

Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019

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Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

**Fines, Penalties and Infringement Notices
Enforcement Amendment Bill 2019**

A Bill for

An Act to amend —

- **the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; and**
 - **the *Sentence Administration Act 2003*; and**
 - **the *Sentencing Act 1995*,**
- and to make consequential amendments to other Acts.**

¹ ***[Long title to be reviewed as drafting progresses]***

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary**

2 **1. Short title**

3 This is the *Fines, Penalties and Infringement Notices*
4 *Enforcement Amendment Act 2019*.

5 **2. Commencement**

6 This Act comes into operation as follows —

- 7 (a) Part 1 — on the day on which this Act receives the
8 Royal Assent;
- 9 (b) Part 2 Division [*to be drafted - amendments for WDPs*]
10 and [*to be drafted - consequential for WDPs*] — on a
11 day fixed by proclamation;
- 12 (c) the rest of the Act — on a day fixed by proclamation.

Part 2 — *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

3. Act amended

This Part amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[The following text is the Fines, Penalties and Infringement Notices Enforcement Act 1994 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Fines, Penalties and Infringement Notices Enforcement Act 1994*¹.

2. Commencement

- (1) Subject to this section this Act comes into operation on such day as is fixed by proclamation¹.
- (2) Section 29(2) has no effect unless the *Young Offenders Act 1994* is enacted, and, if that Act receives the Royal Assent after the day on which this Act comes into operation, section 29(2) comes into operation on the day on which that Act receives the Royal Assent¹.

3. Terms used

- (1) In this Act —
- approved form* means a form approved in writing by the CEO;
- CEO (fines enforcement)* means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;
- CEO (corrections)* means the chief executive officer of the Public Sector agency principally assisting the Minister

s. 3

1 administering Part 8 of the *Sentence Administration Act 2003* in
2 its administration;

3 **child** means a person who is under 18 years of age;

4 **Department's website** means the website of the department of
5 the Public Service principally assisting the Minister in the
6 administration of this Act;

7 ~~**Department of Corrective Services** means the department of the~~
8 ~~Public Service principally assisting the Minister in the~~
9 ~~administration of the *Court Security and Custodial Services*~~
10 ~~*Act 1999*;~~

11 **Director General** means the CEO as defined in the *Road Traffic*
12 *(Administration) Act 2008* section 4;

13 **dishonoured payment** means a purported payment —

- 14 (a) by means of a cheque where the cheque is subsequently
15 dishonoured or cancelled; or
16 (b) by means of a credit card where the payment is not
17 authorised by the issuer of the card; or
18 (c) pursuant to an arrangement to directly debit an account
19 with a person where the payment is not authorised by
20 the person;

21 **driver's licence** means a driver's licence as defined in the *Road*
22 *Traffic (Authorisation to Drive) Act 2008* section 3(1) and
23 includes an extraordinary licence as defined in that section;

24 **electricity corporation** means a corporation established under
25 the *Electricity Corporations Act 2005* section 4(1);

26 ~~**Electricity Generation and Retail Corporation** has the meaning~~
27 ~~given in the *Electricity Corporations Act 2005* section 3(1);~~

28 **give** information or a document or notice, has a meaning
29 affected by section 5A;

30 **hardship** has a meaning affected by section 4A;

31 **number plate** —

- 1 (a) before the *Road Traffic (Vehicles) Act 2012* section 3
2 comes into operation — has the meaning given in the
3 *Road Traffic Act 1974* section 5(1); or
4 (b) after the *Road Traffic (Vehicles) Act 2012* section 3
5 comes into operation — has the meaning given in that
6 section;

7 ***paid*** means paid in full;

8 ***Registrar*** means the Registrar appointed under section 7(1);

9 ***Registry*** means the Fines Enforcement Registry established
10 under section 6;

11 ***remote area*** means an area designated as a remote area under
12 regulations made for the purposes of section 4B;

13 ***road law*** has the meaning given in the *Road Traffic*
14 *(Administration) Act 2008* section 4;

15 ***serve*** a document, has a meaning affected by sections 5 and 5A;

16 ***Sheriff*** means the Sheriff of Western Australia;

17 ***vehicle licence*** means a licence granted in respect of a vehicle
18 under the *Road Traffic (Vehicles) Act 2012*;

19 ***work and development order*** has the meaning given in
20 section 28(1);

21 ***work and development permit*** has the meaning given in
22 section 28(1).-

23 ~~(2) For the purposes of this Act, a vehicle is licensed in the name of~~
24 ~~a person if the person holds the vehicle licence in respect of the~~
25 ~~vehicle, whether or not the vehicle licence is suspended.~~

26 [Section 3 amended by No. 76 of 1996 s. 29; No. 7 of 2002
27 s. 61; No. 65 of 2006 s. 62; No. 3 of 2008 s. 4(1) and 5(2);
28 No. 47 of 2011 s. 27; No. 8 of 2012 s. 107; No. 48 of 2012 s. 4;
29 No. 25 of 2013 s. 43(2) and (3).]

30 [4. Deleted by No. 84 of 2004 s. 46.]

s. 4

4. General principles relating to enforcement of fines

(1) The following principles must be observed in the administration of this Act —

(a) imprisonment for failure to pay a fine is an enforcement measure of last resort; and

(b) an offender who is experiencing hardship affecting the offender's capacity to pay a fine or to undertake activity under a work and development permit or work and development order should not be imprisoned by reason only of a failure to pay a fine.

(2) A person performing a function under this Act must have regard to the principles set out in subsection (1).

4A. Hardship

For the purposes of this Act, *hardship* includes the following personal circumstances —

(a) financial hardship;

(b) family violence (as defined in the *Restraining Orders Act 1997* section 3(1));

(c) mental illness (as defined in the *Mental Health Act 2014* section 4);

(d) disability (as defined in the *Disability Services Act 1993* section 3);

(e) homelessness;

(f) alcohol or other drug use problems.

4B. Remote areas

(1) The regulations may designate 1 or more areas of the State as remote areas for the purposes of this Act.

(2) Regulations made for the purposes of subsection (1) must not designate as a remote area an area that includes the metropolitan

region (as defined in the *Planning and Development Act 2005* section 4(1)) or any part of the metropolitan region.

5. Service of documents

(1) If under this Act a document must be served on a person, then unless the contrary intention appears, service may be effected in accordance with section 76 of the *Interpretation Act 1984* (other than paragraph (b)) or by post in accordance with this section or in accordance with section 5A.

(2) A document issued under this Act may be served by post on a person by properly addressing and posting it by pre-paid post as a letter to the person at the person's last known address.

(3) For the purposes of this Act, ~~the service of documents under Part 4 or 7 on a person or the publication of relevant details of a person under Part 5A~~ if a fine has been imposed on a ~~the~~ person, the person's last known address may be taken to be —

- (a) the address that under section 30 was supplied to the court that imposed the fine; or
- (b) the address on any summons or other document issued to the offender in connection with the charge giving rise to the fine,

unless the person has advised the Registry or the Sheriff that he or she has another address.

(4) For the purposes of ~~the service of any document under~~ this Act, a person's last known address may be taken to be the person's current address shown in the records of —

- (a) the Director General; or
- (b) an electricity corporation; or
- (c) a government department, or agency, of the Commonwealth.

~~(b) the Electricity Generation and Retail Corporation.~~

s. 5A

1 (5) A document sent by post to a person under subsection (2) is to
2 be taken as having been served on the person.

3 (6) Section 75 of the *Interpretation Act 1984* does not apply to a
4 document issued under this Act.

5 *[Section 5 amended by No. 76 of 1996 s. 30; No. 3 of 2008*
6 *s. 5(3); No. 48 of 2012 s. 5; No. 25 of 2013 s. 43(4).]*

7 **5A. Service by electronic means**

8 (1) If under this Act information or a document or notice must or
9 may be given to or served on a person, it may, with the consent
10 of that person or in other circumstances specified in the
11 regulations, be given or served by electronic means in
12 accordance with the regulations.

13 (2) Subsection (1) does not apply to giving or serving —

14 (a) any document that under this Act must be served
15 personally, other than any of the following —

16 (i) an order to attend for work and development
17 under section 47 ~~or 47A~~;

18 (ii) a work and development order;

19 *[(b), (c) deleted]*

20 (d) a document under section 21(4)(b);

21 (e) a summons or arrest warrant issued under section 52P;

22 *[(e) deleted]*

23 (f) any information or a document or notice under Part 7,
24 other than a garnishee order under section 95O or 95V;

25 (g) subject to section 105, an enforcement warrant or a
26 warrant of commitment issued under this Act.

27 (3) Subsection (1) does not limit the operation of section 76 of the
28 *Interpretation Act 1984*.

29 *[Section 5A inserted by No. 3 of 2008 s. 5(1); amended by*
30 *No. 48 of 2012 s. 43; No. 20 of 2013 s. 75.]*

1 **5B. *Courts and Tribunals (Electronic Processes Facilitation)***
2 ***Act 2013 Part 2 applies***

3 (1) *The Courts and Tribunals (Electronic Processes Facilitation)*
4 *Act 2013 Part 2 applies to this Act.*

5 (2) Subsection (1) is subject to section 5A(2).

6 **5C. Act binds Crown**

7 This Act binds the Crown in right of Western Australia and, so
8 far as the legislative power of the Parliament permits, the Crown
9 in all its other capacities.

10 *[Section 5B inserted by No. 20 of 2013 s. 76.]*

1 **Part 2 — Fines Enforcement Registry**

2 **6. Registry established**

3 As part of the Magistrates Court, a registry called the Fines
4 Enforcement Registry is established.

5 *[Section 6 amended by No. 59 of 2004 s. 107.]*

6 **7. Registrar**

7 (1) Under Part 3 of the *Public Sector Management Act 1994*, a
8 person is to be appointed as the Registrar of the Registry.

9 (2) The Registrar is an officer of the Magistrates Court and the
10 functions of the Registrar are to be taken to be functions of that
11 Court.

12 (3) Any notice, order or warrant issued by the Registrar is to be
13 taken to be a notice, order or warrant issued by the Magistrates
14 Court.

15 *[Section 7 amended by No. 14 of 2003 s. 4; No. 59 of 2004*
16 *s. 107.]*

17 **7A. Registrar may delegate**

18 (1) The Registrar may delegate to a person any power or duty of the
19 Registrar under another provision of this Act other than —

20 (aa) the power under section 21A to issue an enforcement
21 warrant; and

22 (a) the power under section 45 to issue an enforcement
23 warrant; and

24 (b) the power under section 52F to issue a fine expiation
25 order.

26 ~~(b) the power under section 53(1) to issue a warrant of~~
27 ~~commitment.~~

28 (2) The delegation must be in writing signed by the Registrar.

1 (3) A person exercising or performing a power or duty that has been
2 delegated to the person under this section is to be taken to do so
3 in accordance with the terms of the delegation unless the
4 contrary is shown.

5 (4) Nothing in this section limits the ability of the Registrar to
6 perform a function through an officer or agent.

7 *[Section 7A inserted by No. 14 of 2003 s. 5; amended by No. 48*
8 *of 2012 s. 6 and 43.]*

9 **8. Payments to Registry**

10 (1) Payment under this Act of any amount to the Registry is to be
11 made in such manner and at such places as the Registrar
12 determines from time to time.

13 (2) Documents issued under this Act by the Registrar are to contain
14 information about the manner in which and the places at which
15 payments to the Registry may be made.

16 **9. Registrar exempt from fees**

17 The Registrar is exempt from paying fees under the *Electoral*
18 *Act 1907* and a road law in connection with any matter arising
19 out of or in connection with the performance of his or her
20 functions under this Act.

21 *[Section 9 amended by No. 8 of 2012 s. 109.]*

22 ~~**10. Registrar has access to records of Director General and**~~
23 ~~**Electricity Generation and Retail Corporation**~~

24 ~~To the extent that it is necessary or convenient for the~~
25 ~~performance of the Registrar's functions under this Act, the~~
26 ~~Registrar is entitled to have access to and to make use of~~

27 ~~(a) the records kept by the Director General under a road~~
28 ~~law or, after the *Road Traffic (Administration) Act 2008*~~
29 ~~section 4 comes into operation, a road law in relation to~~
30 ~~drivers' licences and vehicle licences; and~~

s. 10A

1 ~~(b) the records that the Electricity Generation and Retail~~
2 ~~Corporation has of the names and addresses of its~~
3 ~~customers.~~

4 ~~[Section 10 amended by No. 76 of 1996 s. 30; No. 47 of 2011~~
5 ~~s. 27; No. 8 of 2012 s. 109; No. 48 of 2012 s. 7; No. 25 of 2013~~
6 ~~s. 43(5).]~~

7 **~~10A. Registrar may disclose information to Commissioner of~~**
8 **~~Police or officer of Department of Corrective Services~~**

9 ~~The Registrar, on any terms the Registrar thinks fit, may~~
10 ~~disclose to the Commissioner of Police, or to an officer of the~~
11 ~~Department of Corrective Services, any information the~~
12 ~~Registrar thinks fit about any proceedings under this Act.~~

13 ~~[Section 10A inserted by No. 3 of 2008 s. 6; amended by No. 48~~
14 ~~of 2012 s. 8.]~~

15 **10B. Registrar to keep record of outstanding fines and other**
16 **amounts payable by young persons**

17 (1) In this section —

18 *relevant amount* means —

- 19 (a) a fine to which the *Young Offenders Act 1994*
20 section 65(1)(a) applies; or
21 (b) a bail undertaking to which the *Young Offenders*
22 *Act 1994* section 65(1)(b) applies; or
23 (c) a recognisance to which the *Young Offenders Act 1994*
24 section 65(1)(c) applies;

25 *young person* has the meaning given in the *Young Offenders*
26 *Act 1994* section 3.

27 (2) The Registrar must maintain a record of all relevant amounts to
28 which this section applies, including details of —

- 29 (a) the young person by whom the relevant amount is
30 payable; and

- 1 (b) the time specified by the court within which the relevant
2 amount is to be paid; and
- 3 (c) any order of the court that the relevant amount is to be
4 paid in instalments; and
- 5 (d) the payment of the relevant amount or of any instalment
6 of the relevant amount; and
- 7 (e) when the young person by whom the relevant amount is
8 payable has defaulted in the payment of the relevant
9 amount or of any instalment of the relevant amount.
- 10 (3) As soon as practicable after the record maintained by the
11 Registrar under subsection (2) indicates that, in relation to a
12 relevant amount, a young person has defaulted in the payment
13 of the relevant amount or of any instalment of the relevant
14 amount, the Registrar must notify the default to —
- 15 (a) in the case of a fine, the court that imposed the fine; or
16 (b) in the case of a bail undertaking or a recognisance, the
17 court that ordered the bail undertaking or recognisance
18 to be forfeited.

19 *[Section 10B inserted by No. 20 of 2013 s. 77.]*

Part 3 — Infringement notices

Division 1 — Preliminary

11. Terms used

In this Part —

~~**aggregate unpaid infringement amount**, in relation to an alleged offender, means the aggregate of the unpaid infringement amounts for each outstanding order to pay or elect in relation to the alleged offender;~~

alleged offence means the offence that an infringement notice alleges has been committed;

alleged offender means the person to whom an infringement notice is issued;

election means an election in writing to have a charge for an alleged offence heard and determined by a court;

enforcement fees means prescribed fees imposed in connection with proceedings under this Act in relation to an infringement notice; ~~under this Part and includes the registration fee referred to in section 16;~~

enforcement warrant means a warrant issued under section 21A;

infringement notice means a notice issued under a written law, other than this Act, to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court;

licence suspension order means an order made under section 19;

modified penalty means the amount of money prescribed in a written law and specified in an infringement notice as the amount that the offender is to pay if he or she wants the matter dealt with out of court;

1 ***outstanding order to pay or elect***, in relation to an alleged
2 offender, means an order to pay or elect issued to the alleged
3 offender under section 17, where —

- 4 (a) the modified penalty, and enforcement fees, specified in
5 that order have not been paid in full, or recovered in full
6 under an enforcement warrant; and
7 (b) an election has not been made under section 21 in
8 relation to the infringement notice to which the order
9 relates; and
10 (c) no time to pay order is in force under section ~~21C~~27A in
11 respect of the alleged offender and the infringement
12 notice to which the order relates~~modified penalty, and~~
13 ~~enforcement fees, specified in that order~~; and
14 (d) if an enforcement warrant issued under section 21A is in
15 force in respect of the alleged offender and the
16 infringement notice to which the order relates~~modified~~
17 ~~penalty, and enforcement fees, specified in the order~~ —
18 no arrangement under section 68A is in force in relation
19 to the warrant; and
20 (e) the prosecuting authority has not, under section 22,
21 withdrawn proceedings in respect of the infringement
22 notice to which the order relates;

23 ***prescribed enactment*** means a principal enactment that under
24 section 12(1) is prescribed as an enactment to which this Part
25 applies;

26 ***principal enactment***, in relation to an infringement notice,
27 means the written law under which an infringement notice is
28 issued;

29 ***prosecuting authority***, in relation to an infringement notice,
30 means the person who or which, under the principal enactment,
31 administers the issuing of, and any subsequent proceedings in
32 relation to, the notice;

33 ***prosecuting officer*** means a person designated as such in a
34 notice given to the Registrar under section 13(2);

1 **registered** means registered with the Registry for enforcement
2 under section 16;

3 **time to pay order** means an order made under section 21C, as
4 **amended from time to time;**

5 **unpaid infringement amount**, in relation to ~~an order to pay or~~
6 ~~elect issued under section 17~~ a registered infringement notice,
7 means that amount of the modified penalty, and enforcement
8 fees, specified in the order to pay or elect for the infringement
9 notice that has not been paid, or recovered under an
10 enforcement warrant.

11 *[Section 11 amended by No. 84 of 2004 s. 80; No. 48 of 2012*
12 *s. 9.]*

13 **12. Application**

- 14 (1) This Part does not apply to an infringement notice unless the
15 principal enactment is prescribed as an enactment to which this
16 Part applies.
- 17 (2) This Part does not apply to an infringement notice unless the
18 prosecuting authority in relation to the notice has been approved
19 under section 13(1).
- 20 (3) This Part does not apply to an infringement notice issued to an
21 alleged offender who, at the time of the alleged offence, was
22 under 17 years old.

23 **13. Approved prosecuting authorities and officers**

- 24 (1) For the purposes of this Part, the Registrar may approve a
25 prosecuting authority as a prosecuting authority to which this
26 Part applies.
- 27 (2) The Registrar is not to approve a prosecuting authority unless
28 the authority gives the Registrar written notice of those officers
29 of the authority that are designated as prosecuting officers for
30 the purposes of and in accordance with sections 16 and 22.

- 1 (3) A prosecuting authority at any time may amend the written
2 notice of designated prosecuting officers.

3 **Division 2 — Enforcement of infringement notices**

4 **14. Final demand may be issued to alleged offender**

- 5 (1) If under a prescribed enactment —
6 (a) an infringement notice has been issued; and
7 (b) the infringement notice has not been withdrawn under
8 that enactment; and
9 (c) the modified penalty has not been paid as required by
10 the infringement notice; and
11 (d) the time for paying the modified penalty has elapsed,
12 the prosecuting authority may issue a final demand.
13 (2) A final demand must be served on the alleged offender.
14 (3) A final demand must identify the infringement notice concerned
15 and the alleged offence.
16 (4) A final demand must contain a statement to the effect that
17 unless within 28 days after the date of issue of the final
18 demand —
19 (a) the modified penalty, and enforcement fees, specified in
20 the final demand are paid to the person to whom or
21 which, under the principal enactment, the modified
22 penalty is to be paid; or
23 (b) an election is made by the alleged offender and given to
24 the person to whom or which, under the principal
25 enactment, the modified penalty is to be paid,
26 the infringement notice may be registered with the Registry
27 after which a licence suspension order may be made and further
28 enforcement fees may be imposed.
29 (5) A final demand must contain such information as may be
30 prescribed.

1 **15. Infringement notice may be registered**

2 If —

- 3 (a) 28 days have elapsed since the date of issue of a final
4 demand to an alleged offender; and
5 (b) the modified penalty, and enforcement fees, specified in
6 the final demand have not been paid in accordance with
7 the final demand; and
8 (c) an election has not been made by the alleged offender in
9 accordance with the final demand,

10 the prosecuting authority may register the infringement notice.

11 **16. Registration of infringement notice: enforcement certificate**

12 (1) To register an infringement notice with the Registry for
13 enforcement, a prosecuting authority must give the Registry —

14 (a) an enforcement certificate signed by a prosecuting
15 officer of the authority; and

16 (b) any information prescribed by the regulations.

17 ~~(b) such information as the Registrar requires in such~~
18 ~~manner as the Registrar specifies,~~

19 and must pay the prescribed registration fee, if applicable.

20 (2) An enforcement certificate must identify the alleged offender to
21 whom, and the alleged offence to which, it relates and must
22 state that —

23 (a) on a date specified in the certificate an infringement
24 notice was, in accordance with the principal enactment,
25 issued to the alleged offender in respect of the alleged
26 offence; and

27 (b) on a date specified in the certificate a final demand was,
28 in accordance with section 14, served on the alleged
29 offender; and

- 1 (c) the final demand was served after the time for payment
2 of the modified penalty in accordance with the
3 infringement notice had elapsed; and
- 4 (d) as at the date of the lodging of the certificate —
- 5 (i) 28 days have elapsed since the date of issue of
6 the final demand; and
- 7 (ii) the modified penalty, and enforcement fees,
8 specified in the final demand have not been paid
9 in accordance with the final demand; and
- 10 (iii) an election has not been made by the alleged
11 offender in accordance with the final demand;
12 and
- 13 (iv) proceedings, other than under this Part, have not
14 been commenced in respect of the alleged
15 offence; and
- 16 (v) proceedings under this Part in respect of the
17 alleged offence have not been withdrawn under
18 section 22.
- 19 (3) An enforcement certificate may relate to more than one
20 infringement notice and, if it does, the prescribed registration
21 fee, if applicable, must be paid in respect of each infringement
22 notice registered.
- 23 (4) For the purposes of this section a prosecuting officer must be a
24 person who, under the principal enactment, is empowered to
25 commence a prosecution for the alleged offence.
- 26 (5) If the law limits the time within which proceedings for an
27 alleged offence may be commenced, an enforcement certificate
28 in relation to an infringement notice issued for that alleged
29 offence must not be lodged after that time limit has expired.
- 30 (6) After an infringement notice is registered with the Registry,
31 payment of the whole or any part of the modified penalty and
32 enforcement fees must not be accepted other than by or on
33 behalf of the Registrar.

- 1 (7) The Registrar is to cause an enforcement certificate to be
2 registered in a register kept at the Registry, in such form as the
3 Registrar considers appropriate, for the purposes of this Part.

4 *[Section 16 amended by No. 84 of 2004 s. 80.]*

5 **17. Order to pay or elect**

- 6 (1) If under section 16 a matter is registered with the Registry, the
7 Registrar must issue an order to pay or elect to the alleged
8 offender.
- 9 (2A) An order to pay or elect must not relate to more than one
10 registered infringement notice.
- 11 (2) An order to pay or elect must be served on the alleged offender.
- 12 (3) An order to pay or elect is an order that within 28 days after the
13 date of issue of the order either —
- 14 (a) the modified penalty, and enforcement fees, specified in
15 the order must be paid to the Registry; or
- 16 (b) an election under section 21 must be made by the
17 alleged offender.
- 18 (4) An order to pay or elect must advise the alleged offender that if
19 the order is not complied with, the Registrar may make a licence
20 suspension order or may, in some circumstances, issue an
21 enforcement warrant.
- 22 (5) The Registrar must notify the prosecuting authority of the
23 making of an order to pay or elect and the date on which it was
24 issued.

25 *[Section 17 amended by No. 48 of 2012 s. 10.]*

26 **18. Notice of intention to enforce**

- 27 (1) If —
- 28 (a) 28 days have elapsed since the date of issue of an order
29 to pay or elect; and

- 1 (b) the modified penalty, and enforcement fees, specified in
2 that order have not been paid to the Registry; and
3 (c) an election under section 21 has not been made by the
4 alleged offender,
- 5 the Registrar may issue a notice of intention to enforce.
- 6 (2) A notice of intention to enforce must be served on the alleged
7 offender.
- 8 (3) A notice of intention to enforce must contain a statement to the
9 effect that unless before a date specified in the notice (the *due*
10 *date*) either —
- 11 (a) the unpaid infringement amount in respect of the
12 infringement notice to which the order relates is
13 ~~modified penalty, and enforcement fees, specified in the~~
14 ~~order are~~ paid to the Registry; or
- 15 (b) an election under section 21 is made by the alleged
16 offender,
- 17 the Registrar —
- 18 (c) may make a licence suspension order in respect of the
19 alleged offender; and
- 20 (d) ~~in some circumstances,~~ may issue an enforcement
21 warrant in respect of the alleged offender.
- 22 (4) The due date must not be earlier than 28 days after the date of
23 issue of the notice of intention to enforce.
- 24 (5) A notice of intention to enforce must also —
- 25 (aa) state that a licence suspension order cannot be made in
26 relation to an alleged offender who is an individual and
27 whose last known address is in a remote area; and
- 28 (a) state the date and time when the licence suspension
29 order will have effect if it is made; and

- 1 (b) explain that if a licence suspension order is made it will
2 not be cancelled until the modified penalty and
3 enforcement fees are paid; and
- 4 (c) explain the terms of the licence suspension order that
5 may be made; and
- 6 (da) state that, if the Registrar issues an enforcement
7 warrant —
- 8 (i) the alleged offender will cease to be entitled to
9 make an election under section 21 in relation to
10 the infringement notice to which the warrant
11 relates; and
- 12 (ii) the alleged offender will be required to pay the
13 modified penalty, and enforcement fees,
14 specified in the warrant;
- 15 and
- 16 (db) state the effect that an enforcement warrant will have if
17 it is issued; and
- 18 (dc) explain the effect of sections 4A and 19(2A) and advise
19 the alleged offender that if the alleged offender is an
20 individual experiencing hardship this should be made
21 known to the Registrar; and
- 22 (d) contain such other information as is prescribed.
- 23 *[Section 18 amended by No. 48 of 2012 s. 11.]*

24 **19. Licence suspension order**

- 25 (1) If —
- 26 (a) 28 days have elapsed since the date of issue of a notice
27 of intention to enforce in relation to an infringement
28 notice; and
- 29 (b) the unpaid infringement amount in respect of the
30 infringement notice has modified penalty, and
31 enforcement fees, specified in that notice have not been
32 paid to the Registry; and

- 1 (c) the alleged offender has not made an election under
2 section 21,
- 3 then, whether or not an enforcement warrant issued under
4 section 21A is in force, the Registrar may make a licence
5 suspension order in respect of the alleged offender.
- 6 (2) A licence suspension order is an order as to such of the matters
7 in subsections (3) and (4) as the Registrar thinks fit.
- 8 (2A) If the Registrar has been given notice of any hardship affecting
9 an alleged offender who is an individual, the Registrar must
10 consider that hardship in deciding whether or not to make a
11 licence suspension order in relation to the alleged offender.
- 12 (2B) The Registrar cannot make a licence suspension order in
13 relation to an alleged offender who is an individual if the
14 alleged offender's last known address is in a remote area.
- 15 (3) If the alleged offender is an individual a licence suspension
16 order may disqualify the alleged offender from one of the
17 following:
- 18 (a) from holding or obtaining a driver's licence; or
19 (b) from holding or obtaining a vehicle licence in respect of
20 those vehicles specified in the order; or
21 (c) from holding or obtaining a vehicle licence in respect of
22 any vehicle.
- 23 (4) If the alleged offender is a body corporate a licence suspension
24 order may disqualify the alleged offender from one of the
25 following:
- 26 (a) from holding or obtaining a vehicle licence in respect of
27 those vehicles specified in the order; or
28 (b) from holding or obtaining a vehicle licence in respect of
29 any vehicle.
- 30 (5) A licence suspension order has effect on the date and at the time
31 specified in the order, but the date and time must not be earlier

1 than the date and time stated in the notice of intention to enforce
2 and must not be earlier than when the order is made.

3 (6) If the Registrar makes a licence suspension order, the Registrar
4 ~~he or she~~ must —

5 (a) issue a notice confirming licence suspension; and

6 (b) advise the Director General of the terms of the order
7 forthwith.

8 (7) A notice confirming licence suspension must be served on the
9 alleged offender.

10 (8) A notice confirming licence suspension must —

11 (a) state that a licence suspension order has been made and
12 explain the terms of the order; and

13 (b) state the date and time when the licence suspension
14 order has effect; and

15 (c) explain that the alleged offender can request that the
16 order be cancelled under section 20A(1)(b).

