (c) in relation to a referable debt—an internal review or a statutory internal review.

### **Division 2 Suspension of debt recovery action**

#### **76 Circumstances in which debt recovery action must be suspended**

The Chief Commissioner is to suspend debt recovery action if:

- (a) the Chief Commissioner makes a time to pay order in respect of the relevant State debt and the debt is being paid in accordance with that order, or
- (b) the Chief Commissioner is satisfied that the debtor has duly applied for a review of the State debt and that review has not been finalised, or
- (c) the Chief Commissioner is directed to do so by the Hardship Review Board, or
- (d) in the case of a referable debt, the referring officer or responsible authority requests the suspension of debt recovery action.

#### **77 How debt recovery action is suspended**

- (1) The Chief Commissioner suspends debt recovery action by:
  - (a) revoking any property seizure order that is in force in relation to the State debt and has not been executed, and
  - (b) revoking any garnishee order that is in force in relation to the State debt.
- (2) If the Chief Commissioner suspends debt recovery action, any property obtained as a result of debt recovery action is not required to be returned, and a charge on land created under this Act need not be cancelled, unless the relevant debt recovery order is revoked or the relevant State debt is paid.

- (3) Interest on an unpaid State debt is not to be charged in respect of any days occurring while the suspension has effect.
- (4) The Chief Commissioner must give notice in writing of the suspension of debt recovery action:
  - (a) to the Sheriff, if a property seizure order has already been made in relation to the State debt, and
  - (b) to any person on whom a garnishee order that is revoked as a result of the suspension is required to be served.

#### **78 Circumstances in which debt recovery action may be resumed**

- (1) If debt recovery action is suspended because of the making of a time to pay order, the Chief Commissioner may resume debt recovery action if the time to pay order is revoked.
- (2) If debt recovery action is suspended because of review, the Chief Commissioner may resume debt recovery action if the review is finalised (unless resumption of the debt recovery action is inconsistent with the outcome of the review).
- (3) If debt recovery action is suspended at the direction of the Hardship Review Board, the Chief Commissioner may resume debt recovery action if the direction is revoked.
- (4) If debt recovery action is suspended at the request of the referring officer or responsible authority, the Chief Commissioner may resume debt recovery action if the referring officer or responsible authority requests the resumption of debt recovery action.

#### **79 How debt recovery action is resumed**

The Chief Commissioner resumes debt recovery action by taking or continuing any debt recovery action that the Chief Commissioner was authorised to take before the suspension.

### **Division 3 Cancellation of debt recovery action**

#### **80 Power to revoke debt recovery order**

- (1) The Chief Commissioner may, on application or on the Chief Commissioner's own initiative, revoke a debt recovery order.
- (2) A debt recovery order may be revoked completely or only to the extent of some of the amount or amounts to which it applies.
- (3) The Chief Commissioner must give the responsible authority notice in writing of a decision to revoke a debt recovery order in respect of a referable debt, unless notice is



not required under a debt recovery agreement that applies to the debt.

### **81 Circumstances in which power may be exercised**

- (1) The Chief Commissioner may revoke a debt recovery order if satisfied that:
  - (a) the State debt is not payable by the debtor, or
  - (b) the State debt is not recoverable by debt recovery action.
- (2) The Chief Commissioner must revoke a debt recovery order:
  - (a) if the State debt is a referable debt and the referring officer revokes the referral of the referable debt to the Chief Commissioner, or
  - (b) if the State debt is a referable debt and debtor duly elects to have the referable debt dealt with by a court, or
  - (c) if the State debt is a referable debt and the Chief Commissioner decides to revoke the debt recovery order under Part 7, or is directed to do so by the Hardship Review Board under Part 7, but only to the extent necessary to give effect to the decision or direction (as the case requires), or
  - (d) if the State debt is a tax debt and the revocation is necessary to give effect to a decision of the Hardship Review Board under the [Taxation Administration Act 1996](#), or a decision of the Chief Commissioner exercising the functions of the Hardship Review Board under that Act, to waive payment of the debt in whole or in part, but only to the extent necessary to give effect to the decision, or
  - (e) if the State debt is a grant debt and the Chief Commissioner decides to write off or remit the whole or part of the liability for the debt under the Act under which the grant debt is incurred, but only to the extent necessary to give effect to the decision, or
  - (f) if the revocation is required to give effect to the outcome of a review.