17 ~~(8) A notice confirming licence suspension must advise the~~
18 ~~alleged offender that a licence suspension order has been~~
19 ~~made and of the date and time when it has effect and~~
20 ~~must explain the terms of the order.~~

21 (9) For the purposes of this Act and a road law, a licence
22 suspension order —

23 (a) takes effect on the date and at the time specified in the
24 order; and

25 (b) is in force from the time it takes effect to the time when
26 it is cancelled; and

27 (c) is concurrent with any other period for which the alleged
28 offender is disqualified from holding or obtaining a
29 driver's licence.

30 *[Section 19 amended by No. 76 of 1996 s. 30; No. 8 of 2012*
31 *s. 109; No. 48 of 2012 s. 12.]*

20. Cancelling licence suspension orders

(1) If after a licence suspension order is made —

(a) the relevant modified penalty and the associated enforcement fees are paid to the Registry or recovered under an enforcement warrant; or

(b) the alleged offender makes an election under section 21,

the licence suspension order is to be taken as having been cancelled at the time of the making of the payment or of the election, as the case may be.

(2) Even if neither payment nor an election is made, the Registrar, at any time, may cancel a licence suspension order for good reason.

(3) If a licence suspension order is cancelled under subsection (2) [or section 20A](#), the Registrar must issue a notice of cancellation.

(4) A notice of cancellation must be served on the alleged offender.

(5) If a licence suspension order is cancelled under subsection (1) or (2) [or section 20A](#), the Registrar must advise the Director General forthwith.

(6) For the purposes of a road law, the cancellation of a licence suspension order takes effect when the order is cancelled.

[Section 20 amended by No. 76 of 1996 s. 30; No. 8 of 2012 s. 109; No. 48 of 2012 s. 13.]

20A. Alleged offender may request that licence suspension order not be made or be cancelled

(1) If an infringement notice has been registered, the alleged offender may, in the approved form, request the Registrar —

(a) not to make a licence suspension order in relation to the alleged offender and the infringement notice; or

- 1 (b) to cancel a licence suspension order that has been made
2 in relation to the alleged offender and the infringement
3 notice.
- 4 (2) A request under subsection (1) cannot be made —
5 (a) if an election has been made under section 21; or
6 (b) if an enforcement warrant is in force in relation to the
7 infringement notice.
- 8 (3) A request under subsection (1) may be made on any of the
9 following grounds —
10 (a) that the licence suspension order would or does deprive
11 the alleged offender of —
12 (i) the means of obtaining urgent medical treatment
13 for an illness, disease or disability known to be
14 suffered by the alleged offender or a member of
15 the alleged offender's family; or
16 (ii) the principal means of obtaining income with
17 which to pay the modified penalty and
18 enforcement fees;
19 (b) that the licence suspension order would or does
20 seriously hinder the alleged offender in performing
21 family or personal responsibilities.
- 22 (4) Without limiting subsection (3)(a)(ii), the Registrar may, for the
23 purposes of that subsection, consider the effect that a licence
24 suspension order would have or has had on the ability of the
25 alleged offender to seek or obtain employment.
- 26 (5) If the Registrar is satisfied that there are grounds for making a
27 request under subsection (1), the Registrar must agree to the
28 request and, as the case requires, must not make the licence
29 suspension order or must cancel the licence suspension order.
- 30 (6) Subsection (5) does not prevent the Registrar from making a
31 licence suspension order under section 19 after previously
32 agreeing to a request under subsection (1) if the Registrar is

1 satisfied that the grounds for agreeing to the request no longer
2 apply.

3 **21A. Enforcement warrant**

4 (1) If —

5 (a) 28 days have elapsed since the day on which a notice of
6 intention to enforce was issued in relation to an
7 infringement notice; and

8 (b) the unpaid infringement amount in respect of the
9 infringement notice ~~has modified penalty, and~~
10 ~~enforcement fees, specified in the notice have~~ not been
11 paid to the Registry; and

12 (c) the alleged offender has not made an election under
13 section 21, ~~and~~

14 ~~(d) the aggregate unpaid infringement amount in relation to~~
15 ~~the alleged offender is at least —~~

16 ~~(i) \$2 000; or~~

17 ~~(ii) if regulations prescribe a higher amount for the~~
18 ~~purposes of this paragraph — that higher~~
19 ~~amount;~~

20 then, whether or not a licence suspension order made under
21 section 19 is in force, the Registrar may issue an enforcement
22 warrant.

23 (2) An enforcement warrant must be in the prescribed form and be
24 directed to the Sheriff.

25 (3) An enforcement warrant must specify the ~~modified penalty and~~
26 ~~enforcement fees owed by the alleged offender~~ unpaid
27 infringement amount in respect of the infringement notice.

28 (4) An enforcement warrant must be executed under Part 7.

29 (5) The Registrar may at any time cancel an enforcement warrant
30 for good reason.

31 *[Section 21A inserted by No. 48 of 2012 s. 14.]*

Division 2A — Time to pay orders

21B. Application for time to pay order

(1) An alleged offender may apply to the Registrar for a time to pay order in respect of an infringement notice that has been registered.

(2) An application under subsection (1) must be in the approved form and must include an offer to pay the unpaid infringement amount in respect of the infringement notice before a specified date or by regular instalments.

(3) An application under subsection (1) —

(a) can be made at any time after the infringement notice is registered, whether or not a licence suspension order is in force in relation to the alleged offender and the infringement notice; but

(b) cannot be made if —

(i) an enforcement warrant is in force in relation to the alleged offender and the infringement notice;
or

(ii) the alleged offender has made an election under section 21.

21C. Making time to pay order

(1) On an application under section 21B, the Registrar may require the alleged offender to undergo a means test.

(2) On an application under section 21B, the Registrar, if the Registrar thinks fit, may make a time to pay order.

(3) The Registrar must make a time to pay order on an application under section 21B if the Registrar is satisfied that —

(a) the alleged offender does not have the means to pay the unpaid infringement amount in respect of the infringement notice within 28 days after the application is made; and

- 1 (b) the alleged offender's offer to pay the unpaid
2 infringement amount by a specified date or by regular
3 instalments is reasonable; and
- 4 (c) either —
- 5 (i) the alleged offender has not previously
6 contravened a time to pay order under this Act
7 (whether or not in relation to the infringement
8 notice the subject of the application); or
- 9 (ii) there is a reasonable excuse for any previous
10 contravention by the alleged offender of a time to
11 pay order under this Act.
- 12 (4) A time to pay order may require the alleged offender —
- 13 (a) to pay the unpaid infringement amount in respect of the
14 infringement notice before a set date which is later than
15 28 days after the day on which the time to pay order is
16 made; or
- 17 (b) to pay the unpaid infringement amount in respect of the
18 infringement notice by instalments on or before set
19 dates.
- 20 (5) A time to pay order must be served on the alleged offender.
- 21 (6) If the Registrar refuses to make a time to pay order on an
22 application under section 21B, notice of the refusal must be
23 served on the alleged offender.
- 24 **21D. Alleged offender may apply to have time to pay order**
25 **amended**
- 26 (1) An alleged offender who has obtained a time to pay order in
27 respect of an infringement notice may apply to the Registrar to
28 have the time to pay order amended.
- 29 (2) On an application the Registrar may require the alleged offender
30 to undergo a means test.
- 31 (3) On an application the Registrar, if the Registrar thinks fit, may
32 amend a time to pay order.

1 (4) An amended time to pay order must be served on the alleged
2 offender.

3 (5) If the Registrar refuses to amend a time to pay order, notice of
4 the refusal must be served on the alleged offender.

5 **21E. Registrar may amend time to pay order**

6 (1) The Registrar may at any time request an alleged offender who
7 has obtained a time to pay order in respect of an infringement
8 notice to undergo a means test.

9 (2) A request cannot be made if the modified penalty and
10 enforcement fees have been paid.

11 (3) The request must be in writing and must be served on the
12 alleged offender.

13 (4) After means testing the alleged offender, the Registrar, if the
14 Registrar thinks fit, may amend the time to pay order.

15 (5) An amended time to pay order must be served on the alleged
16 offender.

17 (6) The Registrar must not require an alleged offender to undergo a
18 means test more than once in every period of 12 months, unless
19 the Registrar is advised that the financial circumstances of the
20 alleged offender have changed.

21 **21F. Payments ordered must be within means of alleged offender**

22 In making or amending a time to pay order, the Registrar must
23 ensure that any payment to be made under the order is within
24 the alleged offender's means to pay it.

25 **21G. Registrar may cancel time to pay order**

26 (1) The Registrar may cancel a time to pay order if the alleged
27 offender —

28 (a) contravenes the order; or

29 (b) contravenes a request made under section 21E(1).

1 (2) Notice of the cancellation must be served on the alleged
2 offender.

3 **21H. Enforcement action suspended while time to pay order is in**
4 **force**

5 (1) If the Registrar makes a time to pay order in respect of an
6 infringement notice, the Registrar must, as soon as practicable,
7 cancel any licence suspension order in force in relation to the
8 infringement notice.

9 (2) If a time to pay order is in force in respect of an infringement
10 notice, the Registrar must not, despite any other provision of
11 this Part —

12 (a) issue a notice of intention to enforce under section 18 in
13 relation to the infringement notice; or

14 (b) make a licence suspension order in relation to the
15 infringement notice; or

16 (c) issue an enforcement warrant in relation to the
17 infringement notice.

18 **Division 3 — Miscellaneous**

19 **21. Election by alleged offender or prosecuting authority**

20 (1) Despite any other provision in this Part, at any time that is —

21 (a) after an infringement notice is registered with the
22 Registry; and

23 (b) before the modified penalty and enforcement fees, or
24 any part of them, is paid; and

25 (c) before a time to pay order is made under section 21C;
26 and 27A(4); and

27 (d) before an enforcement warrant is issued in respect of the
28 modified penalty and enforcement fees,

29 the alleged offender or the prosecuting authority that registered
30 the notice may make an election.

- 1 (2) An election made by a prosecuting authority must be signed by
2 a prosecuting officer of the prosecuting authority who is
3 empowered to sign an enforcement certificate in respect of the
4 alleged offence.
- 5 (3) An election under subsection (1) must be given to the Registrar.
- 6 (4) If an election is made under subsection (1), the Registrar
7 must —
- 8 (a) lodge with a court of summary jurisdiction that has
9 jurisdiction to deal with the alleged offence and the
10 alleged offender a prosecution notice in relation to the
11 alleged offence that contains such of the information
12 provided to the Registrar under section 16(1)(b) as will
13 sufficiently describe the prosecuting authority, the
14 alleged offender and the alleged offence; and
- 15 (b) serve the alleged offender with a copy of the prosecution
16 notice and a court hearing notice that complies with the
17 *Criminal Procedure Act 2004*; and
- 18 (c) notify the prosecuting authority that the prosecution
19 notice has been lodged and give the authority a copy of
20 the notice and a copy of the court hearing notice referred
21 to in paragraph (b).
- 22 (5) When a prosecution notice is lodged with a court under
23 subsection (4)(a) —
- 24 (a) the notice is to be taken to have been made in
25 accordance with the *Criminal Procedure Act 2004*,
26 without being verified on oath, before the Registrar by
27 the person who signed the enforcement certificate; and
- 28 (b) the prosecution is to be taken to have been commenced
29 on the day when the enforcement certificate was lodged.
- 30 *[(6) deleted]*
- 31 (7) For the purposes of subsection (1)(b) a modified penalty and
32 enforcement fees, or any part of them, are to be taken to have

1 been paid even if payment was by means of a dishonoured
2 payment.

3 *[Section 21 amended by No. 51 of 2000 s. 4; No. 59 of 2004*
4 *s. 97; No. 84 of 2004 s. 43; No. 3 of 2008 s. 4(2); No. 48 of*
5 *2012 s. 15.]*

6 **22. Prosecuting authority may withdraw proceedings**

- 7 (1) At any time after a final demand has been sent by a prosecuting
8 authority to an alleged offender in respect of an infringement
9 notice, the prosecuting authority may, whether or not the
10 modified penalty and enforcement fees, or any part of them, has
11 been paid, withdraw proceedings under this Part in respect of
12 the infringement notice.
- 13 (2) To withdraw proceedings a prosecuting authority must —
14 (a) serve the alleged offender with a notice of withdrawal in
15 the prescribed form; and
16 (b) if the infringement notice was registered with the
17 Registry, give the Registrar a copy of the notice of
18 withdrawal.
- 19 (3) A notice of withdrawal must be signed by a person who is a
20 prosecuting officer of the prosecuting authority.
- 21 (4) When proceedings are withdrawn under this section —
22 (a) the enforcement certificate relating to the infringement
23 notice ceases to have effect to the extent that it refers to
24 that infringement notice; and
25 (b) if a licence suspension order has been made in respect of
26 the alleged offender in respect of the alleged offence —
27 (i) the order is to be taken as having been cancelled
28 at the time the Registrar is given the copy of the
29 notice of withdrawal; and
30 (ii) the Registrar must notify the Director General of
31 the cancellation forthwith;

- 1 and
- 2 (ca) if an enforcement warrant has been issued in respect of
- 3 the alleged offender and the infringement notice — the
- 4 warrant is cancelled; and
- 5 (c) if a prosecution has been commenced under
- 6 section 21(4) in respect of the alleged offence but not
- 7 determined —
- 8 (i) it is, by virtue of this section, discontinued; and
- 9 (ii) the Registrar must forthwith notify the
- 10 Magistrates Court or the Children’s Court, as the
- 11 case requires, of the discontinuance.
- 12 (5) If proceedings are withdrawn under this section —
- 13 (a) the alleged offender is to be refunded any amount paid
- 14 under this Part by the alleged offender in respect of the
- 15 alleged offence; and
- 16 (b) if —
- 17 (i) an enforcement warrant was issued in respect of
- 18 the infringement notice; and
- 19 (ii) property of the alleged offender was seized and
- 20 sold under the enforcement warrant before it was
- 21 cancelled under subsection (4)(ca),
- 22 the alleged offender is to be paid an amount equal to the
- 23 market value of the sold property; and
- 24 (c) if —
- 25 (i) an enforcement warrant was issued in respect of
- 26 the infringement notice; and
- 27 (ii) under the enforcement warrant, a vehicle licence
- 28 cancellation and disqualification order was made
- 29 under section 95J in respect of a vehicle of the
- 30 alleged offender, ~~registered in the name of the~~
- 31 ~~alleged offender~~;
- 32 the alleged offender is to be paid an amount calculated
- 33 in accordance with the regulations; and

- 1 (d) if any amount has been paid to the Sheriff under a
 2 garnishee order issued under an enforcement warrant
 3 that was issued in respect of the infringement notice, the
 4 alleged offender is to be refunded that amount; and
 5 (e) if any administration fee of a kind referred to in
 6 section 95Z has been charged by the bank in relation to
 7 a garnishee order referred to in paragraph (d), the
 8 alleged offender is to be paid an amount equal to that fee
 9 by the Sheriff.

10 *[Section 22 amended by No. 76 of 1996 s. 30; No. 59 of 2004*
 11 *s. 107; No. 47 of 2011 s. 27; No. 48 of 2012 s. 16.]*

12 **23. Effect of order to pay or elect**

13 The making of an order to pay or elect does not constitute a
 14 conviction of the alleged offender for the alleged offence,
 15 except as provided in sections 25 and 26.

16 **24. Effect of payment of modified penalty etc.**

17 (1) If —

- 18 (a) a modified penalty and the associated enforcement fees
 19 are paid under this Part; and
 20 (b) proceedings under this Part have not been withdrawn,

21 no proceedings can be commenced and no penalty can be
 22 imposed that could not be commenced or imposed if the alleged
 23 offender had been convicted by a court of, and punished for, the
 24 alleged offence.

25 (2) Payment under this Part of a modified penalty, and the
 26 associated enforcement fees, in respect of an alleged offence is
 27 not to be regarded as an admission for the purposes of any
 28 proceedings, whether civil or criminal, arising out of the
 29 occurrence by reason of which the infringement notice was
 30 issued, except where or to the extent that the principal
 31 enactment provides that payment of the modified penalty under
 32 the principal enactment would be regarded as an admission.

1 **25. Continuing offences: effect of proceedings under this Part**

2 If the alleged offence to which an infringement notice relates is
3 constituted by failure to do an act or thing, section 71(1) or (2)
4 (as the case requires) of the *Interpretation Act 1984*, or any
5 provision of another written law substantially to the like effect,
6 operates as if —

7 (a) payment under this Part of the whole or a part of the
8 modified penalty and the associated enforcement fees
9 before an order to pay or elect is made; or

10 (b) the making of an order to pay or elect,

11 were, for the purposes of that provision, a conviction of the
12 alleged offender for the alleged offence and the conviction were
13 on the day on which the payment was made or the order to pay
14 or elect was made, as the case may be.

15 **26. Road laws: effect of proceedings under this Part**

16 (1) This section applies if the *Road Traffic (Administration)*
17 *Act 2008* section 79 is a prescribed enactment.

18 (2) If the alleged offence is under a road law —

19 (a) the payment of the whole or a part of the modified
20 penalty and associated enforcement fees in relation to an
21 infringement notice before an order to pay or elect is
22 made in respect of the notice; or

23 (b) the making of an order to pay or elect in respect of an
24 infringement notice,

25 constitutes a conviction of the alleged offender for the alleged
26 offence for the purposes of the *Road Traffic (Authorisation to*
27 *Drive) Act 2008* section 16(1)(a), and for the purposes of Part 4
28 of that Act, the matter is to be treated as having been dealt with
29 by infringement notice when the payment or order is made.

30 (3) Subsection (2)(a) applies even if the payment is made by means
31 of a dishonoured payment.

- 1 (4) In subsection (2)(a) and (b) —
2 *infringement notice* has the meaning given in the *Road Traffic*
3 *(Administration) Act 2008* section 4.
4 [Section 26 amended by No. 54 of 2006 s. 37; No. 3 of 2008
5 s. 4(3); No. 8 of 2012 s. 108.]

6 **27. How recovered amounts to be applied**

- 7 (1) A modified penalty received by the Registrar is to be dealt
8 with —
9 (a) in accordance with section 60 of the *Sentencing*
10 *Act 1995* as if it were a fine; or
11 (b) if the principal enactment under which the infringement
12 notice was issued provides otherwise, in accordance
13 with the principal enactment.
14 (2) Subject to subsection (3), enforcement fees recovered from an
15 alleged offender under this Part are to be credited to the
16 Consolidated Account.
17 (3) If under this Part the alleged offender pays —
18 (a) the enforcement fee for issuing a final demand in respect
19 of an infringement notice; or
20 (b) the enforcement fee for the preparation of the
21 enforcement certificate; or
22 (c) the registration fee referred to in section 16,
23 the amount concerned is to be credited according to how the
24 modified penalty under the infringement notice is to be credited
25 under subsection (1).

26 [Section 27 amended by No. 78 of 1995 s. 44; No. 77 of 2006
27 s. 4.]

28 **27A. Certain decisions of Registrar are final**

29 A decision of the Registrar under section 20A or Division 2A is
30 final.

~~27A. Registrar may suspend enforcement in certain cases of hardship~~

~~(1) If an infringement notice has been registered, the alleged offender may request the Registrar —~~

~~— (a) not to make a licence suspension order; or~~

~~— (b) to cancel a licence suspension order that has been made,~~

~~in respect of the alleged offender on the grounds that the licence suspension order would or does deprive the alleged offender~~

~~of —~~

~~(c) the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the alleged offender or a member of his or her family; or~~

~~(d) the principal means of obtaining income with which to pay the modified penalty and enforcement fees,~~

~~or on the grounds that the licence suspension order would or does seriously hinder the alleged offender in performing family or personal responsibilities.~~

~~(2) A request cannot be made —~~

~~(a) if the alleged offender is a body corporate; or~~

~~(b) if an election has been made under section 21; or~~

~~(c) if an enforcement warrant issued under section 21A is in force in relation to the infringement notice.~~

~~(3) A request —~~

~~(a) must be made in accordance with the regulations; and~~

~~(b) must include an offer to pay the modified penalty and enforcement fees before a specified date or by regular instalments.~~

~~(4) If the Registrar is satisfied that —~~

~~(a) there are grounds to accede to the request; and~~

~~(aa) the alleged offender has a reasonable excuse for any contravention of a time to pay order made previously~~

- 1 ~~under this section in respect of the infringement notice;~~
2 ~~and~~
3 ~~(b) the alleged offender's offer to pay by regular instalments~~
4 ~~is reasonable,~~
5 ~~the Registrar must make a time to pay order and, as the case~~
6 ~~requires —~~
7 ~~(c) suspend the process in Division 2 for enforcing the~~
8 ~~infringement notice; or~~
9 ~~(d) cancel a licence suspension order that has been made in~~
10 ~~respect of the alleged offender.~~
11 ~~(5) Without limiting paragraph (d) of subsection (1), the Registrar~~
12 ~~may, for the purposes of that paragraph, consider the effect that~~
13 ~~a licence suspension order would have or has had on the ability~~
14 ~~of the alleged offender to seek or obtain employment.~~
15 ~~(6) The time to pay order is to require the alleged offender to pay~~
16 ~~the modified penalty and enforcement fees either —~~
17 ~~(a) before a specified date; or~~
18 ~~(b) by instalments on or before set dates.~~
19 ~~(7) The time to pay order must be served on the alleged offender~~
20 ~~together with notice of the action that has been taken under~~
21 ~~subsection (4)(c) or (d) and the consequences of not complying~~
22 ~~with the order.~~
23 ~~(8) If a licence suspension order is cancelled, the Registrar must~~
24 ~~advise the Director General forthwith.~~
25 ~~(9) For the purposes of a road law, the cancellation of a licence~~
26 ~~suspension order takes effect when the order is cancelled.~~
27 ~~[Section 27A inserted by No. 51 of 2000 s. 5; amended by No. 3~~
28 ~~of 2008 s. 7; No. 8 of 2012 s. 109; No. 48 of 2012 s. 17.]~~

~~27B. — Amending time to pay order~~

~~— The Registrar may amend a time to pay order made under section 27A and for that purpose, sections 34 and 35, with any necessary changes, apply.~~

~~— [Section 27B inserted by No. 51 of 2000 s. 5; amended by No. 20 of 2013 s. 78.]~~

~~27C. — Contravening time to pay order~~

~~— (1) If an alleged offender contravenes a time to pay order made under section 27A, the Registrar may issue a notice that unless the amount overdue is paid before a date specified in the notice (the *due date*) the Registrar may —~~

~~— (a) make or again make a licence suspension order in respect of the alleged offender; and~~

~~— (b) cancel the time to pay order.~~

~~— (2) The notice must be served on the alleged offender.~~

~~— (3) If the amount overdue is not paid by the due date the Registrar may make or again make a licence suspension order in respect of the alleged offender and cancel the time to pay order.~~

~~— (4) For the purposes of subsection (3), section 19(2) to (9) (but not section 19(4)), with any necessary changes, apply and a licence suspension order may be made even if sections 17 and 18 have not been complied with.~~

~~— [Section 27C inserted by No. 51 of 2000 s. 5.]~~

~~27D. — Registrar's decision on time to pay is final~~

~~A decision of the Registrar under section 27A, 27B or 27C is final.~~

~~— [Section 27D inserted by No. 3 of 2008 s. 8.]~~

Part 4 — Fines

Division 1 — Preliminary

28. Terms used

(1) In this Part —

amount owed, in relation to a fine, means the amount of the fine and any enforcement fees relating to the fine —

(a) that has not been paid or recovered under an enforcement warrant; and

(b) the liability to pay which has not been discharged under section 46G, 51, 52H, 52I, 52S(3) or 53;

approved sponsor means a person or entity in relation to whom an approval under section 46J is in force;

audio link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

authorised police officer has the meaning given in the *Bail Act 1982* section 3(1);

community corrections activities has the same definition as in the *Sentence Administration Act 2003*;

community corrections centre has the same definition as in the *Sentence Administration Act 2003*;

community corrections officer (CCO) has the same definition as in the *Sentence Administration Act 2003*;

court includes any person acting judicially;

court officer, in relation to a fine, means an officer of the court that imposed the fine who is approved as a court officer for the purposes of this Part by the CEO (fines enforcement);~~chief executive officer;~~

court custody centre has the meaning given in the *Court Security and Custodial Services Act 1999* section 3;

detainee means a person who is detained in a detention centre;

- 1 *detention centre* has the meaning given in the *Inspector of*
2 *Custodial Services Act 2003* section 3;
- 3 *enforcement instrument* means —
- 4 (a) a licence suspension order; or
5 (b) an enforcement warrant; or
6 (c) a WDP; or
7 (d) an order to attend for work and development; or
8 (e) a fine expiation order;
- 9 *enforceable registered fine*, in relation to an offender, means a
10 fine imposed on the offender if —
- 11 (a) the fine is registered; and
12 (b) the amount owed in respect of the fine has not been paid
13 in full or recovered in full under an enforcement
14 warrant; and
15 (c) the liability of the offender to pay the amount owed in
16 respect of the fine has not been wholly discharged under
17 section 46G, 51, 52H, 52I, 52S(3) or 53;
- 18 *enforcement fees* means prescribed fees imposed in connection
19 with proceedings under this Act in relation to a fine;~~under this~~
20 ~~Part;~~
- 21 *enforcement warrant* means an enforcement warrant issued
22 under section 45;
- 23 *fine* means a monetary penalty imposed on an offender by a
24 court in criminal proceedings for an offence and includes —
- 25 (a) any costs ordered to be paid by the offender in
26 connection with the proceedings; and
- 27 (b) any amount ordered to be paid in connection with or as a
28 result of the offence, if the order is of a kind, and is
29 made under an enactment, prescribed for the purposes of
30 this definition,
- 31 but does not include any other amount of money ordered to be
32 paid in connection with or as a result of the offence;

- 1 ***fine expiation order*** means an order issued under section 52F;
 2 ***licence suspension order*** means a licence suspension order
 3 made under section 43;
 4 ***offender*** means a person found guilty of an offence, whether
 5 after a plea of guilty or otherwise;
 6 ***ongoing fine expiation order*** has the meaning given in
 7 section 52I;
 8 ***order to attend for work and development*** means an order
 9 issued under section 47(1);
 10 ***person in court custody*** means a person in custody as defined in
 11 the *Court Security and Custodial Services Act 1999* section 3
 12 for whom the CEO is responsible under that Act;
 13 ***police facility*** means a police station or other premises managed
 14 or controlled by the Commissioner of Police at which a person
 15 may be detained in police custody;
 16 ***prison*** has the meaning given in the *Inspector of Custodial*
 17 *Services Act 2003* section 3;
 18 ***prisoner*** has the meaning given in the *Prisons Act 1981*
 19 section 3(1);
 20 ***registered*** means registered with the Registry for enforcement
 21 under section 32(2)(a) or 32B;~~section 41(1);~~
 22 ***responsible officer***, in relation to an offender arrested under an
 23 arrest warrant issued under section 52P(1)(b), has the meaning
 24 given in section 52ZB(2);
 25 ***time to pay order*** means an order made under section 33, as
 26 amended from time to time;
 27 ~~***time to pay order, except in sections 55A and 55B—***~~
 28 ~~(a) means an order made under section 33(4); and~~
 29 ~~(b) includes an amended time to pay order;~~
 30 ***video link*** has the meaning given in the *Criminal Procedure*
 31 *Act 2004* section 3(1);
 32 ***warrant of commitment*** means a warrant of commitment issued
 33 under section 52R;

- 1 warrant of commitment inquiry has the meaning given in
2 section 52L(1);
3 warrant of commitment inquiry process has the meaning given
4 in section 52L(2);
5 work and development instrument means a work and
6 development permit or a work and development order;
7 ~~work and development order (WDO) means an order made~~
8 ~~under section 48~~
9 work and development order (WDO) means an order made
10 under section 48;
11 work and development permit (WDP) has the meaning given in
12 section 46A.;

13 (2) In this Part these abbreviations are used:

14 **CCO** for community corrections officer;

15 **WDO** for work and development order;

16 **WDP** for work and development permit.;

17 (3) For the purposes of paragraph (b) of the definition of ***fine*** in
18 subsection (1), an order for the payment of compensation for
19 injury, loss or damage suffered as a result of the commission of
20 an offence is not to be prescribed.

21 *[Section 28 amended by No. 78 of 1995 s. 41; No. 8 of 1996*
22 *s. 9; No. 51 of 2000 s. 6; No. 50 of 2003 s. 29(3); No. 65 of*
23 *2006 s. 63; No. 20 of 2013 s. 79.]*

24 **29. Application of Part**

25 (1) Subject to subsection (2), this Part applies to any fine imposed
26 by any court on any offender, except —

- 27 (a) a fine in respect of which an order is made under
28 section 58 or 59 of the *Sentencing Act 1995*;
29 (b) a pecuniary penalty imposed under section 20(1)(a)(iii)
30 of the *Crimes Act 1914* of the Commonwealth.

- 1 (2) The application of this Part to a young person (as defined in the
2 *Young Offenders Act 1994*) is subject to sections 63 to 65C of
3 that Act.

4 *[Section 29 amended by No. 78 of 1995 s. 44; No. 8 of 1996*
5 *s. 9.]*

6 **30. Court may request offender's address**

- 7 (1) If a court fines an offender, the judicial officer constituting the
8 court, or a court officer, may ask the offender for his or her
9 current address.

- 10 (2) A person who refuses or neglects to comply with a request
11 under subsection (1) commits an offence.

12 Penalty: \$1 000.

13 *[Section 30 amended by No. 8 of 1996 s. 9.]*

14 **Division 2 — Payment and registration of fines**

15 **Subdivision 1 — Fines taken to be registered when imposed**

16 ~~**Subdivision 1 — Fines for which Registrar may make time to**~~
17 ~~**pay orders**~~

18 *[Heading amended by No. 20 of 2013 s. 80.]*

19 **31. Application**

20 This Subdivision applies —

- 21 (a) to a fine that under section 60 of the *Sentencing*
22 *Act 1995*, or any other written law, is to be credited to
23 the Consolidated Account or that under section 56 of
24 that Act is ordered to be paid to a person who has been
25 assaulted; and
26 (b) to a fine imposed under an enactment prescribed for the
27 purposes of this section.

28 *[Section 31 amended by No. 78 of 1995 s. 44; No. 77 of 2006*
29 *s. 4.]*

32. Offender must pay fine or get time to pay order

(1) When a fine is imposed, an offender must either —

- (a) pay the fine; or
- (b) apply for a time to pay order in respect of the fine.

(2) When a fine is imposed —

- (a) the fine is to be taken to be registered; but
- (b) the Registrar must not take any action under this Part to enforce the fine ~~take any action under section 42 or 47A in relation to the fine~~ unless —
 - (i) a period of 28 days after the day on which the fine was imposed has elapsed; and
 - (ii) the offender has not, within that period, either paid the fine or applied for a time to pay order in respect of the fine, or the offender's application for a time to pay order in respect of the fine has been refused.

(3) Subsection (2)(b) does not apply if, at the time the fine is first taken to be registered —

- (a) another fine imposed on the offender, or any other amount payable by the offender, is already registered under this Part, and the fine or amount has not been paid and no time to pay order has been obtained in respect of the fine or amount; or
- (b) one of the methods of enforcement available under ~~Division~~ this Part is already being applied in respect of another enforceable registered fine of the offender.³ ~~(which includes an order to attend for work and development and a WDO) is already being invoked in respect of a fine imposed on, or an amount payable by, the offender; or~~
- ~~(c) the Registrar is already taking action under section 55D(1) in respect of a fine imposed on, or an amount payable by, the offender.~~

(4) This section is subject to [the *Sentencing Act 1995* sections 57A, 58 and 59.](#)—

~~(a) the *Sentencing Act 1995* sections 57A, 58 and 59; and~~

~~(b) section 53(2).~~

(5) If a fine has been imposed before the date on which the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 81 comes into operation (the *commencement date*) —

(a) this section applies to and in relation to the fine only if the fine has not been paid before the commencement date; and

(b) subsection (2) does not apply to or in relation to the fine if —

(i) the fine has been registered before the commencement date; and

(ii) that registration has not been cancelled before the commencement date;

and

(c) if a time to pay order is in force in respect of the fine immediately before the commencement date, that time to pay order continues in force under and subject to this Division.

[Section 32 inserted by No. 20 of 2013 s. 81.]

Subdivision 2 — Fines registered at request of prosecuting authority

32A. Application

[This Subdivision applies to a fine to which Subdivision 1 does not apply.](#)

32B. Fine may be registered at request of prosecuting authority

[\(1\) A fine imposed on an offender may be registered by a court officer if the prosecuting authority has given the court officer a written notice requesting the court officer to register the fine.](#)

(2) In subsection (1) *prosecuting authority* means —

(a) if the *Sentencing Act 1995* section 60(2) or (3) applies to the fine — the person that is to be paid the fine, or who administers the fund or account that is to be credited with the fine, under that section; or

(b) if the fine was imposed under a law of the Commonwealth — a person who administers proceedings in relation to offences under that law.

Subdivision 3 — Time to pay orders

32C. Application for time to pay order

(1) An offender may apply to the Registrar for a time to pay order in respect of a fine imposed on the offender that has been registered.

(2) An application under subsection (1) must be in the approved form and must include an offer to pay the amount owed in respect of the fine before a specified date or by regular instalments.

(3) An application under subsection (1) —

(a) can be made at any time after the fine is registered, whether or not —

(i) an enforcement instrument (other than an enforcement warrant or an ongoing fine expiation order) or WDO is in force in relation to the offender and the fine; or

(ii) a warrant of commitment inquiry process is occurring in relation to the offender and the fine;

but

(b) cannot be made if an enforcement warrant, WDP, ongoing fine expiation order or warrant of commitment is in force in respect of the offender and the fine.

33. Making time ~~Time~~ to pay order

~~(1) An offender who has been fined may apply to the Registrar for a time to pay order in respect of the fine.~~

~~(2) An application for a time to pay order in respect of a fine cannot be made later than the 28th day after the day on which the fine was imposed.~~

(13) On an application under section 32C, the Registrar may require the offender to undergo a means test.

(24) On an application under section 32C, the Registrar, if the Registrar ~~he or she~~ thinks fit, may make a time to pay order.

(3) The Registrar must make a time to pay order on an application under section 32C if —

(a) a warrant of commitment inquiry process is not occurring in relation to the offender and the fine; and

(b) the Registrar is satisfied that the offender does not have the means to pay the amount owed in respect of the fine within 28 days after the application is made; and

(c) the Registrar is satisfied that the offender's offer to pay the amount owed by a specified date or by regular instalments is reasonable; and

(d) the Registrar is satisfied that either —

(i) the offender has not previously contravened a time to pay order under this Act (whether or not in relation to the fine the subject of the application); or

(ii) there is a reasonable excuse for any previous contravention by the offender of a time to pay order under this Act.

~~(5) The Registrar must make a time to pay order if the offender does not have the means to pay the fine within 28 days after the day on which the fine was imposed.~~

(46) A time to pay order may require the offender —

- 1 (a) to pay the amount owed in respect of the fine before a
2 set date which is later than 28 days after the day on
3 which the time to pay order is made; or ~~fine was~~
4 ~~imposed; or~~
5 (b) to pay the amount owed in respect of the fine by
6 instalments on or before set dates.

7 (57) A time to pay order must be served on the offender.

8 (68) If the Registrar refuses to make a time to pay order on an
9 application under section 32C, notice of the refusal must be
10 served on the offender.

11 *[Section 33 amended by No. 8 of 1996 s. 4; No. 20 of 2013*
12 *s. 82.]*

13 **34. Offender may apply to have time to pay order amended**

14 (1) An offender who has obtained a time to pay order in respect of a
15 fine may apply to the Registrar to have the time to pay order
16 amended.

17 *[(2) deleted]*

18 (3) On an application the Registrar may require the offender to
19 undergo a means test.

20 (4) On an application the Registrar, if the Registrar ~~he or she~~ thinks
21 fit, may amend a time to pay order.

22 (5) An amended time to pay order must be served on the offender.

23 (6) If the Registrar refuses to amend a time to pay order, notice of
24 the refusal must be served on the offender.

25 *[Section 34 amended by No. 20 of 2013 s. 83.]*

26 **35. Registrar may amend time to pay order**

27 (1) The Registrar may at any time request an offender who has
28 obtained a time to pay order in respect of a fine to undergo a
29 means test.

1 (2) A request cannot be made if the [amount owed in respect of the](#)
2 fine has been paid.

3 (3) The request must be in writing and must be served on the
4 offender.

5 (4) After means testing the offender, the Registrar, if [the](#)
6 [Registrar](#)~~he or she~~ thinks fit, may amend the time to pay order.

7 (5) An amended time to pay order must be served on the offender.

8 (6) The Registrar must not require an offender to undergo a means
9 test more than once in every period of 12 months, unless the
10 Registrar is advised that the financial circumstances of the
11 offender have changed.

12 *[Section 35 amended by No. 20 of 2013 s. 84.]*

13 **35A. Payments ordered must be within means of offender**

14 In making or amending a time to pay order, the Registrar must
15 ensure that any payment to be made under the order is within
16 the offender's means to pay it.

17 *[Section 35A inserted by No. 8 of 1996 s. 5; amended by No. 20*
18 *of 2013 s. 85.]*

19 **36. Registrar may cancel time to pay order**

20 (1) The Registrar ~~without notice to the offender,~~ may cancel a time
21 to pay order if the offender —

22 (a) contravenes the order; or

23 (b) contravenes a request made under section 35(1).

24 [\(2\) Notice of the cancellation must be served on the offender.](#)

25 ~~(2) If the Registrar cancels a time to pay order, the Registrar may~~
26 ~~take any action in relation to the fine that the Registrar is~~
27 ~~authorised to take under section 42 or 47A or 55D.~~

28 *[Section 36 inserted by No. 20 of 2013 s. 86.]*

37. Enforcement action suspended while time to pay order is in force

(1) If the Registrar makes a time to pay order in respect of a fine, the Registrar must, as soon as practicable, cancel any licence suspension order or order to attend for work and development that is in force in relation to the fine.

(2) If the Registrar makes a time to pay order in respect of a fine, the CEO (corrections) must, as soon as practicable, cancel any WDO that is in force in relation to the fine.

(3) If a time to pay order is in force in respect of a fine, the Registrar must not, despite any other provision of this Part —

(a) issue a notice of intention to enforce under section 42 in relation to the fine; or

(b) make or issue an enforcement instrument in relation to the fine; or

(c) make an application under section 52M in relation to the fine.

(4) If the Registrar makes a time to pay order in respect of a fine while a warrant of commitment inquiry process is occurring in relation to the offender and the fine, the Registrar must, as soon as practicable, withdraw the application for the warrant of commitment inquiry under section 52ZH.

~~37. Registrar's decision is final~~

~~The decision of the Registrar under this Subdivision is final.~~

~~[Section 37 inserted by No. 20 of 2013 s. 86.]~~

~~38A. Transitional provisions for Courts and Tribunals (Electronic Processes Facilitation) Act 2013~~

~~An application under this Subdivision to a court officer that has been made but not decided before the Courts and Tribunals (Electronic Processes Facilitation) Act 2013 section 86 comes~~

1 ~~into operation is to be taken to have been made to the Registrar,~~
2 ~~and is to be dealt with accordingly.~~

3 ~~[Section 38A inserted by No. 20 of 2013 s. 86.]~~

4 **~~Subdivision 2 — Fines for which time to pay orders cannot be made~~**

5 ~~[Heading amended by No. 20 of 2013 s. 87.]~~

6 **~~38. — Application~~**

7 ~~This Subdivision applies to a fine to which Subdivision 1 does~~
8 ~~not apply.~~

9 **~~39. — Fine may be registered at request of prosecuting authority~~**

10 ~~(1) — A fine imposed on an offender may be registered by a court~~
11 ~~officer if the prosecuting authority has given the court officer a~~
12 ~~written notice requesting the court officer to register the fine.~~

13 ~~(2) — In subsection (1) *prosecuting authority* means —~~

14 ~~(a) — if the fine was imposed under an Act of the State —~~
15 ~~the person that is to be paid the fine, or that administers~~
16 ~~the fund that is to be credited with the fine, under~~
17 ~~section 60(2) or (3) of the *Sentencing Act 1995*;~~

18 ~~(b) — if the fine was imposed under a law of the~~
19 ~~Commonwealth — a person that administers~~
20 ~~proceedings in relation to offences under that law.~~

21 ~~[Section 39 amended by No. 78 of 1995 s. 44; No. 3 of 2008~~
22 ~~s. 10; No. 48 of 2012 s. 19.]~~

23 **~~Division 3 — Enforcement of fines~~**

24 **~~40. — Term used: amount owed~~**

25 ~~In this Division *amount owed* means that amount of a fine and~~
26 ~~any enforcement fees that is unpaid.~~

Subdivision 4 — Cancellation of registration

41. Cancellation of registration~~Registration of fine~~

~~(1) To register a fine with the Registry for enforcement, a court officer must give the Registry such information as the Registrar requires in such manner as the Registrar specifies.~~

~~[(2) deleted]~~

(3) If, at any time after a fine is registered and before an enforcement warrant or a warrant of commitment is issued in respect of it, there is good reason to do so, a court officer, in writing, may order the Registrar to cancel the registration.

(4) A court officer may only make an order under subsection (3) in respect of a fine to which Division 2 Subdivision 2 applies with the consent of the prosecuting authority (as defined in section 32B(2)).~~39(2))~~.

(5) When the registration of a fine is cancelled —

(a) any time to pay order made under section 33~~55A(4)~~ in respect of the fine is cancelled; and

(b) any enforcement instrument or WDO in force in respect of the fine is cancelled; and

~~(b) any licence suspension order made in respect of the offender in respect of the fine is cancelled; and~~

~~(c) any order to attend for work and development made under section 47, 47A or 55D is cancelled; and~~

(d) the Registrar must forthwith notify the offender of the cancellation of any time to pay order, enforcement instrument or WDO ~~order~~ that occurs under this subsection.

~~[(6) deleted]~~

[Section 41 amended by No. 3 of 2008 s. 11; No. 48 of 2012 s. 43; No. 20 of 2013 s. 88.]

Division 3 — Notice of intention to enforce

42. Notice of intention to enforce

(1) ~~The~~ ~~When a fine is registered, the~~ Registrar may issue a notice of intention to enforce in relation to a registered fine.

(2) A notice of intention to enforce must be served on the offender.

(3) A notice of intention to enforce must contain a statement to the effect that unless before a date specified in the notice (the *due date*) the amount owed is paid, the Registrar —

(a) may make a licence suspension order in respect of the offender; and

(b) may issue an enforcement warrant in respect of the offender; and

(c) may issue an order to attend for work and development to the offender; ~~and~~

~~(d) in some circumstances, may issue a warrant of commitment in respect of the offender.~~

(4) The due date must not be earlier than 28 days after the date of issue of the notice of intention to enforce.

(5) A notice of intention to enforce must also —

(aa) state that a licence suspension order cannot be made in relation to an offender who is an individual and whose last known address is in a remote area; and

(a) state the date and time when the licence suspension order will have effect if it is made; and

(b) explain that if a licence suspension order is made it will not be cancelled until the amount owed is paid; and

(c) explain the effect of the licence suspension order that may be made; and

(ca) explain the effect of sections 4A and 43(1A) and advise the offender that if the offender is an individual

- 1 experiencing hardship this should be made known to the
2 Registrar; and
- 3 (d) state the effect that an enforcement warrant will have if
4 it is issued; and
- 5 (da) explain the circumstances in which a WDP can be
6 issued and how an application for a WDP can be made;
7 and
- 8 (db) explain the circumstances in which a fine expiation
9 order can be issued and how an application for a fine
10 expiation order can be made; and
- 11 (dc) explain that, if other enforcement action is unsuccessful,
12 the Registrar can apply to the Magistrates Court for a
13 warrant of commitment inquiry to be held; and
- 14 (dd) explain the statutory principles in section 4; and
- 15 (e) contain such other information as is prescribed.
- 16 *[Section 42 inserted by No. 48 of 2012 s. 20.]*

17 **Division 3A — Licence suspension orders**

18 **43. Licence suspension order**

- 19 (1) The Registrar may make a licence suspension order in respect of
20 an offender and an enforceable registered fine if —
- 21 (a) a notice of intention to enforce has been issued under
22 section 42 in relation to the fine; and
- 23 (b) the due date specified in that notice has passed.
- 24 ~~(1) If~~
- 25 ~~(a) 28 days have elapsed since the date of issue of a notice~~
26 ~~of intention to enforce; and~~
- 27 ~~(b) the amount owed has not been paid,~~
- 28 ~~then, whether or not an enforcement warrant issued under~~
29 ~~section 45 is in force, the Registrar may make a licence~~
30 ~~suspension order in respect of the offender.~~

- 1 (1A) If the Registrar has been given notice of any hardship affecting
2 an offender who is an individual, the Registrar must consider
3 that hardship in deciding whether or not to make a licence
4 suspension order in relation to the offender.
- 5 (1B) The Registrar cannot make a licence suspension order in
6 relation to an offender who is an individual if the offender's last
7 known address is in a remote area.
- 8 (2) A licence suspension order is an order as to such of the matters
9 in subsections (3) and (4) as the Registrar thinks fit.
- 10 (3) If the offender is an individual a licence suspension order may
11 disqualify the offender from one of the following:
12 (a) from holding or obtaining a driver's licence; or
13 (b) from holding or obtaining a vehicle licence in respect of
14 those vehicles specified in the order; or
15 (c) from holding or obtaining a vehicle licence in respect of
16 any vehicle.
- 17 (4) If the offender is a body corporate a licence suspension order
18 may disqualify the offender from one of the following:
19 (a) from holding or obtaining a vehicle licence in respect of
20 those vehicles specified in the order; or
21 (b) from holding or obtaining a vehicle licence in respect of
22 any vehicle.
- 23 (5) A licence suspension order has effect on the date and at the time
24 specified in the order, but the date and time must not be earlier
25 than the date and time stated in the notice of intention to enforce
26 and must not be earlier than when the order is made.
- 27 (6) If the Registrar makes a licence suspension order, the Registrar
28 ~~he or she~~ must —
29 (a) issue a notice confirming licence suspension; and
30 (b) advise the Director General of the terms of the order
31 forthwith.

1 (7) A notice confirming licence suspension must be served on the
2 offender.

3 (8) A notice confirming licence suspension must —

4 (a) state that a licence suspension order has been made and
5 explain the terms of the order; and

6 (b) state the date and time when the licence suspension
7 order has effect; and

8 (c) explain that the offender can request that the order be
9 cancelled under section 44A(1)(b).

10 ~~(8) A notice confirming licence suspension must advise the~~
11 ~~offender that a licence suspension order has been made and of~~
12 ~~the date and time when it has effect and must explain the terms~~
13 ~~of the order.~~

14 (9) For the purposes of this Act and a road law, a licence
15 suspension order —

16 (a) takes effect on the date and at the time specified in the
17 order; and

18 (b) is in force from the time it takes effect to the time when
19 it is cancelled; and

20 (c) is concurrent with any other period for which the
21 offender is disqualified from holding or obtaining a
22 driver's licence.

23 *[Section 43 amended by No. 8 of 1996 s. 9; No. 76 of 1996*
24 *s. 30; No. 8 of 2012 s. 109; No. 48 of 2012 s. 21.]*

25 **44. Cancelling licence suspension order**

26 (1) A licence suspension order is to be taken to be cancelled at the
27 time when the amount owed is paid or recovered under an
28 enforcement warrant.

29 (2) Even if the amount owed has not been paid, the Registrar, at any
30 time, may cancel a licence suspension order for good reason.

- 1 (3) If a licence suspension order is cancelled under subsection (2) or
2 section 37(1), 44A(4) or 53A(2)(b), ~~section 45(2)~~, the Registrar
3 must issue a notice of cancellation.
- 4 (4) A notice of cancellation must be served on the offender.
- 5 (5) If a licence suspension order is cancelled under subsection (1)
6 or (2) or section 37(1), 44A(4) or 53A(2)(b), ~~45(2)~~, the Registrar
7 must advise the Director General forthwith.
- 8 (6) For the purposes of a road law, the cancellation of a licence
9 suspension order takes effect when the order is cancelled.

10 **44A. Offender may request that licence suspension order not be**
11 **made or be cancelled**

- 12 (1) An offender may, in the approved form, request the Registrar —
13 (a) not to make a licence suspension order in relation to an
14 enforceable registered fine; or
15 (b) to cancel a licence suspension order that has been made
16 in relation to an enforceable registered fine.
- 17 (2) A request under subsection (1) may be made on any of the
18 following grounds —
19 (a) that the licence suspension order would or does deprive
20 the offender of —
21 (i) the means of obtaining urgent medical treatment
22 for an illness, disease or disability known to be
23 suffered by the offender or a member of the
24 offender's family; or
25 (ii) the principal means of obtaining income with
26 which to pay the amount owed in respect of the
27 fine;
28 (b) that the licence suspension order would or does
29 seriously hinder the offender in performing family or
30 personal responsibilities.
- 31 (3) Without limiting subsection (2)(a)(ii), the Registrar may, for the
32 purposes of that subsection, consider the effect that a licence

suspension order would have or has had on the ability of the
offender to seek or obtain employment.

(4) If the Registrar is satisfied that there are grounds for making a
request under subsection (1), the Registrar must agree to the
request and, as the case requires, must not make the licence
suspension order or must cancel the licence suspension order.

(5) Subsection (4) does not prevent the Registrar from making a
licence suspension order under section 43 after previously
agreeing to a request under subsection (1) if the Registrar is
satisfied that the grounds for agreeing to the request no longer
apply.

*[Section 44 amended by No. 8 of 1996 s. 9; No. 76 of 1996
s. 30; No. 8 of 2012 s. 109; No. 48 of 2012 s. 22.]*

Division 3B — Enforcement warrants

45. Enforcement warrant

(1) The Registrar may issue an enforcement warrant in respect of an
offender and an enforceable registered fine if —

(a) a notice of intention to enforce has been issued under
section 42 in relation to the fine; and

(b) the due date specified in that notice has passed.

~~(1) If —~~

~~(a) 28 days have elapsed since the date of issue of a notice
of intention to enforce; and~~

~~(b) the amount owed has not been paid;~~

~~then, whether or not a licence suspension order made under
section 43 is in force, the Registrar may issue an enforcement
warrant.~~

(2) An enforcement warrant must be in the prescribed form and be
directed to the Sheriff.

(3) An enforcement warrant must be executed under Part 7.

1 (4) An enforcement warrant must specify the amount owed by the
2 offender.

3 (5) The Registrar may at any time cancel an enforcement warrant
4 for good reason.

5 *[Section 45 amended by No. 48 of 2012 s. 23 and 43.]*

6 **Division 3C — Work and development**

7 **Subdivision 1 — Preliminary**

8 **46. Division does not apply to body corporate**

9 This Division does not apply in relation to an offender that is a
10 body corporate.

11 ~~Sections 47 to 53 apply only in a case where the offender is an~~
12 ~~individual. Sections 47 to 53 do not apply to body corporate~~

13 **Subdivision 2 — Work and development permits**

14 **46A. Work and development permit**

15 A *work and development permit* is a permit enabling an
16 offender to discharge the offender's liability to pay the amount
17 owed in respect of a fine by undertaking any of the following
18 activity —

19 (a) unpaid work for, or on behalf of, an approved sponsor;

20 (b) medical or mental health treatment provided under a
21 treatment plan approved by an approved sponsor;

22 (c) an educational, vocational or personal development
23 course provided or approved by an approved sponsor;

24 (d) treatment for an alcohol or drug use problem under a
25 treatment plan provided or approved by an approved
26 sponsor;

27 (e) if the offender has not reached 25 years of age when the
28 permit is issued — a mentoring programme provided or
29 approved by an approved sponsor;

1 (f) activity of a kind prescribed by the regulations.

2 **46B. Eligibility for work and development permit**

3 An offender is eligible for a WDP if the offender —

4 (a) is experiencing financial hardship; or

5 (b) has been or might be subjected or exposed to family
6 violence (as defined in the *Restraining Orders Act 1997*
7 section 3(1)); or

8 (c) has a mental illness (as defined in the *Mental Health Act*
9 2014 section 4); or

10 (d) has a disability (as defined in the *Disability Services Act*
11 1993 section 3); or

12 (e) is homeless; or

13 (f) is experiencing alcohol or other drug use problems.

14 **46C. Application for work and development permit**

15 (1) An approved sponsor may, with the agreement of an offender,
16 apply to the Registrar on the offender's behalf for the issue of a
17 WDP in relation to the offender and an enforceable registered
18 fine.

19 (2) An application under subsection (1) cannot be made unless a
20 notice of intention to enforce has been issued under section 42
21 in relation to the fine (whether or not the due date specified in
22 the notice has passed).

23 (3) An application under subsection (1) must —

24 (a) be in the approved form; and

25 (b) include a written assessment (an *eligibility assessment*)
26 by the approved sponsor setting out the reasons why the
27 approved sponsor considers that the offender meets 1 or
28 more of the eligibility criteria in section 46B; and

29 (c) state —

30 (i) the amount owed in respect of the fine; and

1 (ii) the activity of a kind referred to in section 46A to
2 be undertaken under the permit; and

3 (iii) the applicable rates prescribed for the purposes
4 of section 46M(1) to be used to assign a value to
5 each part of the activity undertaken under the
6 permit.

7 (4) The Registrar must rely on the eligibility assessment in an
8 application under subsection (1) unless the Registrar believes on
9 reasonable grounds that it should not be relied on.

10 (5) The Registrar may, by written notice given to the approved
11 sponsor, require the approved sponsor to give the Registrar any
12 information or evidence used by the approved sponsor for the
13 purposes of making the eligibility assessment within the period
14 stated in the notice.

15 (6) If the approved sponsor does not comply with a notice given
16 under subsection (5), the application is taken to be withdrawn.

17 **46D. Issue of work and development permit**

18 (1) If an approved sponsor applies under section 46C for a WDP in
19 relation to an offender and an enforceable registered fine, the
20 Registrar may issue the WDP if the Registrar is satisfied that the
21 offender is eligible for the WDP.

22 (2) The Registrar must refuse to issue a WDP if the issue of the
23 permit would result in the maximum number, as prescribed by
24 the regulations, of work and development instruments being in
25 force in respect of the offender.

26 (3) A copy of a WDP must be served on the offender and the
27 approved sponsor.

28 (4) If the Registrar refuses to issue a WDP, the Registrar must serve
29 notice of the refusal on the approved sponsor and the offender.

30 **46E. Form of work and development permit**

31 (1) A WDP issued in respect of an offender and a fine must —

- 1 (a) be in the approved form; and
- 2 (b) state —
- 3 (i) the amount owed in respect of the fine; and
- 4 (ii) the activity of a kind referred to in section 46A
- 5 that is to be undertaken under the permit; and
- 6 (iii) the applicable rates prescribed for the purposes
- 7 of section 46M(1) to be used to assign a value to
- 8 each part of the activity undertaken under the
- 9 permit.
- 10 (2) A WDP must be issued in the terms applied for unless the
- 11 approved sponsor and the offender agree otherwise.
- 12 (3) If the activity to be undertaken under a WDP is unpaid work,
- 13 the activity is cumulative on —
- 14 (a) any unpaid work to be undertaken under another WDP;
- 15 and
- 16 (b) the required hours under any WDO in force in relation
- 17 to the offender; and
- 18 (c) any hours of community work that the offender is
- 19 required to do under a community service requirement
- 20 in a community order imposed under the *Sentencing*
- 21 *Act 1995*; and
- 22 (d) any hours of community corrections activities that the
- 23 offender is required to do under the *Sentence*
- 24 *Administration Act 2003*.
- 25 (4) Except to the extent provided in subsection (3), activity
- 26 undertaken under a WDP can be undertaken concurrently with
- 27 any other activity the offender undertakes under or for the
- 28 purposes of a written law or a law of the Commonwealth.
- 29 **46F. Duration of work and development permit**
- 30 A WDP —
- 31 (a) comes into force when it is issued; and

1 (b) is in force until whichever of the following occurs
2 first —

3 (i) the permit is completed under section 46G(4);

4 (ii) the permit is cancelled.

5 **46G. Discharge of liability under work and development permit**

6 (1) If a WDP has been issued in relation to an offender and a fine,
7 the offender's liability to pay the amount owed in respect of the
8 fine is discharged —

9 (a) by the offender undertaking all of the activity stated in
10 the permit to the satisfaction of the approved sponsor; or

11 (b) by payment of the amount owed in respect of the fine; or

12 (c) by a combination of the offender undertaking some of
13 the activity stated in the permit and paying a part of the
14 amount owed in respect of the fine.

15 (2) If the offender pays a part of the amount owed in respect of a
16 fine while a WDP is in force in relation to the fine, the Registrar
17 must amend the WDP under section 46I(3) to reduce the activity
18 to be undertaken under the permit so that the value assigned to
19 the activity (determined using the applicable rates stated in the
20 permit under section 46E(1)(b)(iii)) is equal to the amount owed
21 after that payment.