### **82 Consequences of revocation**

- (1) If a debt recovery order is revoked completely:
  - (a) the order then ceases to have effect, and
  - (b) any debt recovery action is to be cancelled, and
  - (c) any debt recovery action already taken is to be reversed, unless the same debt recovery action is authorised under another debt recovery order, and
  - (d) debt recovery costs are not payable under the order and, if paid, are repayable.
- (2) If a debt recovery order is revoked only to the extent of some of the amount or

amounts to which it applies:

- (a) the order continues to have effect in respect of the remaining amount or amounts to which it applies, and
  - (b) any debt recovery action under the order is to be limited to that remaining amount or amounts, and
  - (c) any amount that has been paid under the order is to be applied to payment of the remaining amount or amounts to which it applies and any debt recovery costs payable under the order.
- (3) The revocation of a debt recovery order does not prevent the making of a further debt recovery order in respect of the State debt.

### **83 How Chief Commissioner cancels debt recovery action**

- (1) The Chief Commissioner cancels debt recovery action in respect of a State debt:
- (a) by revoking any property seizure order or garnishee order in respect of the State debt, and
  - (b) if the debt recovery order has been registered as a charge on land, by applying to the Registrar-General for a cancellation of that registration.
- (2) The Chief Commissioner must give notice in writing of the cancellation of debt recovery action:
- (a) to the Sheriff, if a property seizure order has already been made in relation to the State debt, and
  - (b) to any person on whom a garnishee order that is revoked as a result of the cancellation is required to be served.
- (3) The Registrar-General must, on application of the Chief Commissioner under this section, cancel the registration of a debt recovery order as a charge on land.
- (4) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge.

### **84 Debt recovery action taken to be cancelled in certain circumstances**

- (1) Debt recovery action in respect of a State debt is taken to be cancelled on payment in full of the State debt.
- (2) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge.

## **Part 9 Interest and debt recovery costs**

### **Division 1 Interest**

#### **85 Interest may be charged**

- (1) Interest is payable on the amount of any State debt that is unpaid after the due date specified for payment in the notice of a debt recovery order served on a debtor, unless the Chief Commissioner otherwise directs.
- (2) Interest is also payable in respect of any debt recovery costs that are unpaid after that due date.
- (3) Interest is to be calculated on a daily basis from the day after the day that is the due date for payment until the day it is paid.
- (4) The interest rate payable is the prescribed rate under section 101 of the *Civil Procedure Act 2005*.
- (5) This section does not apply to the following:
  - (a) a tax debt,
  - (b) any State debt for which a judgment has been given by a court.
- (6) In the case of a tax debt, interest is payable as provided for by the *Taxation Administration Act 1996*.
- (7) In the case of a State debt for which judgment has been given by a court, interest is payable as provided for by the *Civil Procedure Act 2005* or any other Act or as otherwise directed by the court.

#### **86 Interest forms part of State debt**

- (1) The State debt to which a debt recovery order applies is taken to include any interest that becomes payable on the State debt after the order is made.
- (2) Accordingly, a reference in this Act to a State debt includes a reference to any interest payable on the State debt.
- (3) Interest is not payable on the interest component of a State debt.
- (4) This section extends to any interest and penalty tax payable under the *Taxation Administration Act 1996* or payable in respect of a State debt for which judgment has been given by a court.

## **Division 2 Debt recovery costs**

### **87 Debt recovery costs to be paid**

- (1) Debt recovery costs are payable under a debt recovery order, unless the Chief Commissioner otherwise directs.
- (2) The following amounts are the only amounts payable as debt recovery costs under a debt recovery order:
  - (a) the prescribed debt recovery costs,
  - (b) the Sheriff's additional costs (if any).