22 (3) If the offender undertakes some, but not all, of the activity
23 stated in a WDP, the amount owed in respect of the fine is
24 reduced in accordance with the value assigned to the activity
25 that has been undertaken using the applicable rates stated in the
26 permit under section 46E(1)(b)(iii).

27 (4) A WDP is completed when the offender's liability to pay the
28 amount owed in respect of the fine is discharged under
29 subsection (1).

46H. Cancellation of work and development permit

(1) The approved sponsor for a WDP may apply in the approved form for the cancellation of the permit if the approved sponsor will be unable to continue to supervise the performance of the activity (the *required activity*) stated in the permit.

(2) The offender may apply in the approved form for the cancellation of a WDP if the offender believes that the approved sponsor will be unable to continue to supervise the performance of the required activity.

(3) On an application under subsection (1) or (2), the Registrar must cancel the WDP.

(4) The Registrar may cancel a WDP in force in relation to an offender on the Registrar's own initiative if the Registrar is satisfied that —

(a) the offender has failed, without reasonable excuse, to undertake the required activity; or

(b) the offender no longer meets any of the eligibility criteria in section 46B; or

(c) the approved sponsor is unable to continue to supervise the required activity; or

(d) the approved sponsor has contravened any requirement of this Subdivision; or

(e) the approved sponsor's approval has been revoked under section 46J(2); or

(f) any statement or information in the application for the permit is false or misleading in a material particular; or

(g) any information or evidence given to the Registrar in response to a notice under section 46C(5) is false or misleading in a material particular; or

(h) there is another good reason to cancel the WDP.

(5) The Registrar must serve notice of a decision under subsection (3) or (4) on the approved sponsor and the offender.

46I. Amendment of work and development permit

(1) The approved sponsor for a WDP may, with the agreement of the offender, apply in the approved form to have the permit amended.

(2) On an application under subsection (1), the Registrar must —

(a) approve the amendment of the WDP; or

(b) refuse to approve the amendment of the WDP.

(3) The Registrar must amend a WDP if required to do so under section 46G(2).

(5) The Registrar must serve notice of a decision under subsection (2) or (3) on the approved sponsor and the offender.

46J. Approval of sponsors for work and development permits

(1) The CEO (fines enforcement) may, in writing, approve a person as an approved sponsor for the purposes of this Subdivision.

(2) The CEO (fines enforcement) may, in writing, revoke the approval of a person under subsection (1).

(3) The CEO (fines enforcement) must establish and maintain a register of approved sponsors.

(4) The regulations may make provision as to the form and content of the register.

(5) The register must be published on the Department's website.

46K. Guidelines for work and development permits

(1) The Minister may issue guidelines in relation to WDPs and the administration of this Subdivision.

(2) Without limiting subsection (1), guidelines may include provision for or in relation to the following —

- 1 (a) assessing whether an offender meets the eligibility
2 criteria in section 46B and the supporting information
3 and evidence required in making that assessment;
4 (b) the application of rates prescribed for the purposes of
5 section 46M;
6 (c) applications for WDPs;
7 (d) the approval of approved sponsors under section 46J and
8 the revocation of approvals under that section.
9 (3) The Minister may at any time amend or revoke guidelines
10 issued under this section.
11 (4) Guidelines issued under this section, or an amendment or
12 revocation under subsection (3), must be published in the
13 manner prescribed by the regulations.
14 (5) Guidelines issued under this section are not subsidiary
15 legislation for the purposes of the *Interpretation Act 1984*.
16 (6) If there is a conflict or inconsistency between a provision of this
17 Act and a provision of guidelines issued under this section, the
18 provision of this Act prevails.
19 **46L. Guidelines to be taken into account**
20 (1) Guidelines issued under section 46K are intended —
21 (a) to assist the CEO (fines enforcement) and other persons
22 in the performance of functions under this Act; and
23 (b) to provide information to approved sponsors, offenders
24 and any person or body that may be affected by this
25 Subdivision.
26 (2) In performing a function under this Subdivision a person must
27 take into account guidelines issued under section 46K that relate
28 to the performance of the function.
29 (3) Nothing in subsection (2) —
30 (a) derogates from the person's duty to exercise the person's
31 discretion in a particular case; or

- 1 (b) precludes the person from taking into account matters
2 not set out in guidelines; or
3 (c) requires the person to take into account guidelines that
4 are inconsistent with the provision of this Act that
5 confers the function.

6 **46M. Regulations about work and development permits**

- 7 (1) The regulations must provide for the rates to be used to assign a
8 value to each part of the activity undertaken under a WDP for
9 the purposes of section 46G.
10 (2) Different rates, or methods for determining rates, may be
11 prescribed for different kinds of activity.
12 (3) The regulations may make provision for and in relation to
13 WDPs and approved sponsors, including by providing for the
14 following —
15 (a) records, information and evidence required to be
16 collected and retained by approved sponsors in relation
17 to —
18 (i) an offender's eligibility for a WDP; and
19 (ii) activity undertaken under the permit;
20 (b) notices and information to be given by approved
21 sponsors to the Registrar in connection with WDPs;
22 (c) requirements for approved sponsors in relation to
23 insurance or health and safety procedures or policies.

24 **46N. Offender undertaking unpaid work not employee**

- 25 An offender undertaking unpaid work for, or on behalf of, an
26 approved sponsor under a WDP —
27 (a) is not to be taken to be employed by, or in a contract for
28 services with, the approved sponsor; and
29 (b) is not an employee for the purposes of the *Industrial*
30 *Relations Act 1979* or any other written law.

46O. Protection from liability in relation to unpaid work

(1) In this section —

relevant person, in relation to unpaid work for, or on behalf of,
an approved sponsor under a WDP —

(a) means the approved sponsor or any person —

(i) for whose benefit that work is performed; or

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

(iii) who owns or occupies the land or premises on
which that work is performed;

but

(b) does not include the offender by whom the work is
performed.

(2) No act or omission of an offender in the course of undertaking
unpaid work for, or on behalf of, an approved sponsor under a
WDP gives rise to civil liability on the part of a relevant person
in relation to that work.

(3) Subsection (2) does not apply to an act or omission that was
expressly required by the relevant person but was not necessary
to carry out the unpaid work stated in the WDP.

(4) No act or omission of a relevant person in relation to unpaid
work for, or on behalf of, an approved sponsor under a WDP
gives rise to civil liability on the part of the relevant person to
the offender undertaking the unpaid work.

(5) Subsection (4) do not apply if —

(a) the work concerned was not stated in the WDP; or

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

Subdivision 3 — Work and development orders

47. Order to attend for work and development

(1) The Registrar may issue an order to attend for work and development in respect of an offender and an enforceable registered fine if —

(a) a notice of intention to enforce has been issued under section 42 in relation to the fine; and

(b) the due date specified in that notice has passed.

(2) An order to attend for work and development issued under subsection (1) must not be served on an offender unless the Registrar is satisfied that the offender —

(a) does not have the means to pay the amount owed; and

(b) does not have any personal property that could be seized under an enforcement warrant to satisfy, wholly or partly, the amount owed; and

(c) will be unlikely to have the means to pay, or personal property that could be so seized, within a reasonable time after the order is issued.

(3) The Registrar may require the offender to undertake a means test for the purpose of determining whether subsection (1)(b) is satisfied.

(4) An order to attend for work and development must be served personally.

~~47. Order to attend for work and development~~

~~(1) If under section 45 the Registrar issues an enforcement warrant in respect of an offender who is an individual, the Registrar may also issue an order to attend for work and development.~~

~~(2) An order to attend for work and development is to be served on an offender only if the whole of the amount owed (and specified in the enforcement warrant) and any enforcement fees imposed~~

1 ~~under Part 7 are neither recovered by the Sheriff under the~~
2 ~~enforcement warrant nor paid.~~

3 ~~— (3) If an order to attend for work and development is to be served~~
4 ~~on an offender, it must be served personally.~~

5 ~~— (4) When an order to attend for work and development is served on an~~
6 ~~offender in respect of an amount owed, an enforcement warrant~~
7 ~~issued in respect of the amount owed ceases to be in force.~~

8 ~~— [Section 47 amended by No. 9 of 2000 s. 4; No. 48 of 2012~~
9 ~~s. 43.]~~

10 **~~47A. Order to attend for work and development may be issued~~**
11 **~~ahead of other enforcement measures~~**

12 ~~— (1) Despite sections 42 to 45 and 47, at any time after a fine is~~
13 ~~registered the Registrar may issue an order to attend for work~~
14 ~~and development in respect of the offender if the Registrar is~~
15 ~~satisfied —~~

16 ~~— (a) that the offender —~~

17 ~~— (i) does not have the means to pay the amount~~
18 ~~owed; and~~

19 ~~— (ii) is not the holder of a vehicle licence; and~~

20 ~~— (iii) does not have any personal property that could~~
21 ~~be seized under an enforcement warrant to~~
22 ~~satisfy, wholly or partly, the amount owed; and~~

23 ~~— (iv) will be unlikely to have the means to pay, or~~
24 ~~personal property that could be so seized, within~~
25 ~~a reasonable time after the fine was registered;~~

26 ~~and~~

27 ~~— (b) that the offender —~~

28 ~~— (i) is the holder of a driver's licence but is~~
29 ~~disqualified from holding or obtaining such a~~
30 ~~licence; or~~

- 1 ~~_____ (ii) is not the holder of a driver's licence;~~
2 ~~_____ and~~
3 ~~_____ (c) that the issue of a licence suspension order has not~~
4 ~~resulted, or would be unlikely to result, in the amount~~
5 ~~owed being paid within a reasonable time after the fine~~
6 ~~was registered.~~
7 ~~_____ (2) An order issued under subsection (1) must be served on the~~
8 ~~offender personally.~~
9 ~~_____ (3) On issuing an order under subsection (1), the Registrar must~~
10 ~~cancel —~~
11 ~~_____ (a) any licence suspension order; or~~
12 ~~_____ (b) any enforcement warrant,~~
13 ~~_____ that is in force in respect of the offender in respect of the fine.~~
14 ~~_____ (4) If a licence suspension order is cancelled under subsection (3),~~
15 ~~the Registrar must advise the Director General forthwith.~~
16 ~~_____ (5) For the purposes of a road law, the cancellation of a licence~~
17 ~~suspension order takes effect when the order is cancelled.~~
18 ~~_____ [Section 47A inserted by No. 9 of 2000 s. 5; amended by No. 14~~
19 ~~of 2003 s. 6; No. 8 of 2012 s. 109; No. 48 of 2012 s. 43.]~~

20 **47B. Effect of order to attend for work and development**

21 An order to attend for work and development issued under
22 section 47 ~~or 47A~~ is an order requiring the offender, within
23 7 days after the service of the order or a longer period specified
24 in the order —

- 25 (a) to pay the amount owed; or
26 (b) to report to a community corrections centre to be
27 assessed for the purposes of deciding whether a WDO
28 should be made in respect of the offender.

29 *[Section 47B inserted by No. 9 of 2000 s. 5.]*

47C. Cancellation and duration of order to attend for work and development

(1) The Registrar may cancel an order to attend for work and development issued under section 47 if it is not reasonably practicable to serve the order on the offender —

(a) personally; or

(b) by electronic means under section 5A(1).

(2) An order to attend for work and development —

(a) comes into force when it is served on the offender; and

(b) is in force until whichever of the following occurs first —

(i) the order is cancelled;

(ii) the amount owed in respect of the fine is paid;

(iii) a WDO is made in respect of the offender and the fine;

(iv) the time within which the offender must pay the amount owed or report to a community corrections centre under section 47B expires.

~~48A. Order to attend for work and development: cancellation~~

~~(1) This section applies if —~~

~~(a) an order to attend for work and development is issued under section 47 or 47A; and~~

~~(b) it is not reasonably practicable to serve the order on the offender —~~

~~(i) personally; or~~

~~(ii) by electronic means under section 5A(1).~~

~~(2) If this section applies, the Registrar may cancel the order to attend for work and development and make or again make a licence suspension order in respect of the offender.~~

1 ~~— (3) For the purposes of subsection (2), section 43(2) to (9) (but not~~
2 ~~section 43(4)), with any necessary changes, apply.~~

3 ~~— (4) A licence suspension order —~~

4 ~~— (a) may be made even if section 42 has not been complied~~
5 ~~with; but~~

6 ~~— (b) cannot be made if a time to pay order under section 33 is~~
7 ~~in force in respect of the person and the amount owed.~~

8 *[Section 48A inserted by No. 20 of 2013 s. 89.]*

9 **48. Making work and development order**
10 **~~development order (WDO)~~**

11 (1) An offender who reports to a community corrections centre in
12 accordance with an order to attend for work and development is
13 to be assessed by a CCO who is to report to the
14 CEO (corrections) on the suitability of the offender to be given
15 a WDO.

16 (2) The CEO (corrections) must make a WDO in respect of an
17 offender unless the CEO (corrections) is satisfied —

18 (a) that the offender is mentally or physically incapable of
19 performing the requirements of the order; or

20 (b) that in the course of performing the requirements of a
21 WDO the offender will or may pose a risk to the
22 personal safety of people in the community or of any
23 individual in the community.

24 (2a) If an offender reports to a community corrections centre
25 pursuant to an order made under section 57A(3) of the
26 *Sentencing Act 1995*, the CEO (corrections) must make a WDO
27 in respect of the offender and subsections (1) and (2) do not
28 apply.

29 (3) A WDO must be served on the offender personally.

30 ~~— (4) A WDO must not be made if a WDO made after the~~
31 ~~commencement of this Act has been made previously in respect~~
32 ~~of a particular fine and has been cancelled.~~

~~(5) A WDO must not be made if under section 53 a warrant of commitment has been issued.~~

(4) If the CEO (corrections) decides not to make a WDO in respect of an offender under subsection (2), the CEO (corrections) must give the Registrar written notice stating —

(a) the decision; and

(b) the reasons for the decision; and

(c) if the decision is made because the CEO (corrections) is satisfied that the offender is mentally or physically incapable of performing the requirements of the WDO — whether, in the opinion of the CEO (corrections), the offender is likely to become mentally and physically capable of performing the requirements of a WDO within a reasonable time after the day on which the decision is made.

[Section 48 amended by No. 9 of 2000 s. 6; No. 51 of 2000 s. 7; No. 65 of 2006 s. 64.]

49. Effect of work and development order~~WDO: nature of~~

A WDO is an order that the offender must comply with —

- (a) section 76 of the *Sentence Administration Act 2003*; and
- (b) the primary requirements in section 50.

[Section 49 inserted by No. 78 of 1995 s. 42; amended by No. 50 of 2003 s. 29(3).]

50. Primary requirements of work and development order~~WDO: primary requirements~~

(1) The primary requirements of a WDO are that the offender —

- (a) must do community corrections activities for a number of hours specified in the WDO (the ***required hours***); and
- (b) in each period of 7 days must do community corrections activities for the number of hours specified in the WDO; ~~and do the prescribed number of the required hours; and~~

- 1 (c) must not leave the State without the prior written
2 permission of the supervisor of a community corrections
3 centre; and
4 (d) must notify a CCO of any change of address or
5 employment within 2 clear working days after the
6 change.

- 7 (2) The required hours in a WDO are to be calculated under the
8 regulations by reference to the amount owed; but must be at
9 least 6 hours.

10 (2A) A CCO may, by written notice to the offender, amend the WDO
11 to specify a lower number of hours than the number specified
12 under subsection (1)(b).

- 13 (3) The required hours in a WDO are cumulative on —
14 (a) the required hours in any other WDO; and
15 (aa) any unpaid work to be undertaken under a WDP; and
16 (b) any hours of community work that the offender is
17 required to do under a community service requirement
18 in a community order imposed under the *Sentencing*
19 *Act 1995*; and
20 (c) any hours of community corrections activities that the
21 offender is required to do under the *Sentence*
22 *Administration Act 2003*.

23 *[Section 50 inserted by No. 78 of 1995 s. 42; amended by*
24 *No. 50 of 2003 s. 29(3).]*

25 *[Section 50. Modifications to be applied in order to give effect*
26 *to Cross-border Justice Act 2008: section altered 1 Nov 2009.*
27 *See endnote 1M.]*

28 **51. Discharge of liability under work and development**
29 **order ~~WDO: completion~~**

- 30 (1) If a WDO has been issued in relation to an offender and a fine,
31 the offender's liability to pay the amount owed in respect of the

fine is discharged — ~~A WDO is completed when the offender's liability to pay the fine and enforcement fees is discharged —~~

- (a) by the offender satisfactorily performing all the requirements of the WDO; or
- (b) by payment of the amount owed; or
- (c) by a combination of the offender satisfactorily performing part of the requirements of the WDO and payment of part of the amount owed.

(2) If an offender is subject to a WDO, the required hours of a WDO are to be reduced in accordance with the regulations by reference to any payment of the amount owed that is made.

(3) If the offender satisfactorily performs some, but not all, of the requirements of a WDO, ~~an offender is subject to a WDO,~~ the amount owed is ~~to be~~ reduced in accordance with the regulations by reference to the number of the required hours of the WDO that the offender performs satisfactorily.

(4) A WDO is completed when the offender's liability to pay the amount owed is discharged under subsection (1).

52. Cancellation and duration of work and development order ~~WDO: cancellation~~

(1) The CEO (corrections), in writing, may at any time cancel a WDO.

(2) Notice of the cancellation is to be given to the Registrar as soon as practicable and if practicable to the offender.

(3) A WDO —

(a) comes into force when it is issued; and

(b) is in force until whichever of the following occurs first —

(i) the WDO is completed under section 51(4);

(ii) the WDO is cancelled.

[Section 52 amended by No. 65 of 2006 s. 64.]

~~53A. — WDO: effect of cancellation~~

~~(1) If a WDO is cancelled under section 52, the Registrar may make or again make a licence suspension order in respect of the offender.~~

~~(2) For the purposes of subsection (1), section 43(2) to (9) (but not section 43(4)), with any necessary changes, apply.~~

~~(3) A licence suspension order —~~

~~(a) may be made even if section 42 has not been complied with; but~~

~~(b) cannot be made if a time to pay order under section 33 is in force in respect of the person and the amount owed.~~

~~[Section 53A inserted by No. 48 of 2012 s. 25;
amended by No. 20 of 2013 s. 90.]~~

Division 3D — Fine expiation orders

52A. Division does not apply to body corporate

This Division does not apply in relation to an offender that is a body corporate.

52B. Term used: daily expiation amount

In this Division —

daily expiation amount means the amount prescribed by the regulations for the purposes of this definition.

52C. When a person is in custody for the purposes of fine expiation order

(1) For the purposes of this Division, a person is in custody during any period when the person is —

(a) under arrest; or

(b) a prisoner in a prison; or

(c) a detainee in a detention centre; or

1 (d) a person in court custody in a court custodial centre; or

2 (e) detained at a police facility.

3 (2) For the purposes of subsection (1), a person is in custody
4 whether the person is serving a sentence of imprisonment, on
5 remand, in custody under an arrest warrant or warrant of
6 commitment issued under Division 3E or in custody for any
7 other reason.

8 (3) For the purposes of this Division, a period of custody —

9 (a) is a period during which a person is continuously in
10 custody (whether the same or different kinds of custody
11 and whether the custody relates to 1 or more offences or
12 charges); and

13 (b) begins on the day on which a person is taken into
14 custody and ends on the day on which a person ceases to
15 be in custody.

16 (4) For the purposes of this Division, a part-day during which a
17 person is in custody is to be counted as a day.

18 **52D. Fine expiation order**

19 (1) A fine expiation order is an order enabling an offender who is in
20 custody, or has been in custody, to discharge the offender's
21 liability to pay the amount owed in respect of a fine.

22 (2) A fine expiation order does not itself authorise the offender to
23 be held in custody.

24 **52E. Application for fine expiation order**

25 (1) An offender may apply to the Registrar in the approved form for
26 a fine expiation order in relation to an enforceable registered
27 fine.

28 (2) An application under subsection (1) can be made —

29 (a) by an offender who is in custody, in relation to that
30 period of custody; or

1 (b) by an offender who has been in custody, in relation to a
2 period of custody that has ended.

3 (3) An application referred to in subsection (2)(a) can be made on
4 behalf of the offender by any person authorised in writing by the
5 offender to do so.

6 **52F. Issue of fine expiation order**

7 (1) On an application under section 52E, the Registrar may issue a
8 fine expiation order in relation to the offender and the fine if the
9 Registrar is satisfied that the offender —

10 (a) does not have the means to pay the amount owed; and

11 (b) does not have any personal property that could be seized
12 under an enforcement warrant to satisfy, wholly or
13 partly, the amount owed; and

14 (c) will be unlikely to have the means to pay, or personal
15 property that could be so seized —

16 (i) for an application referred to in
17 section 52E(2)(a) — within a reasonable time
18 after the period of custody referred to in that
19 section will end; or

20 (ii) for an application referred to in
21 section 52E(2)(b) — within a reasonable time
22 after the application is made.

23 (2) The Registrar may require the offender to undertake a means
24 test for the purpose of determining whether subsection (1) is
25 satisfied.

26 (3) A fine expiation order must be served on the offender.

27 (4) If the Registrar refuses to issue a fine expiation order, the
28 Registrar must serve notice of the refusal on the offender.

29 (5) Two or more fine expiation orders in relation to different fines
30 can be issued in relation to the same period of custody.

52G. Form of fine expiation order

(1) A fine expiation order must —

(a) be in the approved form; and

(b) state the amount owed in respect of the fine; and

(c) state an expiation commencement day, which may be earlier than the day on which the order is issued but must not be earlier than any of the following —

(i) the first day of the period of custody to which the order relates;

(ii) the day on which the fine was registered;

(iii) the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019* section [to be drafted - the section that inserts fine expiation orders] came into operation.

(2) A fine expiation order issued on an application referred to in section 52E(2)(b) must also state the last day of the period of custody to which it relates.

52H. Discharge of liability when fine expiation order is issued

(1) This section applies if —

(a) a fine expiation order is issued in relation to an offender and a fine; and

(b) the expiation commencement day stated in the order under section 52G(1)(c) is earlier than the day on which the order is issued (the *issue day*).

(2) When the fine expiation order is issued, the offender's liability to pay the amount owed is —

(a) reduced by the amount determined by multiplying the daily expiation amount by the number of days in the period beginning on the expiation commencement day and ending —

- 1 (i) if the period of custody to which the order relates
2 has ended on the issue day — on the last day of
3 the period of custody; or
4 (ii) otherwise — on the day before the issue day;
5 and
6 (b) wholly discharged if the amount determined under
7 paragraph (a) is equal to or exceeds the amount owed.

8 **52I. Discharge of liability under ongoing fine expiation order**

- 9 (1) This section applies to a fine expiation order (an *ongoing fine*
10 *expiation order*) if —
11 (u) when the order is issued, the period of custody to which
12 the order relates has not ended; and
13 (b) either —
14 (i) section 52H does not apply to the order; or
15 (ii) section 52H applies to the order but the liability
16 to pay the amount owed is not wholly discharged
17 under that section.
18 (2) The offender's liability to pay the amount owed is reduced by
19 the daily expiation amount at the end of each day during which
20 the ongoing fine expiation order is in force.
21 (3) The offender's liability to pay the amount owed is wholly
22 discharged when a reduction under subsection (2) would result
23 in the amount owed reaching or going below zero.

24 **52J. Cancellation and duration of fine expiation order**

- 25 (1) A fine expiation order, other than an ongoing fine expiation
26 order, has effect when it is issued.
27 (2) An ongoing fine expiation order —
28 (u) comes into force on the day on which it is issued; and
29 (b) is in force until whichever of the following occurs
30 first —

- 1 (i) the offender's liability to pay the amount owed in
2 respect of the fine is wholly discharged under
3 section 52I(3);
4 (ii) the period of custody to which the order relates
5 ends;
6 (iii) the order is cancelled;
7 and
8 (c) may be in force concurrently with 1 or more other
9 ongoing fine expiation orders issued in relation to other
10 fin.
11 (3) The Registrar may at any time cancel an ongoing fine expiation
12 order for good reason.
13 (4) The Registrar must serve notice on the offender of a
14 cancellation of an ongoing fine expiation order under
15 subsection (3).

16 **Division 3E — Warrants of commitment and other court-**
17 **ordered enforcement action**

18 **Subdivision 1 — Preliminary**

19 **52K. Division does not apply to body corporate**

20 This Division does not apply in relation to an offender that is a
21 body corporate.

22 **Subdivision 2 — Application for and conduct of warrant of**
23 **commitment inquiry**

24 **52L. Warrant of commitment inquiry**

- 25 (1) A *warrant of commitment inquiry* is an inquiry conducted
26 before the Magistrates Court in order to determine the following
27 in relation to an offender and 1 or more enforceable registered
28 fin.

- 1 (a) whether the offender has the means to pay, or to pay by
2 instalments, the amount owed in respect of the fines,
3 having regard to the offender's income, assets, liabilities
4 and personal circumstances;
5 (b) the offender's suitability for a WDO and the likelihood
6 of the offender complying with a WDO;
7 (c) whether the offender has contravened an order made
8 under section 52R(1) in a previous warrant of
9 commitment inquiry;
10 (d) the appropriate action to be taken under this Act to
11 enforce the fines.

12 (2) A *warrant of commitment inquiry process* is occurring in
13 relation to a fine if —

- 14 (a) the Registrar has applied under section 52M for a
15 warrant of commitment inquiry to be held in relation to
16 the offender and the fine; and
17 (b) the application has not been withdrawn under
18 section 52ZH; and
19 (c) either —
20 (i) the Magistrates Court has not made a decision
21 under section 52O on the application; or
22 (ii) the Magistrates Court has decided under
23 section 52O to hold the warrant of commitment
24 inquiry but the inquiry has not been held.

25 **52M. Application for warrant of commitment inquiry**

- 26 (1) The Registrar may, in the circumstances referred to in
27 subsection (2) or (3), apply to the Magistrates Court for a
28 warrant of commitment inquiry to be held in relation to 1 or
29 more enforceable registered fines (the *relevant fines*) imposed
30 on an offender.
31 (2) The Registrar may make an application under subsection (1)
32 if —

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- 1 (a) the offender has been served with an order to attend for
2 work and development in relation to 1 or more of the
3 relevant fines; and
- 4 (b) any of the following occurred in relation to any order to
5 attend for work and development referred to in
6 paragraph (a) —
- 7 (i) the offender did not report as required by the
8 order to attend for work and development;
- 9 (ii) a WDO was not made under section 48 or could
10 not be served on the offender;
- 11 (iii) a WDO was made under section 48 but was
12 cancelled under section 52(1) because of non-
13 compliance with the WDO;
- 14 and
- 15 (c) the Registrar is satisfied that —
- 16 (i) all applicable enforcement action that could be
17 taken under this Act has been taken in relation to
18 each of the relevant fines; and
- 19 (ii) any further enforcement action that could be
20 taken under this Act is not applicable or unlikely
21 to result in the recovery of the amount owed in
22 respect of the relevant fines.
- 23 (3) The Registrar may make an application under subsection (1) if a
24 previous warrant of commitment inquiry has been held in
25 relation to any of the relevant fines and the offender has
26 contravened any order made under section 52R(1) at that
27 inquiry.
- 28 (4) An application under subsection (1) can be made whether or not
29 a warrant of commitment inquiry has previously been held in
30 relation to the offender and any or all of the relevant fines or
31 any other fine.

52N. Information and evidence to be included in application

(1) An application under section 52M must include the following information —

(a) the offender's name and last known address;

(b) for each of the relevant fines referred to in section 52M(1) —

(i) the amount owed; and

(ii) a summary of the enforcement action taken under this Act before the application is made;

(c) the name and address of any other person the Registrar thinks should be summoned to the inquiry to give evidence;

(d) whether the Registrar requests that a summons under section 52P(1)(a) or an arrest warrant under section 52P(1)(b) be issued for the offender;

(e) the orders that the Registrar requests be made under section 52R at the inquiry and the reasons, expressed in general terms, for that request.

(2) The application must be supported by —

(a) documentation as to the matters in subsection (1)(b); and

(b) if the Registrar requests that an arrest warrant under section 52P(1)(b) be issued for the offender — evidence on oath that the grounds for the issue of the warrant in section 52P(3) are satisfied.

52O. Decision on application for warrant of commitment inquiry

(1) The Magistrates Court may make a decision on an application under section 52M from a consideration of the documents lodged with the Court by the Registrar.

(2) If the Court decides to hold a warrant of commitment inquiry, the Court must issue in relation to the offender either —

(a) a summons under section 52P(1)(a); or

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1 (b) an arrest warrant under section 52P(1)(b).