### **88 Prescribed debt recovery costs**

- (1) The regulations may prescribe the debt recovery costs payable under a debt recovery order.
- (2) The regulations may:
  - (a) prescribe an amount as the debt recovery costs payable to the Chief Commissioner on the making of the order, and
  - (b) prescribe an amount as the debt recovery costs payable into the Consolidated Fund for any action taken by the Sheriff or other official under this Act before payment is made under the order.

### **89 Sheriff's additional costs**

- (1) The Chief Commissioner may approve any costs and expenses reasonably incurred by the Sheriff in taking action to recover a debt under this Act as debt recovery costs payable by the debtor under the debt recovery 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 the prescribed debt recovery costs payable to the Consolidated Fund for any action taken by the Sheriff or other official under this Act.
- (3) For the purposes of this section, the Chief Commissioner has the functions of the registrar of the relevant court with respect to the approval of those costs and expenses.
- (4) Debt recovery 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 debt recovery costs applies to a decision of the Chief Commissioner under this section.

## **90 Debt recovery costs form part of State debt**

- (1) The State debt to which a debt recovery order applies is taken to include the debt recovery costs payable under the debt recovery order.
- (2) Accordingly, a reference in this Act to a State debt includes a reference to any debt recovery costs payable under the debt recovery order.

## **Part 10 Payment, allocation of payments and refunds**

### **91 Disposition of money paid by or recovered from debtors**

- (1) After the making of a debt recovery order in respect of a State debt, the State debt is payable to the Chief Commissioner.
- (2) However, with the approval of the Chief Commissioner, the State debt may be paid to another person or body and directly credited to the Consolidated Fund or another account, or retained, in accordance with this or any other Act or law.

### **92 Payment of tax debts and grant debts**

- (1) A tax debt or grant debt, including any interest or penalty tax payable on the debt, is, when recovered, to be paid into the Consolidated Fund.
- (2) This section is subject to the requirements of this Act with respect to the payment of debt recovery costs.

### **93 Payment of referable debts**

- (1) A referable debt, including any interest payable on the debt, is, when recovered under this Act, to be paid to the responsible authority, subject to this Act.
- (2) Payment is to be made in accordance with any debt recovery agreement relating to the referable debt.
- (3) The Chief Commissioner may, in accordance with a debt recovery agreement, deduct or retain from any amount paid or to be paid to a responsible authority under this section the Chief Commissioner's fee or payment for exercising functions under this Act in relation to the amount concerned.
- (4) This section is subject to the requirements of this Act with respect to the payment of debt recovery costs.

### **94 Amounts recovered to be applied towards debt recovery costs first**

Any amount recovered under a debt recovery order is to be applied as follows:

- (a) firstly, towards payment of the debt recovery costs payable under the debt recovery order,

(b) secondly, towards payment of the remainder of the State debt.

**95 Allocation of recovered amounts between State debts**

- (1) If more than one State debt is payable under a debt recovery order, and the amount recovered is insufficient to satisfy all of the State debts:
  - (a) tax debts have priority over all other State debts, and
  - (b) tax debts and grant debts have priority over referable debts.
- (2) Accordingly, the amount recovered is to be applied as follows:
  - (a) firstly, towards payment of tax debts,
  - (b) secondly, towards payment of grant debts,
  - (c) thirdly, towards payment of referable debts.
- (3) If there is more than one tax debt, and the amount recovered is insufficient to satisfy all of them, the amount recovered is to be allocated pro rata between those tax debts.
- (4) If there is more than one grant debt, and the amount recovered is insufficient, after payment of any tax debts, to satisfy all of the grant debts, the amount recovered is to be allocated pro rata between those grant debts.
- (5) If there is more than one referable debt, priority between those debts is determined on the basis of the referral date, with an earlier referral date taking priority over a later referral date.
- (6) Accordingly, the amount recovered is to be applied firstly towards payment of the referable debt with the oldest referral date, next towards payment of the referable debt with the next oldest referral date, and so on.
- (7) The Chief Commissioner may, at his or her discretion, apply any amount recovered under a debt recovery order otherwise than as provided for by this section having regard to any of the following:
  - (a) the wishes of the debtor,
  - (b) the nature of the debt,
  - (c) the consequences of non-payment of the debt,
  - (d) the date on which the debt became payable.
- (8) The Chief Commissioner is to exercise that discretion in accordance with the debt recovery guidelines.