2 **52P. Issue of summons or arrest warrant**

3 (1) For the purposes of a warrant of commitment inquiry to be held
4 in relation to an offender, the Magistrates Court may —

5 (a) issue a summons in accordance with Subdivision 3 for
6 the offender to appear at the warrant of commitment
7 inquiry and do either or both of the following —

8 (i) give oral evidence for the purpose of the inquiry;

9 (ii) produce for the Court, for use in the inquiry, any
10 record or thing that may be relevant to the
11 inquiry;

12 or

13 (b) subject to subsection (3), issue a warrant in accordance
14 with Subdivision 4 to have an offender arrested and
15 brought before the Court for a warrant of commitment
16 inquiry.

17 (2) If the application for the warrant of commitment inquiry named
18 1 or more persons under section 52N(1)(c), the Court may also
19 issue a summons in accordance with Subdivision 3 for any of
20 those persons to appear at the warrant of commitment inquiry
21 and do either or both of the things referred to subsection (1)(a).

22 (3) The Court must not issue an arrest warrant under
23 subsection (1)(b) unless —

24 (a) a summons under subsection (1)(a) in respect of the
25 inquiry has been served on the offender in accordance
26 with section 52U and the offender did not attend Court
27 as required by the summons; or

28 (b) a summons under subsection (1)(a) in respect of a
29 previous warrant of commitment inquiry was served on
30 the offender in accordance with section 52U and the
31 offender did not attend Court as required by the
32 summons; or

1 (c) the offender has, on at least 2 occasions, contravened an
2 order made under section 52R(1) at a previous warrant
3 of commitment inquiry.

4 (4) If the Court issues a summons under subsection (1)(a) in
5 relation to the offender, the Court must set a date for the inquiry
6 and notify the Registrar of that date.

7 **52Q. Conduct of warrant of commitment inquiry**

8 (1) At a warrant of commitment inquiry the Magistrates Court is to
9 determine the matters listed in section 52L(1).

10 (2) At a warrant of commitment inquiry the offender must produce
11 to the Court all records that relate to the matters listed in
12 section 52L(1) that are in the possession or under the control of
13 the offender.

14 (3) At a warrant of commitment inquiry the Court may itself
15 examine the offender for the purposes of determining the
16 matters listed in section 52L(1).

17 (4) Subject to this Division, the *Magistrates Court (Civil*
18 *Proceedings) Act 2004* and rules of court made under that Act
19 apply in relation to warrant of commitment inquiries and
20 applications and orders made under this Division.

21 **52R. Court may make orders or issue warrant of commitment**

22 (1) At a warrant of commitment inquiry the Magistrates Court may
23 make any of the following orders in relation to the offender and
24 any of the fines to which the inquiry relates —

25 (a) an order that the Registrar make a time to pay order
26 under section 33;

27 (b) an order that an order to attend for work and
28 development should be issued;

29 (c) an order writing off all or part of the amount owed in
30 respect of the fine;

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- 1 (d) an order amending an order made at a previous warrant
2 of commitment inquiry in relation to the fine, including
3 by extending any time period in that order;
4 (e) an order that a warrant of commitment should be issued;
5 (f) any other order the court considers appropriate in the
6 circumstances.
7 (2) In making an order under subsection (1), the Court must have
8 regard to —
9 (a) the matters set out in section 52L(1) that it has
10 determined; and
11 (b) the principles set out in section 4; and
12 (c) any other matters the Court considers relevant.
13 (3) If the warrant of commitment inquiry relates to more than
14 1 fine, separate orders are to be made under subsection (1) in
15 relation to each of the fines to which the inquiry relates.
16 (4) If the Court makes an order under subsection (1)(e) in relation
17 to an offender and a fine, it must issue a warrant of commitment
18 in the prescribed form in relation to the fine.

52S. Effect of orders under s. 52R(1)(a) to (c)

- 20 (1) If the Magistrates Court makes an order under
21 section 52R(1)(a), the Registrar must make a time to pay order
22 under section 33 in relation to the fine, even though the offender
23 has not applied for the time to pay order.
24 (2) If the Court makes an order under section 52R(1)(b) —
25 (a) an order to attend for work and development is taken to
26 have been issued and served under section 47 when the
27 order under section 52R(1)(b) is made; and
28 (b) the offender must pay the amount owed, or report to a
29 community corrections centre, as referred to in
30 section 47B within the period of 7 days after the order

1 under section 52R(1)(b) is made, unless the Court
2 specifies a longer period.

3 (3) If the Court makes an order under section 52R(1)(c), the
4 offender's liability to pay the amount owed in respect of the fine
5 is taken to be discharged to the extent specified in the order.

6 **Subdivision 3 — Summons to appear at warrant of commitment**
7 **inquiry**

8 **52T. Form of summons**

9 A summons to appear at a warrant of commitment inquiry
10 issued in relation to a person under section 52P(1)(a) or (2)
11 must —

- 12 (a) be in the prescribed form; and
13 (b) state when and where the warrant of commitment
14 inquiry will be held; and
15 (c) require the person to appear at that time and place; and
16 (d) contain any information prescribed by the regulations;
17 and
18 (e) be signed by the magistrate who issues it.

19 **52U. Service of summons**

20 (1) A summons to appear at a warrant of commitment inquiry
21 issued under section 52P(1)(a) or (2) must be served personally
22 unless the Magistrates Court has authorised oral service under
23 subsection (2) or substituted service under subsection (3).

24 (2) The Court may authorise oral service of a summons if the Court
25 is satisfied that reasonable efforts to serve the order personally
26 are unlikely to be successful.

27 (3) The Court may authorise substituted service of a summons if the
28 Court is satisfied that personal service and oral service are
29 impracticable for any reason, including (but not limited to) the
30 following —

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1 (a) the person to be served does not have a fixed place of
2 residence or business;

3 (b) the person to be served has a place of residence or
4 business that is in a remote area;

5 (c) the person to be served is likely to avoid personal
6 service.

7 (4) The Court is to consider making an order for oral service or
8 substituted service of a summons to appear at a warrant of
9 commitment inquiry in every case.

10 **52V. Oral service or substituted service of summons**

11 (1) A summons to appear at a warrant of commitment inquiry is
12 served by oral service if the person being served is informed of
13 the following —

14 (a) that the summons has been issued;

15 (b) that the person is required to appear at a warrant of
16 commitment inquiry and the date and place where the
17 person is required to appear;

18 (c) a place where a written copy of the summons can be
19 obtained.

20 (2) Oral service —

21 (a) may be effected in person or by telephone, radio, video
22 conference or another similar method; and

23 (b) does not require the person serving the summons to be
24 in possession of a copy of it at the time of service.

25 (3) If a person to whom information is to be given under subsection
26 (1) does not readily understand English, or the person serving
27 the summons is not satisfied that the person understood the
28 information, the person serving the summons is, as far as
29 practicable, to arrange for someone else who is 16 years of age
30 or older to give the information to the person in a way that the
31 person can understand.

1 (4) A summons to appear at a warrant of commitment inquiry is
2 served by substituted service if the person serving the summons
3 takes the steps that the Magistrates Court has directed to bring it
4 to the attention of the person being served.

5 **52W. When summons ceases to have effect**

6 A summons to appear at a warrant of commitment inquiry
7 ceases to have effect if —

- 8 (a) the amount owed in respect of each of the fines to which
9 the warrant of commitment inquiry relates is paid or the
10 liability to pay the amount owed in respect of each of
11 those fines is discharged under section 52H or 52I; or
12 (b) the application for the warrant of commitment inquiry is
13 withdrawn under section 52ZH.

14 **Subdivision 4 — Arrest warrant for appearance at warrant of**
15 **commitment inquiry**

16 **52X. Form of arrest warrant**

17 An arrest warrant for an offender issued under section 52P(1)(b)
18 must —

- 19 (a) be directed to all members of the Police Force; and
20 (b) be in the prescribed form; and
21 (c) require the person who arrests the offender to bring the
22 offender before the Magistrates Court as soon as
23 practicable after doing so; and
24 (d) contain any information prescribed by the regulations;
25 and
26 (e) be signed by the magistrate who issues it.

27 **52Y. Effect of arrest warrant**

- 28 (1) An arrest warrant issued under section 52P(1)(b) is itself
29 sufficient authority to any person to whom it is directed to act
30 according to it.

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- 1 (2) An offender arrested under an arrest warrant issued under
2 section 52P(1)(b) —
3 (a) must be brought before the Magistrates Court for the
4 warrant of commitment inquiry as soon as practicable
5 after the arrest; and
6 (b) may be brought before the Court at any place where it is
7 sitting; and
8 (c) may be held in custody until the Court makes its orders
9 under section 52R at the inquiry.
10 (3) Subsection (2) is subject to section 52ZA.
11 (4) A police officer must obey any warrant issued under
12 section 52P(1)(b) or other order or direction of the Magistrates
13 Court.
14 (5) A police officer who contravenes subsection (4) is to be dealt
15 with under the *Police Act 1892* section 23.
16 (6) To avoid doubt, an arrest warrant issued under section 52P(1)(b)
17 is an arrest warrant for the purposes of the definition of *arrest*
18 *warrant* in the *Criminal Investigation Act 2006* section 3(1).

52Z. Duration of arrest warrant

- 20 An arrest warrant for an offender issued under
21 section 52P(1)(b) —
22 (a) comes into force when it is issued; and
23 (b) remains in force until whichever of the following occurs
24 first —
25 (i) the offender is brought before the Magistrates
26 Court for the warrant of commitment inquiry
27 under the arrest warrant;
28 (ii) the offender appears voluntarily in Court for the
29 warrant of commitment inquiry;
30 (iii) the amount owed in respect of each of the fines
31 to which the warrant of commitment inquiry

relates is paid or the liability to pay the amount
owed in respect of each of those fines is
discharged under section 52H or 52I;

(iv) the offender is released under section 52ZA(1)(b)
or (3);

(v) the application for the warrant of commitment
inquiry is withdrawn under section 52ZH.

**52ZA. Arrested offender to be brought before Court or granted
conditional release**

(1) If an offender is arrested under an arrest warrant issued under
section 52P(1)(b) and it is not practicable to bring the offender
before the Magistrates Court for the warrant of commitment
inquiry immediately after the arrest, the responsible officer —

(a) must, as soon as practicable, consider whether the
offender should be released under paragraph (b); and

(b) may, subject to section 52ZC(1), release the offender.

(2) The decision whether or not to release an offender under
subsection (1)(b) is at the discretion of the responsible officer,
having regard to the following —

(a) whether, if the offender is not kept in custody, the
offender may fail to appear in Court in accordance with
the offender's undertaking under section 52ZC;

(b) any other matter the responsible officer considers
relevant.

(3) The responsible officer must, subject to section 52ZC(1),
release an offender arrested under an arrest warrant issued under
section 52P(1)(b) if —

(a) the offender has been in custody under the warrant for
24 hours; or

(b) at any time when the offender is in custody under the
warrant, it becomes apparent that it is not reasonably

1 practicable to bring the offender before the Court within
2 24 hours after the arrest.

3 (4) Subsection (3) applies whether or not a decision has previously
4 been made not to release the offender under subsection (1)(b).

5 (5) The duties of a responsible officer under this section must be
6 performed whether or not an application for conditional release
7 is made by or on behalf of the offender.

8 (6) The *Bail Act 1982* does not apply to an offender arrested under
9 an arrest warrant issued under section 52P(1)(b) except to the
10 extent provided in section 52ZG(2).

11 **52ZB. Responsible officer for conditional release of offender**

12 (1) If an offender is arrested under an arrest warrant issued under
13 section 52P(1)(b), the police officer who arrested the offender
14 (the *arresting officer*) —

15 (a) may, if the arresting officer is not an authorised police
16 officer, request an authorised police officer to perform
17 any or all of the duties in section 52ZA in relation to the
18 offender; and

19 (b) must, if it is not practicable for the arresting officer to
20 perform any or all of the duties in section 52ZA in
21 relation to the offender, request an authorised police
22 officer to perform those duties.

23 (2) For the purposes of section 52ZA, the responsible officer in
24 relation to an offender arrested under an arrest warrant issued
25 under section 52P(1)(b) is —

26 (a) if a request under subsection (1) has not been made
27 when the duty is required to be performed — the
28 arresting officer; or

29 (b) if a request under subsection (1) has been made when
30 the duty is required to be performed — the authorised
31 police officer to whom the request was made.

1 (3) A responsible officer commits an offence if the officer, wilfully
2 and without reasonable excuse, fails to perform any duty of the
3 officer under section 52ZA.

4 Penalty for this subsection: imprisonment for 12 months, or a
5 fine of \$1 000, or both.

6 **52ZC. Conditional release undertaking**

7 (1) An offender must not be released under section 52ZA(1)(b) or
8 (3) unless the offender has entered into a conditional release
9 undertaking for the offender's appearance at the warrant of
10 commitment inquiry.

11 (2) A conditional release undertaking is an undertaking in writing
12 by an offender in the prescribed form —

13 (a) that the offender will appear in the Magistrates Court for
14 the warrant of commitment inquiry at —

15 (i) the time and place specified in the undertaking;
16 or

17 (ii) if a different time and place has been substituted
18 by notice served personally on the offender — at
19 that substituted time and place;

20 and

21 (b) that if the offender fails to appear in the Court at that
22 time and place the offender will, as soon as practicable,
23 appear in the Court at that place when the Court is
24 sitting.

25 (3) A conditional release undertaking may be entered into before
26 any person before whom a bail undertaking may be entered into
27 under the *Bail Act 1982* section 29.

28 (4) The prescribed form for a conditional release undertaking must
29 include an explanation of the obligations of the offender under
30 the undertaking and the consequences of failure to comply with
31 the undertaking.

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**52ZD. Duties of person before whom conditional release
undertaking entered into**

(1) The person before whom a conditional release undertaking is to be entered into by an offender must, before the undertaking is entered into, either —

(a) read it to the offender; or

(b) be informed by the offender that the offender has read it; or

(c) if necessary, have the undertaking translated to the offender or provide the offender with a written translation of the undertaking.

(2) The person before whom a conditional release undertaking is entered into by an offender must give the offender, or cause the offender to be given, a copy of the completed undertaking.

52ZE. Limitations on right to conditional release

An offender who has entered into a conditional release undertaking under section 52ZC is entitled to be released, subject to the following —

(a) any requirement that the offender be in custody for some other reason;

(b) the same limitations as apply under the *Bail Act 1982* section 12 to the right of a person granted bail under that Act to be at liberty;

(c) the person before whom the conditional release undertaking is entered into signing a certificate in the prescribed form that the offender has a right to be released.

52ZF. Offence of failure to comply with conditional release undertaking

(1) A person who, without reasonable excuse, fails to comply with a requirement of a conditional release undertaking mentioned in section 52ZC(2)(a) commits an offence.

Penalty for this subsection: *[to be drafted]*.

(2) A person who fails to comply with a requirement of a conditional release undertaking mentioned in section 52ZC(2)(b) commits an offence.

Penalty for this subsection: *[to be drafted]*.

(3) A person must not be convicted of an offence under this section in the person's absence.

52ZG. General provisions about conditional release

(1) A conditional release undertaking for the appearance of an offender at a warrant of commitment inquiry remains in force until whichever of the following occurs first —

(a) the offender appears in the Magistrates Court in accordance with the undertaking;

(b) the amount owed in respect of each of the fines to which the warrant of commitment inquiry relates is paid or the liability to pay the amount owed in respect of each of those fines is discharged under section 52H or 52I;

(c) the application for the warrant of commitment inquiry is withdrawn under section 52ZH.

(2) The *Bail Act 1982* sections 59B, 60 and 62 apply for the purposes of this Subdivision as if —

(a) a reference to an accused were a reference to an offender; and

(b) a reference to a bail undertaking were a reference to a conditional release undertaking; and

- 1 (c) a reference to section 28(2)(a) or (b) of that Act were a
2 reference to section 52ZC(2)(a) or (b) of this Act; and
3 (d) a reference to release on bail or a grant of bail were a
4 reference to conditional release under
5 section 52ZA(1)(b) or (3).

6 **Subdivision 5 — Miscellaneous provisions about warrant of**
7 **commitment inquiry**

8 **52ZH. Withdrawal of application for warrant of commitment**
9 **inquiry**

- 10 (1) The Registrar may withdraw an application under section 52M
11 for a warrant of commitment inquiry at any time before the
12 inquiry is held.
13 (2) Notice of a withdrawal under subsection (1) must be served on
14 the offender and any person named under section 52N(1)(c) in
15 the application for the warrant of commitment inquiry.

16 **52ZI. Appearance of offender at warrant of commitment inquiry**
17 **by video link or audio link**

- 18 (1) This section applies if —
19 (a) an offender who has been arrested under an arrest
20 warrant issued under section 52P(1)(b) is required to be
21 brought before the Magistrates Court under
22 section 52Y(2); or
23 (b) an offender who is in custody for any other reason is
24 required to appear in the Magistrates Court under a
25 summons issued under section 52P(1)(a).
26 (2) The person in charge of the offender must ensure that the
27 offender is brought before the Court in person unless —
28 (a) there is a video link or audio link between the place
29 where the offender is held and the Court; and
30 (b) the Court has ordered that the offender be brought
31 before the Court by means of a video or audio link.

1 (3) The Court may make an order under subsection (2)(b) at any
2 time on its own initiative or on an application by the Registrar
3 or the offender if it is satisfied it is in the interests of justice to
4 do so.

5 (4) An audio link cannot be used under this section unless a video
6 link is not available and cannot reasonably be made available.

7 (5) When the offender appears before the court by means of a video
8 link or audio link, the Court may exercise any power in this
9 Division as if the offender were personally present before it.

10 **52ZJ. Appeal**

11 (1) Except as provided in subsection (2), no appeal lies against an
12 order of the Court under section 52R.

13 (2) The offender may appeal under the *Magistrates Court (Civil*
14 *Proceedings) Act 2004* section 40 against an order of the
15 Magistrates Court under section 52R(1)(e) that a warrant of
16 commitment should be issued.

17 **52ZK. Evidence of appearance or non-appearance of offender**

18 For the purposes of this Division, evidence that an offender did
19 or did not appear in the Magistrates Court at a particular time
20 and place may be given by tendering a certificate to that effect
21 signed by an officer of the Court.

22 **Subdivision 6 — Imprisonment under warrant of commitment**

23 **53. Effect of warrant of commitment** ~~Warrant of commitment~~

24 ~~— (1) If an offender is served with an order to attend for work and~~
25 ~~development or with an order made under section 57A(3) of the~~
26 ~~*Sentencing Act 1995* and —~~

27 ~~— (a) the offender does not report as required by the order; or~~

28 ~~— (b) under section 48 a WDO is not made or cannot be~~
29 ~~served on the offender; or~~

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- 1 ~~— (c) under section 48 a WDO is made but under~~
2 ~~section 52(1) it is cancelled,~~
- 3 ~~— and if the amount owed is not paid, the Registrar may issue a~~
4 ~~warrant of commitment in the prescribed form.~~
- 5 ~~— (2) A warrant of commitment must not be issued unless at least~~
6 ~~7 days have elapsed since an offender was served with an order~~
7 ~~to attend for work and development.~~
- 8 (3) A warrant of commitment issued under section 52R(4) is to
9 commit the offender to be imprisoned for a period (in days)
10 specified in the warrant that is the shorter of —
11 (a) the period of imprisonment determined by dividing the
12 amount owed by the amount prescribed and rounding
13 the result down to the nearest whole number of days;
14 and
15 (b) the maximum term of imprisonment (if any) to which
16 the offender could have been sentenced for the offence
17 concerned,
- 18 and that in any event is not less than one day.
- 19 ~~— (4) If, when the Fines Legislation Amendment Act 2008~~
20 ~~section 12(1) (the **amending provision**) comes into operation, a~~
21 ~~warrant of commitment is in force but the offender has not~~
22 ~~commenced to serve the period of imprisonment specified in it,~~
23 ~~the warrant has effect as if —~~
- 24 ~~— (a) the amending provision; and~~
25 ~~— (b) the regulations made for the purposes of~~
26 ~~subsection (3)(a) as enacted by the amending provision,~~
27 ~~had come into operation before the warrant was issued.~~
- 28 (5) The period for which an offender is to be imprisoned under a
29 warrant of commitment ends when the offender's liability to pay
30 the amount in respect of which the warrant is issued has been
31 discharged by —

- 1 (a) the offender serving the whole of the period of
2 imprisonment specified in the warrant; or
3 (b) payment of that amount; or
4 (c) a combination of the offender serving part of that period
5 and payment of part of that amount.
- 6 (6) If part of the amount in respect of which a warrant of
7 commitment is issued is paid after the warrant is issued, the
8 warrant has effect as if the period of imprisonment specified in
9 it were reduced by a period (in days) determined as follows —

10 Period of reduction = Specified period $\times \frac{\text{Part payment}}{\text{Warrant amount}}$
11 (rounded up to the nearest whole number)

12 where **warrant amount** is the amount in respect of which the
13 warrant was issued.

- 14 (7) If under a warrant of commitment an offender serves any of the
15 period of imprisonment, the amount in respect of which the
16 warrant was issued is to be reduced by an amount determined as
17 follows —

18 Reduction (\$) = Warrant amount $\times \frac{\text{Period served}}{\text{Specified period}}$
19 (rounded down to the nearest whole number)

20 where —

21 **period served** is the period (in days) served under the warrant of
22 commitment and includes any part day served;

23 **specified period** is the period (in days) originally specified in
24 the warrant;

25 **warrant amount** is the amount in respect of which the warrant
26 was issued.

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- 1 (8) The period of imprisonment specified in a warrant of
2 commitment is concurrent with any other period or term of
3 imprisonment that the offender is serving or has to serve.
- 4 ~~(8a) If, immediately before the *Fines Legislation Amendment*~~
5 ~~*Act 2008* section 12(3) (the **amending provision**) comes into~~
6 ~~operation¹, an offender who has served, is serving or has to~~
7 ~~serve a period of imprisonment under a warrant of commitment~~
8 ~~is in prison, the offender is entitled to be released from~~
9 ~~imprisonment on —~~
- 10 ~~— (a) the day on which the offender would have been entitled~~
11 ~~to be released if the amending provision had come into~~
12 ~~operation before the warrant of commitment was issued;~~
13 ~~or~~
- 14 ~~— (b) the day on which the amending provision comes into~~
15 ~~operation;~~
- 16 ~~— whichever is later.~~
- 17 ~~(8b) In the case of an offender who is serving or has to serve a parole~~
18 ~~term as defined in the *Sentencing Act 1995* section 85(1), a~~
19 ~~reference in subsection (8a) to the offender being entitled to be~~
20 ~~released is a reference to the offender being eligible to be~~
21 ~~released on parole.~~
- 22 ~~(8c) The Registrar may at any time cancel a warrant of commitment~~
23 ~~for good reason.~~
- 24 (9) Nothing in this section affects the power of the Governor to
25 exercise the Royal Prerogative of Mercy.

26 [Section 53 amended in Gazette 12 Mar 1999 p. 1162; amended
27 by No. 9 of 2000 s. 7; No. 3 of 2008 s. 12.]

28 [Section 53. Modifications to be applied in order to give effect
29 to Cross-border Justice Act 2008: section altered 1 Nov 2009.
30 See endnote 1M.]

Division 3F — Interaction of enforcement action under this Part

53A. Effect of enforcement instrument or WDO on other enforcement powers

(1) If an enforcement instrument (other than a licence suspension order or enforcement warrant) or a WDO is in force in relation to a fine, the Registrar must not, despite any other provision of this Part —

(a) make or issue another enforcement instrument in relation to the fine; or

(b) make an application under section 52M in relation to the fine.

(2) If a licence suspension order is in force in relation to an offender and a fine —

(a) a power of the Registrar under this Part to make or issue another enforcement instrument, or to make an application under section 52M, in relation to the offender and the fine is not affected; but

(b) the Registrar must cancel the licence suspension order as soon as practicable if —

(i) the Registrar issues an enforcement instrument (other than an enforcement warrant or an order to attend for work and development) in relation to the offender and the fine; or

(ii) the Registrar serves an order to attend for work and development on the offender in relation to the fine; or

(iii) the Registrar makes an application under section 52M in relation to the offender and the fine.

(3) If an enforcement warrant is in force in relation to an offender and a fine —

- 1 (a) a power of the Registrar under this Part to make or issue
2 another enforcement instrument, or to make an
3 application under section 52M, in relation to the
4 offender and the fine is not affected; but
5 (b) the Registrar must cancel the enforcement warrant as
6 soon as practicable if —
7 (i) the Registrar issues an enforcement instrument
8 (other than a licence suspension order or an order
9 to attend for work and development) in relation
10 to the offender and the fine; or
11 (ii) the Registrar serves an order to attend for work
12 and development on the offender in relation to
13 the fine; or
14 (iii) the Registrar makes an application under
15 section 52M in relation to the offender and the
16 fine.
17 (4) A power under this Part to make or issue an enforcement
18 instrument or WDO in relation to a fine is not affected by a
19 previous enforcement instrument or WDO having been made or
20 issued in relation to the fine and subsequently cancelled.
21 **53B. Effect of warrant of commitment inquiry process or**
22 **warrant of commitment on other enforcement powers**
23 (1) The Registrar must not make or issue an enforcement
24 instrument (other than a fine expiation order) in relation to a
25 fine if a warrant of commitment inquiry process is occurring in
26 relation to the fine.
27 (2) The Registrar must not make or issue an enforcement
28 instrument in relation to a fine if a warrant of commitment is in
29 force in relation to the fine.
30 (3) A power under this Part to make or issue an enforcement
31 instrument or WDO in relation to an offender and a fine is not
32 affected by a warrant of commitment inquiry process having
33 previously occurred in relation to the offender and the fine.

Division 4 — Miscellaneous

54. Functions of Registrar in relation to Service and Execution of Process Act 1992 (Commonwealth) Part 7

(1) The Registrar is authorised to exercise the functions conferred on the Registrar as a fine enforcement officer under the *Service and Execution of Process Act 1992* (Commonwealth) Part 7.

(2) If the Registrar receives an amount in whole or part satisfaction of a fine under the *Service and Execution of Process Act 1992* (Commonwealth) Part 7, the Registrar must apply the money as if it had been received from the offender in whole or part satisfaction of the fine.

~~**54. Warrants of apprehension for people interstate**~~

~~—(1) Despite any other provision of this Part, if at any time after a fine is registered the Registrar has reason to believe that the offender may be in another State or a Territory, the Registrar may refer the matter to the registrar or clerk of the court by which the fine was imposed, or to a justice, for the issue of a warrant of apprehension under section 112 of the *Service and Execution of Process Act 1992* of the Commonwealth.~~

~~—(2) The period of imprisonment to be specified in a warrant of apprehension is the period calculated under section 53(3) by reference to the amount owed.~~

[Section 54 amended by No. 59 of 2004 s. 107.]

55. How recovered amounts to be dealt with

(1) A fine received by the Registrar is to be dealt with in accordance with section 60 of the *Sentencing Act 1995*.

(2) Enforcement fees recovered from an offender under this Part are to be credited to the Consolidated Account.

[Section 55 amended by No. 78 of 1995 s. 44; No. 8 of 1996 s. 9; No. 77 of 2006 s. 4.]

55A. Certain decisions of Registrar are final

A decision of the Registrar under Division 2 Subdivision 3,
section 44A, Division 3C Subdivision 2 or Division 3D is final.

~~55A. Registrar may suspend enforcement in certain cases of hardship~~

- ~~(1) If a fine has been registered, the offender may request the Registrar —~~
- ~~(a) not to make a licence suspension order; or~~
 - ~~(b) to cancel a licence suspension order that has been made,~~
- ~~in respect of the offender on the grounds that the licence suspension order would or does deprive the offender of —~~
- ~~(c) the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the offender or a member of his or her family; or~~
 - ~~(d) the principal means of obtaining income with which to pay the amount owed (as defined in section 40);~~
- ~~or on the grounds that the licence suspension order would or does seriously hinder the offender in performing family or personal responsibilities.~~
- ~~(2) A request cannot be made —~~
- ~~(a) if the offender is a body corporate; or~~
 - ~~(b) if an enforcement warrant issued under section 45 is in force.~~
- ~~(3) A request —~~
- ~~(a) must be made in accordance with the regulations; and~~
 - ~~(b) must include an offer to pay the amount owed before a specified date or by regular instalments.~~
- ~~(4) If the Registrar is satisfied that —~~
- ~~(a) there are grounds to accede to the request; and~~

- 1 ~~— (aa) the offender has a reasonable excuse for any~~
2 ~~contravention of a time to pay order made previously~~
3 ~~under this section in respect of the fine; and~~
- 4 ~~— (b) the offender's offer to pay by regular instalments is~~
5 ~~reasonable,~~
- 6 ~~— the Registrar must make a time to pay order and, as the case~~
7 ~~requires —~~
- 8 ~~— (c) suspend the process in Division 3 for enforcing the fine;~~
9 ~~or~~
- 10 ~~— (d) cancel a licence suspension order that has been made in~~
11 ~~respect of the offender.~~
- 12 ~~— (5) Without limiting paragraph (d) of subsection (1), the Registrar~~
13 ~~may, for the purposes of that paragraph, consider the effect that~~
14 ~~a licence suspension order would have or has had on the ability~~
15 ~~of the offender to seek or obtain employment.~~
- 16 ~~— (6) The time to pay order is to require the offender to pay the~~
17 ~~amount owed either —~~
- 18 ~~— (a) before a specified date; or~~
19 ~~— (b) by instalments on or before set dates.~~
- 20 ~~— (7) The time to pay order must be served on the offender together~~
21 ~~with notice of the action that has been taken under~~
22 ~~subsection (4)(c) or (d) and the consequences of not complying~~
23 ~~with the order.~~
- 24 ~~— (8) If a licence suspension order is cancelled, the Registrar must~~
25 ~~advise the Director General forthwith.~~
- 26 ~~— (9) For the purposes of a road law, the cancellation of a licence~~
27 ~~suspension order takes effect when the order is cancelled.~~
- 28 ~~[Section 55A inserted by No. 51 of 2000 s. 8; amended by No. 3~~
29 ~~of 2008 s. 13; No. 8 of 2012 s. 109; No. 48 of 2012 s. 26.]~~

~~55B. Amending time to pay order~~

~~The Registrar may amend a time to pay order made under section 55A and for that purpose, sections 34 and 35, with any necessary changes, apply.~~

~~[Section 55B inserted by No. 51 of 2000 s. 8; amended by No. 20 of 2013 s. 91.]~~

~~55C. Contravening time to pay order~~

~~(1) If an offender contravenes a time to pay order made under section 55A, the Registrar may issue a notice that unless the amount overdue is paid before a date specified in the notice (the *due date*) the Registrar may~~

~~(a) make or again make a licence suspension order in respect of the offender; and~~

~~(b) cancel the time to pay order.~~

~~(2) The notice must be served on the offender.~~

~~(3) If the amount overdue is not paid by the due date the Registrar may make or again make a licence suspension order in respect of the offender and cancel the time to pay order.~~

~~(4) For the purposes of subsection (3), section 43(2) to (9) (but not section 43(4)), with any necessary changes, apply and a licence suspension order may be made even if section 42 has not been complied with.~~

~~[Section 55C inserted by No. 51 of 2000 s. 8.]~~

~~55D. Registrar may use most effective enforcement means~~

~~(1) If the Registrar is satisfied that~~

~~(a) an enforcement warrant; or~~

~~(b) an order to attend for work and development; or~~

~~(c) a warrant of commitment;~~

- 1 ~~— would be more likely than a licence suspension order or any of~~
2 ~~the other methods of enforcement referred to in paragraph (a),~~
3 ~~(b) or (c) to result in the payment or recovery of the amount~~
4 ~~owed, the Registrar may —~~
- 5 ~~— (d) despite section 45(1), issue an enforcement warrant in~~
6 ~~the prescribed form; or~~
- 7 ~~— (e) despite section 47(1) and (2), issue an order to attend for~~
8 ~~work and development; or~~
- 9 ~~— (f) despite section 53(1) and (2), issue a warrant of~~
10 ~~commitment.~~
- 11 ~~— (2) If the Registrar takes any action under subsection (1) the~~
12 ~~Registrar must cancel any other authorisation, order or warrant~~
13 ~~that has been issued in respect of the amount owed.~~
- 14 ~~— (3) If under subsection (1) the Registrar issues an enforcement~~
15 ~~warrant, section 45(2) to (5) apply to the warrant.~~
- 16 ~~— (4) If under subsection (1) the Registrar issues an order to attend for~~
17 ~~work and development, sections 47(3) to (5), 48, 49, 50, 51~~
18 ~~and 52 apply in relation to the order.~~
- 19 ~~— (5) If under subsection (1) the Registrar issues a warrant of~~
20 ~~commitment, section 53(3) to (9) apply in relation to the~~
21 ~~warrant.~~
- 22 ~~— [Section 55D inserted by No. 14 of 2003 s. 7; amended by~~
23 ~~No. 48 of 2012 s. 43.]~~
- 24 **55E. Registrar's decision on time to pay etc. is final**
- 25 ~~— A decision of the Registrar under section 55A, 55B, 55C or 55D~~
26 ~~is final.~~
- 27 ~~[Section 55E inserted by No. 3 of 2008 s. 14.]~~

**Part 5A — Publication of details of persons on
Department's Registrar's website**

[Heading inserted by No. 48 of 2012 s. 27.]

Division 1 — Preliminary

[Heading inserted by No. 48 of 2012 s. 27.]

56A. Terms used

In this Part —

aggregate amount owed, by a person, means the aggregate of —

- (a) the amount owed for each outstanding registered fine in relation to the person; and
- (b) the amount owed for each outstanding order to pay or elect in relation to the person;

amount owed means —

- (a) for an order to pay or elect issued under section 17 — **means** that amount of the modified penalty, and enforcement fees, specified in the order that has not been paid, or recovered under an enforcement warrant; or
- (b) for a fine — **has the meaning given in section 28(1); ~~that amount of a fine, and any enforcement fees in relation to the fine, that has not been paid, or recovered under an enforcement warrant;~~**

enforcement fees means prescribed fees imposed in connection with proceedings under Part 3 or 4 and includes the registration fee referred to in section 16;

fine has the meaning given in section 28(1);

modified penalty has the meaning given in section 11;

outstanding order to pay or elect has the meaning given in section 11;

1 **outstanding registered fine** has the meaning given in
2 section 56B;

3 **relevant details** has the meaning given in section 56C.

4 *[Section 56A inserted by No. 48 of 2012 s. 27.]*

5 **56B. Outstanding registered fines**

6 An **outstanding registered fine**, in relation to a person, means a
7 fine imposed on the person, where —

- 8 (a) the fine is an enforceable registered fine (as defined in
9 section 28(1)); and ~~is registered under section 41; and~~
- 10 (b) at least 28 days have elapsed since the day on which the
11 fine was imposed; and
- 12 ~~(c) the fine, and any enforcement fees in relation to the fine,~~
13 ~~have not been paid in full or recovered in full under an~~
14 ~~enforcement warrant; and~~
- 15 (d) no time to pay order under section 33 ~~or 55A~~ is in force
16 in respect of the person and the amount owed; and
- 17 (e) if an enforcement warrant is in force in respect of the
18 person and the amount owed — no arrangement under
19 section 68A is in force in relation to the warrant; and
- 20 ~~(f) if a work and development order has been made in~~
21 ~~respect of the person and the amount owed — the order~~
22 ~~has not been completed under section 51; and~~
- 23 ~~(g) the person's liability to pay the amount owed has not~~
24 ~~been discharged under section 53(5); and~~
- 25 (h) either —
- 26 (i) the person has not appealed against the fine, or a
27 decision giving rise to the fine, for the purposes
28 of section 101B; or
- 29 (ii) any appeal against the fine, or a decision giving
30 rise to the fine, has been disposed of (within the
31 meaning of section 101B), and the fine is still
32 payable.

Part 5A Publication of details of persons on Department's Registrar's website

Division 2 Publication of relevant details of persons on Registrar's Department's website

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1 *[Section 56B inserted by No. 48 of 2012 s. 27; amended by*
2 *No. 20 of 2013 s. 92.]*

3 **56C. Relevant details of persons**

4 The *relevant details* of a person are —

5 (a) for an individual, the following details only —

- 6 (i) the individual's surname;
7 (ii) the individual's given names;
8 (iii) the street, and the suburb or town, in which the
9 individual resides according to the individual's
10 last known address;
11 (iv) whether there are one or more outstanding orders
12 to pay or elect, or outstanding registered fines, or
13 both, in relation to the individual;
14 (v) the aggregate amount owed by the individual;

15 or

16 (b) for a body corporate, the following details only —

- 17 (i) the registered name of the body corporate;
18 (ii) the street, and the suburb or town, at which the
19 registered office of the body corporate is located;
20 (iii) whether there are one or more outstanding orders
21 to pay or elect, or outstanding registered fines, or
22 both, in relation to the body corporate;
23 (iv) the aggregate amount owed by the body
24 corporate.

25 *[Section 56C inserted by No. 48 of 2012 s. 27.]*

26 **Division 2 — Publication of relevant details of persons on**
27 **~~Registrar's~~ Department's website**

28 *[Heading inserted by No. 48 of 2012 s. 27.]*

**56D. Publication of relevant details of persons on ~~Registrar's~~
Department's website**

(1) If, in relation to a person, there are one or more —

- (a) outstanding orders to pay or elect; or
- (b) outstanding registered fines,

the Registrar may cause some or all of the relevant details of the person to be published on the ~~Registrar's~~ Department's website.

(2) The Registrar must not cause any relevant details of a person to be published under this section if the Registrar has grounds to suspect —

- (a) the person is a child; or
- (b) all of the following conditions are satisfied —
 - (i) there are one or more outstanding registered fines in relation to the person;
 - (ii) an order prohibiting the publication of the person's name was made in the proceedings in which any of those outstanding registered fines was imposed;
 - (iii) the order is in force;
- or
- (c) the person is a person protected under a violence restraining order, or police order, in force under the *Restraining Orders Act 1997*; or
- (d) the publication of the relevant details would endanger the person's safety.

(3) If —

- (a) relevant details of a person are published under this section on the ~~Registrar's website~~ Department's website;
- and

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Division 2 Publication of relevant details of persons on Registrar's Department's website

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1 (b) the Registrar becomes aware that any of the relevant
2 details of the person has changed; and

3 (c) section 56E(2) does not apply,
4 the Registrar must cause the relevant details published on the
5 website to be updated as soon as practicable.

6 *[Section 56D inserted by No. 48 of 2012 s. 27.]*

7 **56E. Removal of relevant details from website**

8 (1) The Registrar may, at any time, cause some or all of the relevant
9 details of a person to be removed from the ~~Registrar's~~
10 ~~website~~ Department's website.

11 (2) If —

12 (a) under section 56D, relevant details of a person are
13 published on the ~~Registrar's website~~ Department's
14 website; and

15 (b) there ceases to be any outstanding order to pay or elect,
16 or outstanding registered fine, in relation to the person,

17 the Registrar must cause the relevant details of the person to be
18 removed from the website as soon as practicable.

19 *[Section 56E inserted by No. 48 of 2012 s. 27.]*

Part 5 — Amounts forfeited under undertakings

[Heading amended by No. 84 of 2004 s. 46.]

56. Amounts payable by defendants and offenders

In respect of the payment of, or the enforcement of the payment of —

(a) any amount of a bail undertaking that is ordered to be forfeited to the Crown under section 57 of the *Bail Act 1982*; or

[(b) deleted]

(ca) any amount of a recognisance entered into by an offender under the *Young Offenders Act 1994* section 69, in any case where any amount of the recognisance is ordered to be forfeited and —

(i) section 64 of that Act applies to the payment and enforcement of the amount concerned; or

(ii) under section 65(3)(a) of that Act, the court must register the amount forfeited under this Act;

or

(c) an amount that is ordered to be paid to the Crown by an offender, under section 52(2) of the *Sentencing Act 1995*,

Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the person liable to pay the amount.

[Section 56 inserted by No. 78 of 1995 s. 43; amended by No. 59 of 2004 s. 107; No. 84 of 2004 s. 46; No. 20 of 2013 s. 93.]

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57. Amounts payable by sureties

In respect of the payment of, or the enforcement of the payment of —

(a) any amount of a surety undertaking that is ordered to be forfeited to the Crown under section 49 of the *Bail Act 1982*; or

[(b) deleted]

(c) an amount that is ordered to be paid to the Crown by a surety under section 52(2) of the *Sentencing Act 1995*,

Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the surety.

[Section 57 inserted by No. 78 of 1995 s. 43; amended by No. 51 of 2000 s. 9; No. 84 of 2004 s. 46.]

58. Amounts payable by witnesses and sureties for witnesses

In respect of the payment of, or the enforcement of the payment of —

(a) any amount of a witness undertaking entered into by a person under Schedule 4 to the *Criminal Procedure Act 2004* that is ordered to be forfeited under section 57 of the *Bail Act 1982*; or

(b) any amount of a surety undertaking entered into by a person under Schedule 4 to the *Criminal Procedure Act 2004* in respect of a witness that is ordered to be forfeited under section 49 of the *Bail Act 1982*,

Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the person.

[Section 58 inserted by No. 84 of 2004 s. 44.]

59A. Automatic registration of amounts payable

(1) Subsection (2) applies to the following orders —

- (a) an order to which section 56(a) applies, other than an order to which the *Young Offenders Act 1994* section 65(1)(b) applies;
- (b) an order to which section 56(ca)(i) or (c), 57 or 58 applies.

(2) When an order to which this subsection applies is made, the amount that is ordered to be forfeited under the order is to be taken to be registered under Part 4 as if the amount were a fine.

(3) If, under the *Young Offenders Act 1994* section 65(3)(a), the court must register the amount of a forfeited bail undertaking or forfeited recognisance under this Act, the amount that is forfeited is to be taken to be registered under Part 4 as if the amount were a fine.

(4) This section does not limit the operation of Part 4 as applied by section 56, 57 or 58.

(5) This section does not apply to or in relation to an order to which section 56, 57 or 58 applies if the order was made before the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 94 came into operation.

[Section 59A inserted by No. 20 of 2013 s. 94.]

1 **Part 6 — Reciprocal enforcement of fines imposed on**
2 **bodies corporate in summary proceedings**

3 **59. Terms used**

4 In this Part —

5 ***fine*** includes a pecuniary penalty, pecuniary forfeiture,
6 pecuniary compensation and fees, charges and costs payable
7 under a conviction or order of a court in the exercise of
8 summary jurisdiction;

9 ***reciprocating court*** means a court of a reciprocating State or
10 Territory prescribed under section 60 to be a reciprocating
11 court;

12 ***reciprocating State or Territory*** means another State or a
13 Territory prescribed under section 60 to be a reciprocating State
14 or Territory.

15 **60. Prescription of reciprocating States and courts**

16 (1) Regulations may prescribe another State or a Territory, being a
17 State or Territory having laws providing for enforcement in that
18 State or Territory of a fine imposed on a body corporate by a
19 court of summary jurisdiction in this State, to be a reciprocating
20 State or Territory for the purposes of enforcement in this State
21 of a fine imposed on a body corporate by a court having
22 summary jurisdiction in the other State or in the Territory.

23 (2) Regulations may prescribe a court having summary jurisdiction
24 in a reciprocating State or Territory to be a reciprocating court
25 for the purposes of the enforcement in this State of a fine
26 payable under a conviction or order of that court against a body
27 corporate.

28 (3) For the purposes of subsection (2) a court may be prescribed
29 singly or in conjunction with another or others by such
30 description or class or by means of such references as is
31 appropriate.

[Section 60 amended by No. 8 of 1996 s. 9.]

61. Enforcement of interstate fine against body corporate

(1) If a reciprocating court, in the exercise of its summary jurisdiction, imposes a fine on a body corporate that has or appears to have property in this State, and the Registrar receives a request in writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the fine accompanied by —

- (a) a certified copy of the order imposing the fine; and
- (b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding (the ***amount outstanding***),

the Registrar must —

- (c) register the certified copy of the order; and
- (d) note the date of the registration on the copy.

(2) On the registration of an order under subsection (1) —

- (a) the order, for the purposes of this Part, is deemed to be an order of the Magistrates Court imposing a fine on the body corporate of the amount outstanding; and
- (b) the Registrar must issue an enforcement warrant for the purpose of recovering the amount outstanding.

(3) An enforcement warrant is to be directed to the Sheriff of Western Australia and is to be executed under Part 7.

(4) If the Registrar receives, subsequent to the request for enforcement, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount outstanding, the Registrar must —

- (a) make a record of the payment; and

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- 1 (b) if the warrant issued under subsection (2) is
2 unexecuted —
- 3 (i) if the amount outstanding has been paid in
4 full — in writing, cancel the warrant and advise
5 the Sheriff accordingly; or
- 6 (ii) if part of the amount outstanding remains
7 unpaid — advise the Sheriff accordingly in
8 writing, and thereafter the warrant is to be
9 enforced as to the amount remaining unpaid.
- 10 (5) A sum of money paid to or received by the Registrar in
11 satisfaction in whole or in part of the amount outstanding must
12 be remitted forthwith to the clerk or corresponding officer of the
13 reciprocating court by which the fine was imposed.
- 14 *[Section 61 amended by No. 8 of 1996 s. 9; No. 59 of 2004*
15 *s. 107; No. 48 of 2012 s. 43.]*

16 **62. Effect of enforcement by reciprocating court**

- 17 A sum of money paid to or received by a court of summary
18 jurisdiction in this State from a reciprocating court in
19 satisfaction in whole or in part of a fine imposed by a court of
20 summary jurisdiction enforced by the reciprocating court must
21 be paid to or received by and applied by the court as if the sum
22 had been paid to the court by the body corporate by which the
23 fine was payable in satisfaction in whole or in part of the fine.
- 24 *[Section 62 amended by No. 59 of 2004 s. 107.]*

Part 7 — Enforcement warrants

[Heading amended by No. 48 of 2012 s. 43.]

Division 1 — Preliminary

63. Terms used

(1) In this Part —

bank means —

(a) an ADI (authorised deposit-taking institution) as defined in the *Banking Act 1959* (Commonwealth) section 5(1);
or

(b) a bank constituted by a law of a State, a Territory or the Commonwealth;

bank account garnishee order has the meaning given in section 95M(2)(b);

debtor means —

(a) in relation to a warrant issued under Part 3 — the alleged offender in respect of whom the warrant is issued; or

(b) in relation to a warrant issued under Part 4 — the offender in respect of whom the warrant is issued; or

(c) in relation to a warrant issued under Part 6 — the body corporate in respect of which the warrant is issued;

dwelling means —

(a) a building, structure or tent, or part of a building, structure or tent, that is ordinarily used for human habitation; or

(b) a mobile home,

and it does not matter that it is uninhabited from time to time;

earnings has the meaning given in the *Civil Judgments Enforcement Act 2004* section 3;

- 1 *enforcement fees* means prescribed fees imposed in connection
2 with proceedings under this Part;
- 3 *garnishee order* has the meaning given in section 95M(2);
- 4 *garnishee order on earnings* has the meaning given in
5 section 95M(2)(a);
- 6 *mobile home* means a vehicle —
- 7 (a) that is ordinarily used for human habitation; and
- 8 (b) that is permanently or semi-permanently stationary in a
9 single location;
- 10 *multiple payments garnishee order* has the meaning given in
11 section 95V(2)(b);
- 12 *owner*, in relation to a vehicle, means a person entitled to
13 immediate possession of the vehicle;
- 14 *personal property* does not include any estate or interest in land;
- 15 *place* means any land, building, structure, tent or vehicle, or any
16 part of any land, building, structure, tent or vehicle;
- 17 *protected bank account amount* means the amount prescribed
18 by or determined under regulations made for the purposes of
19 section 95ZB;
- 20 *protected earnings amount*, for a pay period, means the amount
21 determined under regulations made for the purposes of
22 section 95U(1);
- 23 *relevant payer*, in relation to a garnishee order on earnings, has
24 the meaning given in section 95O(1);
- 25 *saleable interest*, in real or personal property, has the meaning
26 given by section 71(1) or 88(1), as the case requires;
- 27 *single payment garnishee order* has the meaning given in
28 section 95V(2)(a);
- 29 *vehicle* means any thing capable of transporting people or things
30 by road, rail or water, including a hovercraft, and it does not
31 matter how the thing is moved or propelled;

vehicle licensing law —

- (a) before the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — means the *Road Traffic Act 1974*; or
- (b) after the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — means that Act;

warning notice means a notice affixed to a vehicle under section 95B(1);

warrant means an enforcement warrant issued under Part 3, 4 or 6.

(2) When this Part refers to removing the immobilisation of a vehicle it means —

- (a) if the vehicle was immobilised by a wheel clamp — removing the wheel clamp; or
- (b) if the vehicle was immobilised using another means prescribed by the regulations — removing the effect of the means by which the vehicle was immobilised.

(3) A reference in this Part to a vehicle of a debtor is a reference to —

(a) a vehicle that is licensed under the *Road Traffic (Vehicles) Act 2012* in the name of the debtor (whether or not the licence is suspended); or

(b) a vehicle that is not licensed under the *Road Traffic (Vehicles) Act 2012* of which the debtor is an owner.

[Section 63 amended by No. 14 of 2003 s. 8; No. 59 of 2004 s. 98; No. 48 of 2012 s. 28.]

[64. Deleted by No. 49 of 1997 s. 5.]

65. Warrant has indefinite life

Unless sooner cancelled, a warrant remains in force —

- (a) until the amount specified in the warrant, and any enforcement fees, are paid; or

- 1 (b) until the amount specified in the warrant, and any
2 enforcement fees, are recovered under the warrant, ~~or~~
3 ~~(c) in the case of a warrant issued under Part 4 until an~~
4 ~~order to attend for work and development is served on~~
5 ~~the offender,~~

6 whichever happens first.

7 *[Section 65 inserted by No. 48 of 2012 s. 29.]*

8 **Division 2 — General functions of the Sheriff**

9 **66. Sheriff may delegate**

- 10 (1) The Sheriff may delegate to a person any power or duty of the
11 Sheriff under another provision of this Act.
12 (2) The delegation must be in writing signed by the Sheriff.
13 (3) A person exercising or performing a power or duty that has been
14 delegated to the person under this section is to be taken to do so
15 in accordance with the terms of the delegation unless the
16 contrary is shown.
17 (4) Nothing in this section limits the ability of the Sheriff to
18 perform a function through an officer or agent.

19 *[Section 66 inserted by No. 14 of 2003 s. 9.]*

20 **67. Police assistance may be requested**

- 21 (1) The Sheriff may request members of the Police Force of
22 Western Australia to assist in the exercise of the Sheriff's
23 powers under this Part and to make inquiries into the
24 whereabouts of a debtor or of property of a debtor.
25 (2) Members of the Police Force of Western Australia must comply
26 with any such request by the Sheriff as soon as is practicable.

27 *[Section 67 amended by No. 48 of 2012 s. 43.]*

68. Sheriff to note time of receipt of warrant

On receipt of a warrant the Sheriff must note on it the date and the time when it was received.

68A. Execution may be stayed

(1) On receipt of a warrant, the Sheriff may stay the execution of the warrant if the debtor enters into and complies with a written or oral arrangement with the Sheriff under which the debtor agrees to pay the amount owed under the warrant and any enforcement fees either —

(a) on or before an agreed date; or

(b) by instalments on or before agreed dates,

in a manner, and at a place, determined by the Registrar under section 8.

(2A) The Sheriff must not enter into an arrangement under subsection (1) unless the debtor gives the Sheriff the debtor's current address.

(2) As soon as practicable after a debtor enters into an oral arrangement under subsection (1), the Sheriff must serve a written version of it on the debtor.

(3) A failure to comply with subsection (2) does not invalidate the arrangement or any payment made in accordance with it.

(4) The Sheriff may at any time cancel an arrangement entered into under subsection (1) and proceed with executing the warrant. ~~or exercising the powers under section 55D.~~

~~—(5A)— If the Sheriff cancels an arrangement made under subsection (1) and a licence suspension order is not in force in respect of the debtor and the amount specified in the warrant under section 21A(3) or 45(4), as the case requires, the Registrar may make or again make a licence suspension order in respect of the debtor.~~

- 1 ~~(5B) For the purposes of subsection (5A) —~~
2 ~~(a) if the cancelled arrangement related to a warrant issued~~
3 ~~under section 21A — section 19(2) to (9), with any~~
4 ~~necessary changes, apply and a licence suspension order~~
5 ~~may be made without the issue of a further order to pay~~
6 ~~or elect under section 17 or further notice of intention to~~
7 ~~enforce under section 18; or~~
8 ~~(b) if the cancelled arrangement related to a warrant issued~~
9 ~~under section 45 — section 43(2) to (9), with any~~
10 ~~necessary changes, apply and a licence suspension order~~
11 ~~may be made without the issue of a further notice of~~
12 ~~intention to enforce under section 42.~~

- 13 (5) As soon as practicable after cancelling an arrangement under
14 subsubsection (4), the Sheriff must serve a notice of the fact on the
15 debtor.
- 16 (6) A failure to comply with subsection (5) does not invalidate the
17 cancellation, any action taken in connection with executing the
18 warrant, ~~any action taken under section 55D,~~ or any payment
19 made by the debtor after the cancellation.
- 20 (7) Despite the fact that the execution of a warrant is stayed under
21 subsubsection (1), the Sheriff may make an application under
22 section 69.

23 *[Section 68A inserted by No. 14 of 2003 s. 10; amended by*
24 *No. 48 of 2012 s. 30 and 43.]*

25 **68B. Notice of right to apply under s. 101AA to be given for**
26 **warrants issued under Part 3**

- 27 (1) In this section —
28 ***enforcement action*** means any of the following actions taken
29 under a warrant —
30 (a) seizing personal property in accordance with section 71;
31 ~~(aa) serving a notice in accordance with section 78;~~
32 (b) seizing land in accordance with section 88;

- 1 (c) immobilising a vehicle in accordance with section 95C;
2 (d) removing number plates from a vehicle in accordance
3 with section 95F;
4 (e) issuing a garnishee order in accordance with
5 section 95O or 95V.
- 6 (2) When the Sheriff takes the first enforcement action under a
7 warrant issued under Part 3, the Sheriff must give the debtor a
8 notice explaining that —
9 (a) the debtor may apply to the Magistrates Court for an
10 order cancelling the warrant; and
11 (b) the application must be made within 14 days after the
12 notice is given.
- 13 (3) A notice under subsection (2) must be given —
14 (a) if the first enforcement action is seizing personal
15 property — by serving it on the debtor with the notice of
16 seizure required to be served under section 80; or
17 (b) if the first enforcement action is seizing land — by
18 serving it on the debtor as soon as practicable after the
19 memorial referred to in section 89 is lodged; or
20 (c) if the first enforcement action is immobilising a
21 vehicle — by affixing the notice to the vehicle with the
22 notice required to be affixed to the vehicle under
23 section 95C(4); or
24 (d) if the first enforcement action is removing number plates
25 from a vehicle — by affixing the notice to the vehicle
26 with the notice required to be affixed to the vehicle
27 under section 95F(3); or
28 (e) if the first enforcement action is the issue of a garnishee
29 order — by serving it on the debtor with the copy of the
30 garnishee order required to be served under
31 section 95O(4) or 95V(5).

32 *[Section 68B inserted by No. 48 of 2012 s. 31.]*

69. Examination in aid of seizure or exercise of additional powers relating to vehicles

(1) In respect of a warrant, the Sheriff may apply to the Magistrates Court for an order —

- (a) that the debtor; or
- (b) if the debtor is a body corporate — that a person having the management of the body,

personally attend the court to be examined about —

- (c) the existence and whereabouts and value of any property that might be seized under the warrant including any debts due to the debtor; and
- (d) the existence and whereabouts of any vehicle ~~licensed in~~ ~~the name~~ of the debtor.

(2) An order under subsection (1) may include an order that the debtor bring and produce to the court any document relevant to the matters about which the debtor may be examined.

(3) Rules of court made under the *Magistrates Court (Civil Proceedings) Act 2004* may deal with the practice and procedure relating to examinations under subsection (1).

[Section 69 amended by No. 8 of 1996 s. 9; No. 59 of 2004 s. 107; No. 48 of 2012 s. 32 and 43.]

70. Determining debtor's interest in property

(1) In this section —

interest, in any property, means any security, charge or lien over, claim on, or right to, the property or any other legal or equitable interest in the property;

public authority means a public sector body (within the meaning of section 3(1) of the *Public Sector Management Act 1994*), a local government, regional local government or regional subsidiary.

- 1 (2) The powers in this section may only be exercised by the Sheriff
2 after receiving a warrant and for the purpose of determining
3 whether and to what extent a debtor has any saleable interest in
4 any personal or real property that might be sold under the
5 warrant.
- 6 (3) The Sheriff, in writing, may request any person, other than the
7 debtor, who the Sheriff believes on reasonable grounds has or
8 may have an interest in any such property to disclose to the
9 Sheriff —
- 10 (a) the nature of the interest; and
11 (b) if the interest is a security over the property —
12 (i) the amount secured against the property; and
13 (ii) the amount outstanding under the security; and
14 (iii) the amount and rate of interest accruing; and
15 (iv) any change that occurs to the terms of the
16 security;
17 and
18 (c) the amount of money that is owed to the person in
19 relation to the property; and
20 (d) any other information the Sheriff considers is or may be
21 relevant to determining the matters in subsection (2).
- 22 (4) The Sheriff, in writing, may request a public authority to
23 disclose to the Sheriff the amount of any rates, taxes, service
24 charges, or other amounts, that are due and unpaid in respect of
25 any such real property.
- 26 (5) A person, other than a public authority, who contravenes a
27 request made under subsection (3) is guilty of a contempt of the
28 Magistrates Court.
- 29 (6) The Sheriff may disclose any information about any property
30 that has been obtained by the Sheriff to any potential purchaser
31 of the debtor's interest in the property.