## **96 Entitlement to refund**

- (1) If the Chief Commissioner recovers from a debtor an amount that exceeds the State debt payable by the debtor, the Chief Commissioner must refund the difference to the debtor, subject to this section.
- (2) Instead of making a refund to a debtor, the Chief Commissioner may apply the amount that would otherwise be refunded to meet any of the following:
  - (a) a referable debt for which a debt recovery order has been made against the debtor,
  - (b) a tax debt or grant debt (whether or not a debt recovery order has been made against the debtor).

## **97 Payment of refunds**

If the Chief Commissioner is authorised or required to refund an amount under this Act, the amount is to be paid from the Consolidated Fund or as otherwise authorised by a debt recovery agreement.

## **Part 11 Administration**

### **98 Chief Commissioner to administer debt recovery action**

- (1) The Chief Commissioner has the function of administering the following:
  - (a) the making of debt recovery orders,
  - (b) the taking of debt recovery action under this Act,
  - (c) the receipt and collection of State debts.
- (2) The Chief Commissioner has any other functions that are conferred or imposed on the Chief Commissioner by or under this Act.

### **99 Use of name “State Debt Recovery”**

A person must not take proceedings or carry on any other activity under the name “State Debt Recovery” unless authorised to do so by the Chief Commissioner or by or under any other Act.

Maximum penalty: 10 penalty units.

### **100 Employees**

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

Commissioner in the exercise of his or her functions under this Act.

### **101 Delegation**

- (1) The Chief Commissioner may delegate to any person a function of the Chief Commissioner under this Act, other than this power of delegation, a principal debt recovery function or an information gathering function.
- (2) The Chief Commissioner may delegate a principal debt recovery function or information gathering function to any person employed in the Public Service.
- (3) The Chief Commissioner and any person to whom a principal debt recovery function is delegated has, in the exercise of principal debt recovery functions, the same protection and immunities as an officer of a court.
- (4) In this section:

**information gathering function** means a function of the Chief Commissioner under this Act that enables the Chief Commissioner to obtain personal information about a person.

**principal debt recovery function** means a function of the Chief Commissioner of:

- (a) making, amending or revoking an order under this Act, or
- (b) suspending or cancelling debt recovery action under this Act.

### **102 Personal liability**

- (1) A matter or thing done or omitted by the Chief Commissioner, a Public Service delegate or any other person engaged in the administration or execution of this Act does not, if the matter or thing was done or omitted in good faith for the purpose of administering or executing this Act, subject the Chief Commissioner, delegate 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.
- (3) In this section:

**Public Service delegate** means a person employed in the Public Service to whom a function of the Chief Commissioner under this Act is delegated.

### **103 Registration of debt recovery orders**

The Chief Commissioner is to register each debt recovery order made and to record details of payment of a State debt and the taking of debt recovery action.



## **Part 12 Access to and disclosure of information**

### **104 Disclosure of identifying information**

- (1) If a provision of this Act or another Act authorises or requires identifying information about a person to be provided to the Chief Commissioner for the purposes of enabling the Chief Commissioner to exercise functions under this Act, that provision authorises or requires the following information about the person (which is **identifying information** for the purposes of this Act) to be provided:
  - (a) name,
  - (b) ACN (if applicable),
  - (c) if the person is an individual—the following information:
    - (i) date of birth,
    - (ii) driver licence number,
  - (d) residential or business address,
  - (e) email address,
  - (f) contact telephone details,
  - (g) information declared to be identifying information by the regulations.
- (2) A regulation under this section is to be made only with the concurrence of the Attorney General.
- (3) The Minister administering this Act is not to recommend the making of a regulation under this section unless the Minister certifies that:
  - (a) the Attorney General has concurred in the making of the regulation, and
  - (b) the Privacy Commissioner was consulted about the proposed regulation.