1 *[Section 70 inserted by No. 59 of 2004 s. 99; amended by*
2 *No. 43 of 2012 s. 43; No. 26 of 2016 s. 56.]*

3 **70A. Personal property to be sold in preference to real property**

4 (1) Under a warrant, a debtor's saleable interest in any real property
5 must not be sold unless the Sheriff is satisfied that the amount
6 that is reasonably likely to be realised from selling the debtor's
7 saleable interest in any personal property under the warrant will
8 not be sufficient to satisfy the amount owed under the warrant
9 and any enforcement fees.

10 (2) Subsection (1) does not prevent a debtor's saleable interests in
11 real property and in personal property being sold at the same
12 time.

13 *[Section 70A inserted by No. 59 of 2004 s. 99; amended by*
14 *No. 48 of 2012 s. 43.]*

15 **70B. Only sufficient property to be sold**

16 (1) Under a warrant, the Sheriff must not sell more property than is
17 sufficient, in the Sheriff's opinion, to wholly satisfy the amount
18 owed under the warrant and the enforcement fees.

19 (2) Subsection (1) does not prevent the Sheriff from making one or
20 more additional sales of property if a sale of property has not
21 been sufficient to satisfy the amount owed under the warrant
22 and the enforcement fees.

23 *[Section 70B inserted by No. 59 of 2004 s. 99.]*

24 **70C. Seized property, Sheriff to determine fair value of**

25 (1) Before selling a debtor's saleable interest in any personal or real
26 property under a warrant, the Sheriff must take reasonable steps
27 to determine a fair value for the interest.

28 (2) For the purposes of determining a fair value the Sheriff may —
29 (a) request the debtor to provide the Sheriff with such
30 information relevant to the value of the interest as is

- 1 known to the debtor or is reasonably capable of being
2 ascertained by the debtor;
- 3 (b) if the nature and apparent value of the interest is such
4 that it is reasonable to do so, engage a suitably qualified
5 and experienced person to give the Sheriff a written
6 valuation of the interest.

7 *[Section 70C inserted by No. 59 of 2004 s. 99; amended by*
8 *No. 48 of 2012 s. 43.]*

9 **70D. Interests of others**

10 If a person other than the debtor has any legal or equitable
11 interest in any personal or real property in which the debtor has
12 a saleable interest, that interest and that of the debtor may be
13 sold together if —

- 14 (a) the Sheriff is of the opinion that such a sale is desirable;
15 and
- 16 (b) the other person consents in writing; and
- 17 (c) the Sheriff and the other person agree in writing before
18 the sale as to the division of —
- 19 (i) the expenses of and incidental to the sale or any
20 attempted sale of the property; and
- 21 (ii) the proceeds of the sale after payment of those
22 expenses.

23 *[Section 70D inserted by No. 59 of 2004 s. 99; amended by*
24 *No. 48 of 2012 s. 43.]*

25 **70E. Sale to be advertised**

- 26 (1) The Sheriff must advertise any intended sale under a warrant of
27 a debtor's saleable interest in personal or real property in a
28 reasonable manner.
- 29 (2) A debtor's saleable interest in personal or real property must not
30 be sold under a warrant unless at least 7 days have elapsed since
31 the intended sale was first advertised under subsection (1).

- 1 (3) Despite subsections (1) and (2), perishable personal property
2 may be sold without having advertised its intended sale.
- 3 (4) If a warrant was issued under Part 3, an offender's saleable
4 interest in real or personal property must not be sold under the
5 warrant unless either —
- 6 (a) 14 days have elapsed since the notice under section 68B
7 was given to the debtor, and no application has been
8 made to the Magistrates Court under section 101AA in
9 respect of the warrant; or
- 10 (b) any application made to the Magistrates Court under
11 section 101AA has been disposed of (within the
12 meaning of that section), and the warrant remains in
13 force.

14 *[Section 70E inserted by No. 59 of 2004 s. 99; amended by*
15 *No. 48 of 2012 s. 33 and 43.]*

16 **Division 3 — Seizure and sale of personal property**

17 **71. Enforcement warrant, effect of**

- 18 (1) In this section —
19 ***saleable interest***, in personal property, means any legal or
20 equitable interest in the property that can be disposed of
21 according to law.
- 22 (2) A warrant issued in respect of a debtor —
- 23 (a) applies to any saleable interest that the debtor has in any
24 personal property at the time when the Sheriff receives
25 the warrant; and
- 26 (b) entitles the Sheriff —
- 27 (i) to seize any such property in which the debtor
28 has a saleable interest and to sell that interest;
29 and
- 30 (ii) to seize any money of the debtor; and

- 1 (iii) to seize any cheque, bill of exchange, promissory
2 note, bond, specialty, or other security for
3 money, by virtue of which money is or may be
4 payable to the debtor, and to deal with it in
5 accordance with section 77; and
6 (iv) to apply the proceeds of the sale, the money, and
7 any money received or recovered under
8 section 77, in accordance with section 96.
- 9 (3) The Sheriff's entitlement applies even if the debtor's saleable
10 interest in any personal property is held jointly or in common
11 with another or others.
- 12 (4) The Sheriff may take any reasonable action that the Sheriff
13 considers necessary or convenient for the purposes of
14 subsection (2)(b).
- 15 (5) If, after the Sheriff receives the warrant, a person acquires an
16 interest in any goods to which the warrant applies, the person
17 does so subject to the Sheriff's entitlement in subsection (2)
18 unless, at the time of acquiring the interest —
19 (a) the person acquired it in good faith and for valuable
20 consideration; and
21 (b) the person had no notice of the fact that the Sheriff had
22 received the warrant and that it was in effect.

23 *[Section 71 inserted by No. 59 of 2004 s. 100; amended by*
24 *No. 48 of 2012 s. 43.]*

25 *[72, 73. Deleted by No. 59 of 2004 s. 100.]*

26 **74. Seizing personal property, powers enabling**

- 27 (1) Under a warrant the Sheriff, using any force and assistance that
28 is reasonably necessary in the circumstances, may do any or all
29 of the following —
30 (a) enter any place where the Sheriff believes on reasonable
31 grounds there is or may be personal property that may
32 be seized under the warrant, or a record evidencing the

- 1 title to such property, for the purpose of searching for
2 and seizing it;
- 3 (b) from time to time re-enter any such place where any
4 such property or record is for the purpose of performing
5 the Sheriff's functions under the warrant and this Act in
6 relation to the property;
- 7 (c) seize and remove any such property or record;
- 8 (d) make or print out, and keep, a copy of any such record
9 and for that purpose —
- 10 (i) seize and remove, for no more than 7 days, any
11 computer or other thing on which any such
12 record is or may be stored;
- 13 (ii) operate the computer or other thing;
- 14 (iii) direct a person who has the custody or control of
15 any such record, computer or thing to make or
16 print out a copy of the record or to operate the
17 computer or thing;
- 18 (e) take reasonable measures to secure or protect any such
19 property, record, computer or thing against damage or
20 unauthorised removal or interference.
- 21 (2) The powers in subsection (1)(a) and (b) —
- 22 (a) may be exercised at any time of the day or night in
23 respect of a place that is not a dwelling; and
- 24 (b) must not be exercised in respect of a dwelling without
25 the consent of the occupier of the dwelling or, if there is
26 no occupier, the owner.
- 27 (3) Despite subsection (2)(b), if —
- 28 (a) the consent referred to in subsection (2)(b) is
29 unreasonably withheld; or
- 30 (b) the Sheriff, after reasonable attempts to do so, cannot
31 contact the occupier or owner of the dwelling,

1 the Sheriff may exercise the powers in subsection (1)(a) and (b)
2 without that consent, at any time of the day or night.

3 (4) A person who disobeys a direction given under
4 subsection (1)(d)(iii) commits an offence.

5 Penalty: Imprisonment for 12 months.

6 *[Section 74 inserted by No. 59 of 2004 s. 101.]*

7 **75. Property that cannot be seized and sold**

8 The following personal property of a debtor must not be seized
9 or sold under a warrant —

- 10 (a) property that the debtor holds in trust for another person
11 and in which the debtor does not have a beneficial
12 interest;
- 13 (b) wearing apparel and personal items that are of a kind
14 and value prescribed by the regulations;
- 15 (c) household property that is of a kind and value prescribed
16 by the regulations;
- 17 (d) property that is used by the debtor to earn income by
18 personal exertion of a value that does not exceed the
19 amount prescribed by the regulations.

20 *[Section 75 inserted by No. 59 of 2004 s. 102; amended by*
21 *No. 48 of 2012 s. 43.]*

22 **76. Seizure of documents**

23 (1) If the Sheriff seizes any document relating to any business or
24 undertaking of the debtor it must not be retained for longer than
25 7 days.

26 (2) The Sheriff may copy any document seized.

27 (3) Subsection (1) does not apply to any cheque, bill of exchange,
28 promissory note, bond, specialty or other security for money
29 that the Sheriff seizes.

30 *[Section 76 amended by No. 48 of 2012 s. 43.]*

1 **77. Seizure of cheques etc.**

2 (1) If the Sheriff seizes any cheque, bill of exchange, promissory
3 note, bond, specialty or other security for money, the Sheriff
4 may receive any money payable under it from the person liable
5 to pay and may, when payment of the money is due —

6 (a) demand payment; and

7 (b) in the name of the debtor, sue the person liable to pay.

8 (2) For the purposes of receiving payment under any document
9 referred to in subsection (1), the Sheriff is to be taken to be the
10 agent of the debtor.

11 (3) Payment to the Sheriff by the person liable under such a
12 document discharges the person's liability to pay to the extent
13 of the payment.

14 *[Section 77 amended by No. 48 of 2012 s. 43.]*

15 **78. Debts due to debtor to be paid to Sheriff**

16 (1) Under a warrant the Sheriff may serve a person who appears to
17 the Sheriff to owe money to the debtor with a notice warning
18 the person not to pay the money to any person other than the
19 Sheriff.

20 (2) After a person is served with such a notice and until the Sheriff
21 cancels the notice in writing, the person must not pay the money
22 to any person other than the Sheriff.

23 (3) If a person makes a payment in contravention of subsection (2),
24 the person is liable to the Sheriff for the amount so paid.

25 *[Section 78 amended by No. 48 of 2012 s. 43.]*

26 ~~**79.** Deleted by No. 59 of 2004 s. 107.~~

27 **80. Notice of seizure**

28 (1) On seizing personal property of a debtor the Sheriff must issue a
29 notice of seizure.

- 1 (2) A notice of seizure must be served on the debtor and, if the
2 person who has custody of the property when it is seized is not
3 the debtor, on that person.
- 4 (3) A notice of seizure must —
5 (a) name the debtor; and
6 (b) state the amount owed under the warrant and any
7 enforcement fees owed; and
8 (c) describe the personal property seized; and
9 (d) explain that the property has been seized and that unless
10 the amount owed under the warrant and any
11 enforcement fees are paid, the property will be sold to
12 recover them.
- 13 [(4) *deleted*]
- 14 (5) If the Sheriff releases any personal property from seizure the
15 Sheriff must serve any person on whom a notice of seizure was
16 served with a notice of release.
- 17 [Section 80 amended by No. 59 of 2004 s. 107; No. 48 of 2012
18 s. 43.]

19 **81. Custody of seized property**

- 20 (1) Until it is sold, seized personal property is to be kept in such
21 custody as the Sheriff decides.
- 22 (2) Seized personal property may be left in the custody of the
23 debtor or another person if the debtor or person, in writing,
24 consents and agrees —
25 (a) to be responsible for its safekeeping; and
26 (b) not to move it, or allow it to be moved, without the prior
27 consent of the Sheriff; and
28 (c) not to give custody or possession of it to another person
29 without the prior consent of the Sheriff.

1 (3) If the Sheriff leaves seized personal property in the custody of
2 the debtor or another person, the Sheriff is not to be taken as
3 having abandoned the property.

4 (4) If the Sheriff seizes any record relating to a business or
5 undertaking of the debtor or another person, it must not be
6 retained for longer than 7 days.

7 (5) Subsection (4) does not apply to any cheque, bill of exchange,
8 promissory note, bond, specialty or other security for money.

9 *[Section 81 inserted by No. 59 of 2004 s. 103; amended by*
10 *No. 48 of 2012 s. 43.]*

11 *[82-84. Deleted by No. 59 of 2004 s. 107.]*

12 **85. Manner and place of sale**

13 (1) Any sale of personal property under a warrant is to be by public
14 auction or by private agreement, as the Sheriff thinks fit.

15 (2) Seized personal property may be sold at the place of seizure or
16 at any other place, as the Sheriff thinks fit.

17 **86. Sale price**

18 (1) Personal property seized under a warrant is not to be sold at a
19 price that is substantially below its fair value as determined by
20 the Sheriff.

21 (2) If by reason of subsection (1), the Sheriff is unable to sell
22 property, the Sheriff is to serve the debtor with a written notice
23 advising the debtor —

24 (a) that the property is unable to be sold for a price that is
25 not substantially below its fair value as determined by
26 the Sheriff; and

27 (b) that unless the debtor pays the Sheriff the amount owed
28 under the warrant and the enforcement fees, the property
29 may be sold at any price.

1 (3) If within a reasonable time after a debtor is served with such a
2 notice, the amount owed under the warrant and the enforcement
3 fees are not paid the property may be sold at any price.

4 (4) Subsections (1) to (3) do not apply to personal property that is
5 of a perishable nature.

6 *[Section 86 amended by No. 48 of 2012 s. 43.]*

7 **87. Sale passes good title: protection of Sheriff**

8 (1) If when any personal property is sold under a warrant the
9 Sheriff has not received notice of a claim to the property or any
10 interest in it from a person other than the debtor —

11 (a) the purchaser of the property acquires a good title to it;
12 and

13 (b) the Sheriff is not liable to any person in respect of the
14 sale of the property unless it is proved that the Sheriff
15 had notice or, by making reasonable inquiries, might
16 have ascertained, that the debtor did not own or have
17 any interest in the property.

18 (2) Subsection (1) does not affect the entitlement of a claimant to
19 any remedy against a person, other than the Sheriff or the
20 purchaser of the property, if the claimant proves that at the time
21 of the sale of the property the claimant had a title to the
22 property.

23 *[Section 87 amended by No. 48 of 2012 s. 43.]*

24 **Division 4 — Seizure and sale of land**

25 **88. Warrant, effect of**

26 (1) In this section —

27 ***saleable interest***, in real property, means any legal or equitable
28 estate or interest in the property that can be disposed of
29 according to law.

- 1 (2) A warrant issued in respect of a debtor —
- 2 (a) applies to —
- 3 (i) any saleable interest that is registered under the
- 4 *Transfer of Land Act 1893* in respect of land
- 5 under the operation of that Act and that the
- 6 debtor has at the time when the warrant is
- 7 registered under section 133 of that Act in
- 8 respect of the interest;
- 9 (ii) any saleable interest that is not registered under
- 10 the *Transfer of Land Act 1893* in respect of land
- 11 under the operation of that Act and that the
- 12 debtor has at the time when the Sheriff receives
- 13 the warrant;
- 14 (iii) any saleable interest in any other real property in
- 15 the State that the debtor has at the time when the
- 16 Sheriff receives the warrant;
- 17 and
- 18 (b) entitles the Sheriff —
- 19 (i) to seize the land; and
- 20 (ii) to sell the saleable interest; and
- 21 (iii) to apply the proceeds in accordance with
- 22 section 96.
- 23 (3) The Sheriff's entitlement applies even if the debtor's saleable
- 24 interest is held jointly or in common with another or others.
- 25 (4) Under a warrant, the Sheriff must not sell any saleable interest
- 26 that is registered under the *Transfer of Land Act 1893* in respect
- 27 of land under the operation of that Act unless, at the time of the
- 28 sale, the warrant is registered under section 133 of that Act in
- 29 respect of the interest.
- 30 (5) If, after the Sheriff receives a warrant, a person acquires an
- 31 interest in any real property to which the order applies, the
- 32 person does so subject to the Sheriff's entitlement in
- 33 subsection (2) unless, at the time of acquiring the interest —

- 1 (a) the person acquired it in good faith and for valuable
2 consideration; and
3 (b) the person had no notice of the fact that the Sheriff had
4 received the warrant and that it was in effect; and
5 (c) the warrant had not been registered under the
6 *Registration of Deeds Act 1856*.
7 (6) Subsection (5) does not apply to or in relation to an interest
8 acquired in any saleable interest that is registered under the
9 *Transfer of Land Act 1893* in respect of land under the operation
10 of that Act.
11 *[Section 88 inserted by No. 59 of 2004 s. 104; amended by*
12 *No. 48 of 2012 s. 43.]*

13 **89. Seizure: how effected**

- 14 (1) Actual seizure of real property by physical occupation or other
15 means before any saleable interest in it is sold under a warrant is
16 not necessary.
17 (2) Under a warrant, seizure of land is to be effected by the Sheriff
18 lodging with the Registrar of Titles or the Registrar of Deeds
19 and Transfers (as the case requires) —
20 (a) a memorial in the prescribed form describing the land
21 and setting out the amount owed under the warrant and
22 the enforcement fees owed; and
23 (b) a copy of the warrant.
24 (3) The signature of the Sheriff on the memorial does not have to be
25 attested.
26 (4) In the case of land under the operation of the *Transfer of Land*
27 *Act 1893*, the Registrar of Titles, under that Act, must register or
28 enter the memorial in the Register Book in respect of the land
29 described.
30 (5) In the case of land under the operation of the *Registration of*
31 *Deeds Act 1856*, the Registrar of Deeds and Transfers, under
32 that Act, must register the memorial.

- 1 (6) When a memorial is registered under subsection (4) or (5), the
2 Registrar of Titles or the Registrar of Deeds and Transfers, as
3 the case may be, must serve the debtor with a copy of the
4 memorial.
- 5 (7) On the registration of a memorial under subsection (4) and until
6 it is cancelled, the Registrar of Titles is prohibited from
7 registering and from accepting for registration any instrument
8 affecting any estate or interest in the land without the consent of
9 the Sheriff.
- 10 (8) On the registration of a memorial under subsection (5), any
11 instrument affecting the land and lodged for registration after
12 registration of the memorial and before cancellation of the
13 memorial is of no effect.
- 14 (9) A memorial registered under this section has effect until it is
15 cancelled under section 90.
- 16 *[Section 89 amended by No. 59 of 2004 s. 107; No. 48 of 2012*
17 *s. 43.]*

18 **90. Cancelling memorials**

- 19 (1) The Sheriff —
20 (a) may at any time cancel a memorial for good reason;
21 (b) if the warrant ceases to be in force, must cancel a
22 memorial forthwith,
23 by lodging a withdrawal of memorial in the prescribed form
24 with the Registrar of Titles or the Registrar of Deeds and
25 Transfers, as the case requires.
- 26 (2) The Registrar of Titles and the Registrar of Deeds and Transfers
27 must give effect to a withdrawal of memorial when it is lodged.

28 **91. Power of entry**

- 29 (1) Under a warrant the Sheriff, using any force and assistance that
30 is reasonably necessary in the circumstances, may enter any real
31 property in which the debtor has a saleable interest for the

1 purposes of performing the Sheriff's functions under the
2 warrant and this Act in relation to the interest.

3 (2) Without limiting subsection (1), the Sheriff may —

4 (a) enter the real property with any prospective purchaser of
5 the debtor's saleable interest; and

6 (b) conduct any sale of the interest on the property.

7 (3) The powers in subsections (1) and (2) —

8 (a) may be exercised at any time of the day or night in
9 respect of a place that is not a dwelling; and

10 (b) must not be exercised in respect of a dwelling without
11 the consent of the occupier of the dwelling or, if there is
12 no occupier, the owner.

13 (4) Despite subsection (3)(b), if —

14 (a) the consent referred to in subsection (3)(b) is
15 unreasonably withheld; or

16 (b) the Sheriff, after reasonable attempts to do so, cannot
17 contact the occupier or owner of the dwelling,

18 the Sheriff may exercise the powers in subsections (1) and (2)
19 without that consent, at any time of the day or night.

20 *[Section 91 inserted by No. 59 of 2004 s. 105; amended by*
21 *No. 48 of 2012 s. 43.]*

22 **91A. Debtor may be permitted to sell or mortgage real property**

23 (1) The Sheriff may permit the debtor to sell or mortgage the
24 debtor's saleable interest in any real property to which a warrant
25 applies.

26 (2) The Sheriff's permit must —

27 (a) be in writing; and

28 (b) require the amount of any deposit paid in respect of any
29 sale of the interest to be paid to the Sheriff to be held by
30 the Sheriff as stakeholder; and

- 1 (c) state the minimum amount (including any such deposit)
2 that must be paid to the Sheriff out of the money
3 realised from any sale or mortgage of the interest; and
4 (d) state the date on which the permit expires; and
5 (e) contain any other information that is prescribed by the
6 regulations.
- 7 (3) The Sheriff's permit may include any conditions that the Sheriff
8 considers necessary.
- 9 (4) While the Sheriff's permit is in force, the Sheriff must not sell
10 the saleable interest under the warrant.
- 11 (5) If while the Sheriff's permit is in force —
12 (a) the debtor sells or mortgages the interest; and
13 (b) in the case of a sale, the amount of any deposit paid is
14 paid to the Sheriff in accordance with the permit; and
15 (c) in any case, either —
16 (i) an amount not less than the minimum amount
17 stated in the permit is paid to the Sheriff; or
18 (ii) with the Sheriff's consent, an amount less than
19 the minimum amount stated in the permit is paid
20 to the Sheriff,
- 21 then —
22 (d) any liability of the purchaser or mortgagee to pay the
23 debtor the money paid to the Sheriff is extinguished; and
24 (e) the Sheriff must consent to the registration under the
25 *Transfer of Land Act 1893* or the *Registration of Deeds*
26 *Act 1856* of any documents that relate to the sale or
27 mortgage; and
28 (f) the Sheriff must apply the money received in accordance
29 with section 96 as if they were the proceeds of a sale
30 under the warrant.

31 [Section 91A inserted by No. 59 of 2004 s. 105; amended by
32 No. 48 of 2012 s. 43.]

91B. Place and manner of sale

(1) Subject to any order made by a court under this section, the sale under a warrant of a debtor's saleable interest in real property —

- (a) may be conducted on the property or at any other place, as the Sheriff thinks fit; and
- (b) must be by public auction; and
- (c) must not be for less than a fair value of the interest.

(2) The Sheriff may apply to the Magistrates Court for an order as to any or all of the following in relation to a saleable interest to which warrant applies —

- (a) that the interest may be sold by public tender;
- (b) that the interest may be sold by private agreement;
- (c) that the interest may be sold for an amount that is less than a fair value of the interest.

(3) The debtor is entitled to be heard on an application made under subsection (2).

(4) The court may make any or all of such orders.

(5) When or after making an order under subsection (2)(c) a court may order that the interest not be sold for less than an amount set by the court.

[Section 91B inserted by No. 59 of 2004 s. 105; amended by No. 48 of 2012 s. 43.]

92. Sale and transfer of land seized

(1) Subject to this Division, a warrant has effect in respect of land of the debtor as if the warrant were a property (seizure and sale) order issued under the *Civil Judgments Enforcement Act 2004* and the debtor were the judgment debtor named in the order.

(2) If land is sold under a warrant, a transfer or deed of conveyance of the land signed by the Sheriff shall, subject to the *Transfer of*

1 *Land Act 1893*, give to the purchaser as good and sufficient an
2 estate in or title to the land as the debtor in respect of whom the
3 warrant was issued has or can or may have in or to the land.

4 *[Section 92 amended by No. 59 of 2004 s. 107; No. 48 of 2012*
5 *s. 43.]*

6 **Division 5 — Interpleader**

7 **93. Making claim to property seized**

8 (1) A person (the *claimant*), other than the debtor, who claims any
9 property, or any interest in any property, seized under a warrant
10 or any of the proceeds of the sale of the property, may give the
11 Sheriff written notice of the claim.

12 (2) The notice must describe the property claimed and set out the
13 basis of the claim and must give an address for service for the
14 claimant.

15 *[Section 93 amended by No. 48 of 2012 s. 43.]*

16 **94. Sheriff may admit or dispute claim**

17 (1) The Sheriff may admit or dispute a claimant's claim.

18 (2) If the Sheriff disputes a claim the Sheriff may apply for relief by
19 way of interpleader —

20 (a) if the property concerned is personal property (as
21 defined in section 71), in the Magistrates Court at the
22 place nearest to where the property claimed is situated;
23 or

24 (b) if the property concerned is land, in the Supreme Court.

25 (3) On an application under subsection (2)(a) a magistrate has the
26 same powers as a Supreme Court judge has on an application by
27 the Sheriff in the case of property taken in execution under
28 process issued by the Supreme Court.

29 (4) Rules of court made under section 167 of the *Supreme Court*
30 *Act 1935* or the *Magistrates Court (Civil Proceedings) Act 2004*

may deal with the practice and procedure relating to claims and applications for relief by way of interpleader.

[Section 94 amended by No. 59 of 2004 s. 107.]

Division 6A — Additional powers relating to vehicles

[Heading inserted by No. 48 of 2012 s. 34.]

Subdivision 1 — General provisions

[Heading inserted by No. 48 of 2012 s. 34.]

95A. Application

This Division applies to a warrant issued under Part 3 or 4.

[Section 95A inserted by No. 48 of 2012 s. 34.]

95B. Warning notices

- (1) A warrant issued in respect of a debtor entitles the Sheriff to affix a notice that complies with subsection (2) to one or more vehicles ~~licensed in the name~~ of the debtor.
- (2) The notice must include information about the enforcement action that may be taken by the Sheriff in relation to the vehicle under this Division.
- (3) The power in subsection (1) may be exercised whether or not the Sheriff has previously exercised any other powers under the warrant in relation to the vehicle.

[Section 95B inserted by No. 48 of 2012 s. 34.]

Subdivision 2 — Immobilisation of vehicles

[Heading inserted by No. 48 of 2012 s. 34.]

1 **95C. Immobilisation of vehicles**

- 2 (1) A warrant issued in respect of a debtor entitles the Sheriff to
3 immobilise one or more vehicles ~~licensed in the name~~ of the
4 debtor using —
5 (a) one or more wheel clamps; or
6 (b) another means prescribed by the regulations.
- 7 (2) A vehicle must not be immobilised under a warrant at a
8 particular place unless the Sheriff is satisfied that immobilising
9 the vehicle at that place will not —
10 (a) cause the vehicle to be parked in contravention of a
11 written law; or
12 (b) cause undue inconvenience to persons other than the
13 debtor.
- 14 (3) A vehicle must not be immobilised under a warrant if, at the
15 time of the immobilisation —
16 (a) the number plates of the vehicle have been removed in
17 accordance with section 95F; and
18 (b) the number plates have not been returned to the debtor.
- 19 (4) If the Sheriff immobilises a vehicle under a warrant, the Sheriff
20 must affix to the vehicle a notice that complies with
21 subsection (5).
- 22 (5) A notice affixed to a vehicle under subsection (4) must include
23 at least the following information —
24 (a) that a warrant has been issued in respect of the person in
25 whose name the vehicle is licensed or the owner of the
26 vehicle; ~~holder of the vehicle licence; and~~
27 (b) the time at which the vehicle was immobilised; ~~and~~
28 (c) that it is an offence to remove the notice while the
29 vehicle remains immobilised under a warrant; ~~and~~
30 (d) information about what the debtor may do to have the
31 immobilisation of the vehicle removed; ~~and~~

1 (e) that the Sheriff may take further enforcement action
2 against the debtor if the debtor does not pay the amount
3 owed under the warrant and any enforcement fees; ~~and~~ |

4 (f) any other information prescribed by the regulations.

5 (6) A notice under subsection (4) may be in 2 parts.

6 *[Section 95C inserted by No. 48 of 2012 s. 34.]*

7 **95D. Removal of immobilisation of vehicle**

8 (1) The Sheriff may at any time remove the immobilisation of a
9 vehicle that has been immobilised under a warrant.