### **105 Access to information held by police, NSW government agencies and State owned corporations**

- (1) The Chief Commissioner is authorised to request a police officer, a member of the NSW Police Force, a public authority or a State owned corporation to provide any of the following information held about a debtor for the purpose of enabling the Chief Commissioner to take debt recovery action against the debtor or to ascertain the financial circumstances of a debtor against whom a debt recovery order has been made:
  - (a) identifying information about the debtor,

- (b) bank account details,
- (c) information about property of the debtor,
- (d) information that identifies the debtor's employer.

(2) Police officers, members of the NSW Police Force, public authorities and State owned corporations are authorised and required to provide the Chief Commissioner with any available information held by them that is requested by the Chief Commissioner under subsection (1).

#### **106 Access to information held by employers**

- (1) The Chief Commissioner is authorised to obtain from any employer or previous employer of a debtor information about the address, employment details and bank account details of the debtor for the purposes of taking debt recovery action under this Act.
- (2) Any such employer or previous employer is authorised to disclose to the Chief Commissioner the name, address, employer (and any previous address or employer) and bank account details of a debtor if the Chief Commissioner makes a request in writing for that information.

#### **107 Access to and use of information held by credit reporting bodies**

- (1) A credit reporting body is authorised to disclose to the Chief Commissioner, on written request, relevant information about a debtor for the purposes of the Chief Commissioner taking debt recovery action against the debtor.
- (2) In this section:

**credit reporting body** and **identification information** have the same meanings as in the [Privacy Act 1988](#) of the Commonwealth.

**relevant information** about a debtor means any of the following information:

- (a) identification information,
- (b) the name of an authorised deposit-taking institution of which the debtor is a customer and details of any account of the debtor with the institution.

**Note—**

Identification information under the [Privacy Act 1988](#) of the Commonwealth consists of the following information:

- (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.

### **108 Disclosure of information**

- (1) The Chief Commissioner, or any other person engaged in the administration or execution 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 recovery of a State debt), or
  - (b) to a referring officer, or a delegate of a referring officer, for the purposes of the administration or execution of this Act, or
  - (c) 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
  - (d) to the Commissioner of Fines Administration under the *Fines Act 1996*, in connection with the exercise of the functions of the Commissioner of Fines Administration under that Act with respect to State debts and the debt recovery guidelines, or
  - (e) to a tax officer, in connection with the administration or execution of a taxation law, or
  - (f) to the Hardship Review Board, or
  - (g) as authorised or required by or under this Act or any other Act or law.
- (2) Without limiting subsection (1) (a), personal information may be disclosed to an employer or past employer of a debtor for the purposes of the administration, enforcement or execution of a garnishee order.
- (3) A person engaged in the administration or execution 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.

- (4) A person to whom any personal information about a person is disclosed by the Chief Commissioner or by a person engaged in the administration or execution of this Act in accordance with this section must not disclose that personal information to another person unless the disclosure is made:
  - (a) with the consent of the Chief Commissioner, or

(b) so as to enable the person to exercise a function conferred on the person by law, or

(c) as authorised or required by or under this Act or any other Act or law.

Maximum penalty: 100 penalty units.

## **Part 13 Miscellaneous**

### **109 Joint and several liability**

- (1) If 2 or more persons are jointly and severally liable for the payment of a State debt:
  - (a) a debt notice may be served on any of those persons, and
  - (b) a debt recovery order may be made against any of the persons on whom the debt notice was served, and
  - (c) any person against whom an order is made is liable to pay any debt recovery costs payable under the order made against him or her.
- (2) Accordingly, more than one debt recovery order may be made in respect of the amount payable.
- (3) The total amount that may be recovered under the debt recovery orders is not to exceed the total State debt (excluding interest and debt recovery costs).
- (4) If 2 or more persons are jointly and severally liable for payment of a State debt, and the State debt or part of the State debt is recovered from any one of them, the person from whom it is recovered has such rights of contribution or indemnity from the other person or persons as are just.

### **110 Functions of responsible authority**

The functions of a responsible authority under this Act may be exercised by any person, or member of a class of persons, who is authorised in writing by the chief executive officer of the responsible authority to exercise those functions.

### **111 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.

### **112 Form of notices**

Any notice given by the Chief Commissioner to a referring officer under this Act may be given by post, by means of document exchange or by electronic transmission.

### **113 Requirement for notices to be in writing**

- (1) A provision of this Act that requires or permits the Chief Commissioner or an authorised officer to give a notice in writing may be met by the Chief Commissioner or authorised officer giving the notice by electronic transmission.
- (2) Subsection (1) does not affect the requirements of this Act relating to the circumstances in which notices may be served by electronic transmission.
- (3) In this section:

**notice** includes a document.

### **114 Electronic transmission of documents to Sheriff**

- (1) The following directions and orders under this Act may be transmitted electronically to the persons to whom they are given or directed:
  - (a) a property seizure order directed to the Sheriff,
  - (b) a garnishee order, or a summons requiring a garnishee under such a garnishee order to show cause, given to the Sheriff for service,
  - (c) an order for examination given to the Sheriff for service.
- (2) For the purpose of executing any such order, the Sheriff or other officer to whom the order is so transmitted is to cause a copy of the order to be converted into written form and to be endorsed with the following words:

This document has been transmitted electronically by the Chief Commissioner of State Revenue in accordance with section 114 of the [State Debt Recovery Act 2018](#).

### **115 Service of notices**

- (1) A notice that is required by this Act to be served by the Chief Commissioner or a responsible authority on a person may be served on the person:
  - (a) personally, or
  - (b) by post, or
  - (c) by electronic transmission, or
  - (d) by any other manner prescribed by the regulations.
- (2) The address for service by post of any such notice includes, subject to this section:
  - (a) the address supplied by the person in connection with the matter for which the State debt is payable, and
  - (b) in the case of a notice served by the Chief Commissioner—the address obtained

for the person by the Chief Commissioner under this Act, if the Chief Commissioner is satisfied that it is the most recent address available for the person.

- (3) A notice may be served on a person by electronic transmission only if:
- (a) the person has consented to receiving communications by electronic transmission in connection with the matter for which the State debt is payable, or
  - (b) the person has consented to receiving notices or other documents in connection with the State debt by electronic transmission.
- (4) If subsection (3) permits the service of the order by electronic transmission, the address for service by electronic transmission is the address provided by the person.
- (5) Despite any other provision of this Act:
- (a) notice served by post is taken to be served on a person 7 days after it is posted, unless the person establishes that it was not served within that period, and
  - (b) notice served by electronic transmission is taken to be served on a person the next working day after the electronic transmission is sent, unless the person establishes that it was not served within that period.
- (6) In this section:
- notice** includes a document.
- serve** includes give or send.

#### **116 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before the Local Court.

#### **117 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, remittance, postponement or refund of any interest, costs or fees payable under this Act.

## Schedule 1 Referable debts

(Sections 3 (1) and 7)

### Column 1

#### Referable debt

Ambulance fee under Chapter 5A of the *Health Services Act 1997*

Rates, charges, fees and other amounts under Chapter 15 of the *Local Government Act 1993*

### Column 2

#### Referring officer

Health Secretary under the *Health Services Act 1997*

General Manager of the council to which the rates, charges, fees or other amounts are payable

## Schedule 2 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or 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 date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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 Application to existing debts

- (1) This Act, and the amendments made by this Act, extend to an amount that became payable, or a debt that was incurred, before the commencement of this Act.
- (2) Accordingly, a debt recovery order may be made in relation to the amount or debt in accordance with this Act.
- (3) This clause is subject to the *Limitation Act 1969*.

- (4) This clause is subject to any specific provision to the contrary in the *Health Services Act 1997*.

## Schedule 3 Consequential amendments

### 3.1, 3.2

(Repealed)

### 3.3 First Home Owner Grant (New Homes) Act 2000 No 21

#### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**grant debt**—see section 46.

#### [2] Section 25 Objections

Omit section 25 (1A).

#### [3] Section 46 Power to recover certain amounts

Omit section 46 (3)–(3B).

#### [4] Section 46 (5) and (6)

Omit section 46 (5)–(8). Insert instead:

(5) An amount payable by a person under this section is a debt payable to the Crown.

(6) A debt payable to the Crown under this section is a **grant debt** under this Act.

#### [5] Sections 46A and 46B

Omit section 46A. Insert instead:

#### 46A Recovery of grant debts

- (1) The Chief Commissioner may, by notice served on a person by whom a grant debt is payable (a **debt notice**), require the person to pay to the Chief Commissioner that grant debt or any part of it that is unpaid.
- (2) The notice must specify the amount payable and the due date for payment.
- (3) The due date specified must not be less than 28 days after the notice is served on the person.



- (4) The amount is payable by that due date or by a later date specified by the Chief Commissioner.
- (5) A debt notice must inform the person that, if the amount payable is not paid by the due date:
  - (a) debt recovery action may be taken under the *State Debt Recovery Act 2018*, and
  - (b) that, if that action is taken, additional debt recovery costs may become payable under that Act.

#### **46B Payment arrangements and writing off**

- (1) The Chief Commissioner may enter into an arrangement (which may include provision for the payment of interest) for payment of an outstanding grant debt by instalments.
- (2) The Chief Commissioner may write off the whole or part of a liability for a grant debt if satisfied that action, or further action, to recover the amount outstanding is impracticable or unwarranted.
- (3) Without limiting subsection (2), the Chief Commissioner may write off the whole or part of the liability for a grant debt if satisfied that:
  - (a) the person liable to pay it is in such circumstances that the exaction of the full amount of grant debt would result in serious hardship for the person or the person's dependants, or
  - (b) the person liable to pay it has died and that person's dependants are in such circumstances that the exaction of the full amount of grant debt would result in serious hardship for them.
- (4) The Chief Commissioner must not enter into an arrangement for payment of a grant debt, or write off any liability for a grant debt, under this section if a debt recovery order has been made in respect of the amount under the *State Debt Recovery Act 2018*.
- (5) Subsection (4) ceases to apply if the debt recovery order is revoked in respect of that amount.
- (6) This section does not limit any of the Chief Commissioner's functions under the *State Debt Recovery Act 2018*.

**Note—**

The *State Debt Recovery Act 2018* makes separate provision for time to pay arrangements.

**[6] Section 48A**

Insert after section 48:

**48A Service of notices**

Section 116 of the *Taxation Administration Act 1996* applies to the service of notices by the Chief Commissioner under this Act in the same way as it applies to the service of documents under a taxation law.

**[7] Schedule 1 Savings, transitional and other provisions**

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

**Part Provisions consequent on enactment of State Debt Recovery Act 2018**

**Recovery of grant debts**

- (1) The amendments made to this Act by the *State Debt Recovery Act 2018* extend to amounts that became payable under section 46 before the commencement of those amendments.
- (2) Accordingly, those amounts can be recovered under the *State Debt Recovery Act 2018*.
- (3) Section 46, as in force immediately before its amendment by the *State Debt Recovery Act 2018*, continues to apply to any charge created under that section before that amendment.
- (4) Section 46A, as in force immediately before its substitution by the *State Debt Recovery Act 2018*, continues to apply to any requirement made under that section before that substitution.

**3.4-3.11**

(Repealed)

**3.12 Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19**

**[1] Section 4 Definitions**

Omit the definition of **relevant third party** from section 4 (1).

Insert in alphabetical order:

**rebate debt**—see sections 29 and 30.

**[2] (Repealed)**

**[3] Section 29 Power to require payment from claimant**

Omit section 29 (5)–(7). Insert instead:

(5) An amount payable by a person under this section is a debt payable to the Crown.

(6) A debt payable to the Crown under this section is a **rebate debt** under this Act.

**[4] Section 30 Power to require payment from non-claimant**

Omit section 30 (3)–(5). Insert instead:

(3) An amount payable by a person under this section is a debt payable to the Crown.

(4) A debt payable to the Crown under this section is a **rebate debt** under this Act.

**[5] Section 31**

Omit the section. Insert instead:

**31 Recovery of rebate debts**

- (1) The Chief Commissioner may, by notice served on a person by whom a rebate debt is payable (a **debt notice**), require the person to pay to the Chief Commissioner that rebate debt or any part of it that is unpaid.
- (2) The notice must specify the amount payable and the due date for payment.
- (3) The due date specified must not be less than 28 days after the notice is served on the person.
- (4) The amount is payable by that due date or by a later date specified by the Chief Commissioner.
- (5) A debt notice must inform the person that, if the amount payable is not paid by the due date:
  - (a) debt recovery action may be taken under the *State Debt Recovery Act 2018*, and
  - (b) that, if that action is taken, additional debt recovery costs may become payable under that Act.

**[6] (Repealed)**

**[7] Section 35 Objections**

Omit section 35 (3).

**[8], [9] (Repealed)**

**3.13 Small Business Grants (Employment Incentive) Act 2015 No 14**

**[1] Section 4 Definitions**

Omit the definition of **relevant third party** from section 4 (1).

Insert in alphabetical order:

**grant debt**—see sections 31 and 32.

**[2] (Repealed)**

**[3] Section 31 Power to require payment from claimant**

Omit section 31 (5)–(7). Insert instead:

(5) An amount payable by a person under this section is a debt payable to the Crown.

(6) A debt payable to the Crown under this section is a **grant debt** under this Act.

**[4] Section 32 Power to require payment from non-claimant**

Omit section 32 (3)–(5). Insert instead:

(3) An amount payable by a person under this section is a debt payable to the Crown.

(4) A debt payable to the Crown under this section is a **grant debt** under this Act.

**[5] Section 33**

Omit the section. Insert instead:

**33 Recovery of grant debts**

(1) The Chief Commissioner may, by notice served on a person by whom a grant debt is payable (a **debt notice**), require the person to pay to the Chief Commissioner that grant debt or any part of it that is unpaid.

(2) The notice must specify the amount payable and the due date for payment.

- (3) The due date specified must not be less than 28 days after the notice is served on the person.
- (4) The amount is payable by that due date or by a later date specified by the Chief Commissioner.
- (5) A debt notice must inform the person that, if the amount payable is not paid by the due date:
  - (a) debt recovery action may be taken under the *State Debt Recovery Act 2018*, and
  - (b) that, if that action is taken, additional debt recovery costs may become payable under that Act.

**[6] (Repealed)**

**[7] Section 37 Objections**

Omit section 37 (3).

**[8], [9] (Repealed)**

**3.14 Taxation Administration Act 1996 No 97**

**[1]-[4] (Repealed)**

**[5] Sections 46 and 46A**

Omit section 46. Insert instead:

**46 Debt payable as required by debt notice**

- (1) The Chief Commissioner may, if a person fails to pay an amount of tax that the person is required to pay under a notice of assessment served on the person, serve a debt notice on the person by whom any tax is payable.
- (2) A **debt notice** is a notice to the effect that the person to whom it is directed is required to pay a specified amount of tax to the Chief Commissioner by a date specified in the notice.
- (3) The due date specified must not be less than 28 days after the notice is served on the person.
- (4) The notice must inform the person that, if the amount payable is not paid by the due date:
  - (a) debt recovery action may be taken under the *State Debt Recovery Act 2018*, and

(b) that, if that action is taken, additional debt recovery costs may become payable under that Act.

#### **46A Recovery of tax debt**

- (1) If the whole or part of tax payable by a taxpayer is not paid to the Chief Commissioner as required by a debt notice served on the taxpayer, the Chief Commissioner may recover the tax debt, in a court of competent jurisdiction, as a debt to the Chief Commissioner.
- (2) However, the Chief Commissioner cannot take proceedings under subsection (1) to recover the tax debt if the Chief Commissioner makes a debt recovery order against the person under the *State Debt Recovery Act 2018* in respect of that tax debt, unless that order is revoked.
- (3) This section does not limit the Chief Commissioner's functions under the *State Debt Recovery Act 2018*.

**[6]-[17] (Repealed)**