10 (2) If —

11 (a) a vehicle is immobilised under a warrant; and

12 (b) the warrant ceases to be in force,

13 the Sheriff must remove the immobilisation of the vehicle as
14 soon as practicable.

15 *[Section 95D inserted by No. 48 of 2012 s. 34.]*

16 **95E. Offences relating to immobilisation of vehicles**

17 (1) A person must not, without reasonable excuse, remove a vehicle
18 that is immobilised under a warrant from the place at which it is
19 immobilised.

20 Penalty: a fine of \$2 000.

21 (2) A person must not, without reasonable excuse —

22 (a) interfere with or remove a wheel clamp by which a
23 vehicle is immobilised under a warrant; or

24 (b) otherwise remove the immobilisation of a vehicle
25 immobilised under a warrant.

26 Penalty: a fine of \$2 000.

27 (3) A person must not, without reasonable excuse, interfere with or
28 remove a notice affixed to a vehicle under section 95C(4), or

1 any part of such a notice, at any time while the vehicle is
2 immobilised under a warrant.

3 Penalty for an offence under subsection (3): a fine of \$2 000.

4 *[Section 95E inserted by No. 48 of 2012 s. 34.]*

5 **Subdivision 3 — Removal of number plates**

6 *[Heading inserted by No. 48 of 2012 s. 34.]*

7 **95F. Removal of number plates**

8 (1) A warrant issued in respect of a debtor entitles the Sheriff to
9 remove the number plates from one or more vehicles ~~licensed in~~
10 ~~the name~~ of the debtor.

11 (2) The number plates of a vehicle must not be removed under a
12 warrant if —

13 (a) the vehicle has been immobilised under a warrant; and

14 (b) the immobilisation of the vehicle has not been removed.

15 (3) If the Sheriff removes the number plates of a vehicle under this
16 section, the Sheriff must affix to the vehicle a notice that
17 complies with subsection (4).

18 (4) A notice affixed to a vehicle under subsection (3) must include
19 at least the following information —

20 (a) that a warrant has been issued in respect of the person in
21 whose name the vehicle is licensed or the owner of the
22 vehicle; ~~holder of the vehicle licence; and~~

23 (b) the time at which the number plates were removed; ~~and~~

24 (ba) if the vehicle is licensed under the Road Traffic
25 (Vehicles) Act 2012 when the number plates are
26 removed — that the vehicle licence has been suspended;

27 (c) that ~~the vehicle licence has been suspended and~~ the
28 debtor is disqualified from holding or obtaining a
29 vehicle licence for the vehicle; ~~and~~

- 1 (d) that it is an offence to remove the notice before the
2 number plates are returned or a vehicle licence
3 cancellation [and disqualification](#) order is made in
4 respect of the vehicle; ~~and~~
5 (e) information about what the debtor may do to have the
6 number plates returned; ~~and~~
7 (f) that the Sheriff may take further enforcement action
8 against the debtor if the debtor does not pay the amount
9 owed under the warrant and any enforcement fees; ~~and~~
10 (g) any other information prescribed by the regulations.

11 (5) A notice under subsection (3) may be in 2 parts.

12 (6) Subject to sections 95H and 95J, number plates removed under
13 a warrant are to be kept in safe custody by the Sheriff.

14 *[Section 95F inserted by No. 48 of 2012 s. 34.]*

15 **95G. Vehicle licence suspension [and disqualification](#) order made**
16 **when number plates are removed**

17 (1) At the time the number plates of a vehicle are removed under a
18 warrant, the Sheriff must make a vehicle licence suspension [and](#)
19 [disqualification](#) order in respect of the vehicle [and the debtor](#).

20 [\(1A\) Subsection \(1\) applies whether or not a vehicle licence for the](#)
21 [vehicle is in force when the order is made.](#)

22 (2) A vehicle licence suspension [and disqualification](#) order is an
23 order disqualifying the debtor from holding or obtaining a
24 vehicle licence for the vehicle.

25 [Note for this subsection: If a vehicle licence is in force in relation to the](#)
26 [vehicle when the order is made, the licence is suspended under the *Road*](#)
27 [Traffic \(Vehicles\) Act 2012 section 16\(2A\) while the vehicle licence](#)
28 [suspension and disqualification order is in force.](#)

29 (3) As soon as practicable after the number plates of a vehicle are
30 removed under a warrant —

31 (a) the Sheriff must advise the Registrar of the terms of the
32 order; and

- 1 (b) the Registrar must advise the Director General of the
2 terms of the order.
- 3 (4) For the purposes of this Act and a vehicle licensing law, a
4 vehicle licence suspension [and disqualification](#) order made
5 under subsection (1) —
- 6 (a) takes effect when the number plates are removed; and
7 (b) is in force from the time it takes effect to the time when
8 it is cancelled.
- 9 (5) If —
- 10 (a) a vehicle licence suspension [and disqualification](#) order is
11 made under subsection (1) when the number plates of a
12 vehicle are removed under a warrant; and
13 (b) either —
- 14 (i) the warrant ceases to be in force; or
15 (ii) the number plates are returned to the debtor; or
16 (iii) a vehicle licence cancellation [and](#)
17 [disqualification](#) order is made in respect of the
18 vehicle under section 95J,
- 19 the vehicle licence suspension [and disqualification](#) order is
20 taken to be cancelled.
- 21 (6) If a vehicle licence suspension [and disqualification](#) order is
22 cancelled under subsection (5), the Registrar must notify the
23 Director General of the cancellation as soon as practicable.
- 24 *[Section 95G inserted by No. 48 of 2012 s. 34.]*

95H. Return of number plates

- 26 (1) If the number plates of a vehicle ~~licensed in the name~~ of a
27 debtor have been removed under a warrant, the Sheriff may at
28 any time return the number plates to the debtor.

1 (2) If —

- 2 (a) the number plates of a vehicle ~~licensed in the name~~ of a
3 debtor have been removed under a warrant; and
4 (b) the warrant ceases to be in force; and
5 (c) a vehicle licence cancellation and disqualification order
6 has not been made in respect of the vehicle under
7 section 95J; and
8 (d) when the warrant ceases to be in force, the vehicle
9 ~~is~~remains licensed in the name of the debtor,

10 the Sheriff must return the number plates to the debtor as soon
11 as practicable.

12 (3) Without limiting subsections (1) and (2), the Sheriff may return
13 number plates to a debtor by —

- 14 (a) notifying the debtor in writing that the debtor may
15 collect the number plates from a place and during
16 periods specified in the notice; and
17 (b) making the number plates available for collection in
18 accordance with the notice.

19 *[Section 95H inserted by No. 48 of 2012 s. 34.]*

20 **95I. Offence of interfering with or removing notice**

21 (1) In this section —

22 ***affected vehicle*** means a vehicle from which the number plates
23 have been removed under a warrant.

24 (2) A person who, without reasonable excuse, interferes with or
25 removes a notice affixed to an affected vehicle under
26 section 95F(3), or any part of such a notice, commits an offence
27 unless —

- 28 (a) the number plates have been returned to the debtor; or in
29 ~~whose name the vehicle is licensed; or~~

- 1 (b) a vehicle licence cancellation and disqualification order
2 has been made in respect of the vehicle under
3 section 95J.

4 Penalty: a fine of \$2 000.

5 *[Section 95I inserted by No. 48 of 2012 s. 34.]*

6 **Subdivision 4 — Vehicle licence cancellation and disqualification**
7 **orders**

8 *[Heading inserted by No. 48 of 2012 s. 34.]*

9 **95J. Vehicle licence cancellation and disqualification order**

10 (1) If —

- 11 (a) the number plates of a vehicle ~~licensed in the name~~ of a
12 debtor have been removed under a warrant; and
13 (b) 28 days have elapsed since the day on which the number
14 plates were removed; and
15 (c) the warrant remains in force,

16 the Sheriff may make a vehicle licence cancellation and
17 disqualification order in respect of the vehicle.

18 (2) A vehicle licence cancellation and disqualification order is an
19 order —

20 (a) if the vehicle is licensed under the Road Traffic
21 (Vehicles) Act 2012 when the order is made —
22 cancelling that vehicle licence; and

23 ~~(a) cancelling the vehicle licence of a vehicle specified in~~
24 ~~the order; and~~

25 (b) disqualifying the debtor from holding or obtaining a
26 vehicle licence in respect of that vehicle.

27 (3) If the Sheriff makes a vehicle licence cancellation and
28 disqualification order, the Sheriff must —

- 29 (a) serve a copy of the order on the debtor; and
30 (b) advise the Registrar of the terms of the order; and

- 1 (c) give the number plates that were removed from the
2 vehicle to the Director General.
- 3 (4) As soon as practicable after receiving advice under
4 subsection (3), the Registrar must advise the Director General of
5 the terms of the vehicle licence cancellation and disqualification
6 order.
- 7 (5) For the purposes of this Act and a vehicle licensing law, a
8 vehicle licence cancellation and disqualification order takes
9 effect when it is made.
- 10 (6) If —
11 (a) a vehicle licence cancellation and disqualification order
12 is made in respect of a vehicle and a debtor; and
13 (b) the warrant under which the order is made ceases to be
14 in force,
15 the vehicle licence cancellation and disqualification order is
16 taken to be cancelled to the extent that the order would
17 disqualify the debtor from holding or obtaining a vehicle licence
18 in respect of that vehicle.
- 19 (6A) The Sheriff may at any time, if the Sheriff considers that it is
20 appropriate in the circumstances, cancel a vehicle licence
21 cancellation and disqualification order made in respect of a
22 vehicle to the extent that the order would disqualify the debtor
23 from holding or obtaining a vehicle licence in respect of the
24 vehicle.
- 25 (7) If a vehicle licence cancellation and disqualification order is
26 cancelled under subsection (6) or (6A), then as soon as
27 practicable —
28 (a) the Sheriff must notify the offender of the cancellation;
29 and
30 (b) ~~(6)~~, the Registrar must notify the Director General of the
31 cancellation, ~~as soon as practicable.~~

- (8) The making of a vehicle licence cancellation [and](#) [disqualification](#) order under this section in relation to a vehicle does not entitle the debtor to the refund of any fee paid in respect of the grant or renewal of the vehicle licence.

[Section 95J inserted by No. 48 of 2012 s. 34.]

Subdivision 5 — Powers for this Division

[Heading inserted by No. 48 of 2012 s. 34.]

95K. Powers enabling immobilisation of vehicles and removal of number plates etc.

- (1) Under a warrant, using any force and assistance that is reasonably necessary in the circumstances, the Sheriff may do any or all of the following —
- (a) enter any place that is occupied by the debtor for the purpose of immobilising, removing the number plates of, or affixing a warning notice to, a vehicle ~~licensed in the name~~ of the debtor;
 - (b) enter any place that —
 - (i) is not occupied by the debtor; and
 - (ii) is not a public place,for the purpose of immobilising, removing the number plates of, or affixing a warning notice to, a vehicle ~~licensed in the name~~ of the debtor;
 - (c) from time to time re-enter any place described in paragraph (a) or (b) for the purpose of performing the Sheriff's functions under this Act and the warrant.
- (2) The powers in —
- (a) subsection (1)(a); and
 - (b) subsection (1)(c), to the extent that it applies in relation to a place referred to in subsection (1)(a),
- may be exercised at any time of the day or night.

(3) The powers in —

(a) subsection (1)(b); and

(b) subsection (1)(c), to the extent that it applies in relation to a place referred to in subsection (1)(b),

may be exercised at any time of the day or night but must not be exercised without the consent of the occupier of the place or, if there is no occupier, the owner.

(4) Despite subsection (3), if —

(a) the consent referred to in subsection (3) is unreasonably withheld; or

(b) the Sheriff, after reasonable attempts to do so, cannot contact the owner or occupier of the place,

the Sheriff may exercise the powers referred to in subsection (3) without that consent.

[Section 95K inserted by No. 48 of 2012 s. 34.]

Division 6B — Garnishment

Subdivision 1 — Preliminary

95L. Application

This Division applies to a warrant issued under Part 3 or 4.

95M. Garnishee orders

(1) A warrant issued in respect of a debtor entitles the Sheriff, in accordance with this Division, to issue a garnishee order in respect of the debtor and the amount owed under the warrant and any enforcement fees.

(2) A *garnishee order* is —

(a) an order (a *garnishee order on earnings*) issued under section 95O that a person who pays, or is likely to pay,

- 1 earnings to a debtor pay an amount or amounts of those
2 earnings to the Sheriff; or
- 3 (b) an order (a **bank account garnishee order**) issued under
4 section 95V that a bank with which a debtor has 1 or
5 more accounts pay an amount or amounts to the Sheriff
6 from those accounts.
- 7 (3) A reference in this Division to a garnishee order is to the order
8 as amended from time to time.
- 9 (4) The Sheriff must ensure that only 1 garnishee order is in force
10 under an enforcement warrant at a particular time.
- 11 **95N. Duration, amendment and cancellation of garnishee order**
- 12 (1) A garnishee order —
- 13 (a) comes into force on the day that is 7 days after —
- 14 (i) for a garnishee order on earnings — the day on
15 which it is served on the relevant payer to whom
16 it is issued under section 95O(4); or
- 17 (ii) for a bank account garnishee order — the day on
18 which it is served on the bank to which it is
19 issued under section 95V(5);
- 20 and
- 21 (b) is in force until whichever of the following occurs
22 first —
- 23 (i) it is cancelled under subsection (2) or (4);
- 24 (ii) for a garnishee order on earnings — the relevant
25 payer gives the Sheriff a notice under
26 section 95Q(4);
- 27 (iii) for a bank account garnishee order — the bank
28 gives the Sheriff a notice under section 95X(2);
- 29 (iv) for a single payment garnishee order — the bank
30 gives the Sheriff a return under
31 section 95W(1)(c).

1 (2) A garnishee order is cancelled when the warrant under which it
2 is issued ceases to be in force.

3 (3) A debtor in relation to whom a garnishee order is in force may
4 apply to the Sheriff in the approved form for the amendment or
5 cancellation of the order.

6 (4) The Sheriff may, if the Sheriff thinks fit, amend or cancel a
7 garnishee order on an application under subsection (3) or on the
8 Sheriff's own initiative.

9 (5) If a garnishee order is amended or cancelled, notice of the
10 amendment or cancellation must be served on —

11 (a) the debtor; and

12 (b) the relevant payer or bank to whom the order was
13 issued.

14 **Subdivision 2 — Garnishee orders on earnings**

15 **950. Issue of garnishee order on earnings**

16 (1) The Sheriff may, under a warrant issued in respect of a debtor,
17 issue a garnishee order on earnings to a person (the *relevant*
18 *payer*) if the Sheriff is satisfied that the relevant payer pays, or
19 is likely to pay, earnings to the debtor on the relevant payer's
20 own behalf and not as an employee or agent of another person.

21 (2) A garnishee order on earnings must —

22 (a) be in the approved form; and

23 (b) state —

24 (i) the amount owed under the warrant and any
25 enforcement fees; and

26 (ii) the amount of the debtor's earnings for each
27 week that is to be deducted from the debtor's
28 earnings and paid to the Sheriff; and

29 (iii) when deductions and payments under the order
30 must be made;

- 1 (iv) how payments must be made and returns must be
2 given to the Sheriff;
3 and
4 (c) explain how the amount deducted from the debtor's
5 earnings for a pay period is to be determined under
6 section 95P.
- 7 (3) A garnishee order on earnings must not include any information
8 about —
9 (a) if it is issued under an enforcement warrant issued under
10 Part 3 in relation to an infringement notice — the
11 alleged offence for which the infringement notice was
12 issued; or
13 (b) if it is issued under an enforcement warrant issued under
14 Part 4 in relation to a fine — the offence for which the
15 fine was imposed.
- 16 (4) A copy of a garnishee order on earnings must be served on the
17 debtor and the relevant payer.
- 18 **95P. Compliance with garnishee order on earnings**
- 19 (1) This section applies if —
20 (a) a garnishee order on earnings issued to a relevant payer
21 is in force in relation to a debtor; and
22 (b) earnings are payable by the relevant payer to the debtor
23 for a period (the *pay period*).
- 24 (2) The relevant payer must —
25 (a) deduct from the earnings payable to the debtor for the
26 pay period an amount determined under subsection (3);
27 and
28 (b) pay that amount to the Sheriff in accordance with the
29 order; and
30 (c) give the Sheriff a return in the approved form in
31 accordance with the order.

Penalty for this subsection: a fine of \$2 000.

(3) For the purposes of subsection (2)(a), the amount to be deducted is the lesser of the following —

(a) an amount determined by multiplying the weekly amount specified in the garnishee order under section 95O(2)(b)(ii) by the number of weeks in the pay period;

(b) the amount, if any, that would reduce the debtor's earnings for the pay period to the protected earnings amount;

(c) the amount that would result in the total amount deducted under the order for all pay periods being equal to the total amount stated in the order under section 95O(2)(b)(i).

(4) If the debtor's earnings for the pay period are equal to or lesser than the protected earnings amount, the relevant payer must not deduct any amount from the earnings under subsection (2).

(5) If the pay period is not a number of whole weeks, the number of weeks in the pay period for the purposes of subsection (3)(a) is to be determined by dividing the number of days in the pay period by 7 (rounded to 2 decimal places).

(6) A reference in this section to a debtor's earnings for a pay period is a reference to the amount remaining after deducting any amount the relevant payer is required to withhold or deduct from the earnings under —

(a) the *Taxation Administration 1953* (Commonwealth) or any other law of the Commonwealth; or

(b) a written law (other than the *Civil Judgments Enforcement Act 2004* Part 4 Division 4).

95Q. Notices and returns to be given in relation to garnishee orders on earnings

(1) This section applies if a garnishee order on earnings issued to a relevant payer is in force in relation to a debtor.

(2) If the relevant payer pays earnings to the debtor for a pay period, the relevant payer must, no later than 7 days after the earnings are paid, ensure that the debtor is notified of —

(a) the amount deducted under the garnishee order; or

(b) if no deduction was made — that no deduction was made under the garnishee order.

Penalty for this subsection: a fine of \$2 000.

(3) If, in a particular month, the relevant payer does not deduct any amount from the debtor's earnings under the garnishee order, the relevant payer must give the Sheriff a return in the approved form within 7 days after the end of the month.

Penalty for this subsection: a fine of \$2 000.

(4) If the debtor ceases to be a person to whom the relevant payer pays, or is likely to pay, earnings, the relevant payer must give the Sheriff notice of the cessation in the approved form within 7 days after the end of the month in which the cessation occurs.

Penalty for this subsection: a fine of \$2 000.

95R. Discharge of liability to pay debtor

If a relevant payer deducts an amount from a debtor's earnings in compliance with section 95P, the relevant payer's liability to pay the amount to the debtor, or any person other than the Sheriff, is discharged.

95S. Records to be kept by relevant payers

(1) A relevant payer to whom a garnishee order on earnings has been issued in relation to a debtor must keep records of —

(a) the debtor's earnings payable by the relevant payer while the garnishee order is in force; and

(b) amounts deducted from the debtor's earnings and paid to the Sheriff under this Subdivision; and

(c) returns and notices given in accordance with this Subdivision.

Penalty for this subsection: a fine of \$2 000.

(2) Records kept under subsection (1) must be retained for 2 years after the garnishee order on earnings ceases to be in force.

Penalty for this subsection: a fine of \$2 000.

95T. Protection of employees

(1) If a garnishee order on earnings is issued to an employer of the debtor, the employer must not, on the ground of the issue of the order, treat the debtor less favourably than it would treat an employee whose earnings are not the subject of a garnishee order in the same circumstances or in circumstances that are not materially different.

Penalty for this subsection: a fine of \$5 000.

(2) Subsection (3) applies if —

(a) an employer is charged with an offence under subsection (1) that is alleged to have been committed within 6 months after the employer was served with the garnishee order on earnings concerned; and

(b) all of the elements of the offence are proved except the grounds for the employer's treatment of the debtor.

(3) The onus of proving that the grounds for the employer's treatment of the debtor were not the issue of the garnishee order is on the employer.

95U. Regulations for this Subdivision

(1) The regulations may prescribe a method for determining the protected earnings amount for a pay period for the purposes of section 95P.

(2) Different methods may be prescribed for different classes of debtors.

(3) The regulations may include provision for determining, in cases where a relevant payer pays earnings to a debtor otherwise than for a particular period, the period for which those earnings are taken to be paid for the purposes of this Subdivision.

Subdivision 3 — Garnishee orders on bank accounts

95V. Issue of bank account garnishee order

(1) The Sheriff may, under a warrant issued in respect of a debtor, issue a bank account garnishee order to a bank if the Sheriff is satisfied that the debtor has an account with the bank.

(2) A bank account garnishee order may be —

(a) an order (a *single payment garnishee order*) that a single payment be made to the Sheriff from money that is or may be held for the debtor in an account with the bank; or

(b) an order (a *multiple payments garnishee order*) that multiple payments be made to the Sheriff from money that is or may be held for the debtor in an account with the bank at times, or in circumstances, specified in the order.

(3) A bank account garnishee order must —

(a) be in the approved form; and

(b) state —

(i) the amount owed under the warrant and any enforcement fees; and

- 1 (ii) the amount or amounts required to be deducted
2 and paid under the order; and
3 (iii) when deductions and payments under the order
4 must be made;
5 (iv) how payments must be made and returns must be
6 given to the Sheriff;
7 and
8 (c) explain how an amount deducted under the order is to be
9 determined under section 95W.
10 (4) A bank account garnishee order must not include any
11 information about —
12 (a) if it is issued under an enforcement warrant issued under
13 Part 3 in relation to an infringement notice — the
14 alleged offence for which the infringement notice was
15 issued; or
16 (b) if it is issued under an enforcement warrant issued under
17 Part 4 in relation to a fine — the offence for which the
18 fine was imposed.
19 (5) A copy of a bank account garnishee order must be served on the
20 debtor and the bank.
21 **95W. Compliance with bank account garnishee order**
22 (1) If a single payment garnishee order issued to a bank is in force
23 in relation to a debtor, the bank must, as soon as practicable
24 after the order comes into force —
25 (a) deduct the amount determined under subsection (3) from
26 the account or accounts the debtor has with the bank;
27 and
28 (b) pay that amount to the Sheriff in accordance with the
29 order; and
30 (c) give the Sheriff a return in the approved form in
31 accordance with the order.

**Fines, Penalties and Infringement Notices Enforcement Amendment Bill
2019**

Part 7 Enforcement warrants

Division 6B —

Garnishment Additional powers relating to vehicles

s. 95W

- 1 Penalty for this subsection: a fine of \$2 000.
- 2 (2) If a multiple payments garnishee order issued to a bank is in
3 force in relation to a debtor, the bank must, whenever required
4 to make a payment under the order —
- 5 (a) deduct the amount determined under subsection (3) from
6 the account or accounts the debtor has with the bank;
7 and
- 8 (b) pay that amount to the Sheriff in accordance with the
9 order; and
- 10 (c) give the Sheriff a return in the approved form in
11 accordance with the order.
- 12 Penalty for this subsection: a fine of \$2 000.
- 13 (3) For the purposes of subsections (1)(a) and (2)(a), the amount to
14 be deducted is the lesser of the following —
- 15 (a) the amount specified in the order as the amount for the
16 relevant deduction;
- 17 (b) the amount, if any, that would reduce the total amount
18 held for the debtor in accounts with the bank at the time
19 of the deduction to the protected bank account amount;
- 20 (c) the amount that would result in the total amount
21 deducted under the order (including any previous
22 deductions) being equal to the total amount stated in the
23 order under section 95V(3)(b)(i).
- 24 (4) If, when a deduction is required to be made under a bank
25 account garnishee order, the total amount held for the debtor in
26 accounts with the bank is equal to or less than the protected
27 bank account amount, the bank must not deduct any amount
28 under subsection (1) or (2), but is still required to give the
29 Sheriff a return under subsection (1)(c) or (2)(c), as the case
30 requires.
- 31 (5) If money is held for the debtor in more than 1 account with the
32 bank, the bank may decide the account or accounts from which
33 to make the deduction under subsection (1) or (2).

1 (6) The bank must not make a deduction under subsection (1) or (2)
2 that would result in any of the debtor's accounts becoming
3 overdrawn.

4 **95X. Notices to be given by banks**

5 (1) If a bank deducts an amount from a debtor's account under a
6 bank account garnishee order, the bank must ensure that the
7 debtor is notified of the amount deducted under the garnishee
8 order within 7 days after the deduction is made.

9 Penalty for this subsection: a fine of \$2 000.

10 (2) If a debtor closes all of the debtor's accounts with a bank while
11 a bank account garnishee order issued to the bank is in force in
12 relation to the debtor, the bank must give the Sheriff notice in
13 the approved form within 7 days after the end of the month in
14 which the debtor closes the account.

15 Penalty for this subsection: a fine of \$2 000.

16 **95Y. Records to be kept by banks**

17 (1) A bank to which a bank account garnishee order has been issued
18 in relation to a debtor must keep records of —

19 (a) amounts deducted from the debtor's accounts and paid
20 to the Sheriff under this Subdivision; and

21 (b) returns and notices given in accordance with this
22 Subdivision.

23 Penalty for this subsection: [to be drafted].

24 (2) Records kept under subsection (1) must be retained for 2 years
25 after the bank account garnishee order ceases to be in force.

26 Penalty for this subsection: [to be drafted].

27 **95Z. Administration fee for deduction under bank account**
28 **garnishee order**

29 If a bank charges a debtor an amount for the administrative cost
30 of making a deduction under a bank account garnishee order,

1 the amount of the charge must not exceed the amount prescribed
2 by the regulations.

3 Penalty: [to be drafted].

4 **95ZA. Requirements for debtor if bank account garnishee order is**
5 **in force**

6 (1) This section applies if a bank account garnishee order issued to
7 a bank is in force in relation to a debtor.

8 (2) The debtor must not, with the intention of preventing the
9 execution of the order, do any of the following —

10 (a) make a withdrawal or transfer of money from any of the
11 debtor's accounts with the bank that results in a
12 deduction not being able to be made under the order;

13 (b) prevent any earnings or other amount from being paid
14 into any of the debtor's accounts with the bank;

15 (c) close any of the debtor's accounts with the bank.

16 Penalty for this subsection: a fine of \$2 000.

17 (3) The debtor must notify the Sheriff if —

18 (a) the debtor closes all of the debtor's accounts with the
19 bank; or

20 (b) a person who makes regular deposits of earnings or
21 other amounts into any of the debtor's accounts with the
22 bank discontinues those deposits.

23 Penalty for this subsection: a fine of \$2 000.

24 **95ZB. Regulations for this Subdivision**

25 (1) The regulations may prescribe a protected bank account amount,
26 or a method for determining a protected bank account amount,
27 for the purposes of section 95W.

28 (2) Different protected bank account amounts or methods may be
29 prescribed for different classes of debtors.

Subdivision 4 — General provisions

95ZC. Sheriff may refund money deducted under garnishee order

(1) A debtor may apply to the Sheriff in the approved form for a refund of any money —

(a) deducted from the debtor's earnings under a garnishee order on earnings and paid to the Sheriff; or

(b) deducted from the debtor's accounts with a bank under a bank account garnishee order and paid to the Sheriff.

(2) On an application under subsection (1), the Sheriff may, if the Sheriff thinks fit, refund the amount or part of it to the debtor.

95ZD. Obtaining information relevant to garnishee order

(1) The powers in this section can only be exercised by the Sheriff after receiving a warrant and for the purpose of determining whether to exercise a function under this Division.

(2) The Sheriff may, in writing, request any person who the Sheriff suspects pays, or may pay, earnings to the debtor to disclose to the Sheriff specified information about the following —

(a) whether the person pays, or is likely to pay, earnings to the debtor;

(b) the debtor's earnings;

(c) any other information the Sheriff considers is or may be relevant to determining whether to exercise a function under this Division.

(3) The Sheriff may, in writing, request any bank that the Sheriff suspects holds or may hold money for the debtor in an account to disclose to the Sheriff specified information about any of the following —

(a) the debtor's accounts (if any) with the bank;

(b) the balance of those accounts and any payments into those accounts;

1 (c) any other information the Sheriff considers is or may be
2 relevant to determining whether to exercise a function
3 under this Division.

4 (4) A person commits an offence if —

5 (a) the person contravenes a request made under
6 subsection (2) or (3); or

7 (b) the person discloses information to the Sheriff in
8 response to a request under subsection (2) or (3) that the
9 person knows is false or misleading in a material
10 particular.

11 Penalty for this subsection: [to be drafted].

12 **95ZE. Relevant payer or bank must not disclose information**

13 (1) This section applies to a person who is or has been —

14 (a) a relevant payer or bank to whom a garnishee order has
15 been issued in relation to a debtor; or

16 (b) a person employed by, or performing services for, a
17 relevant payer or bank referred to in paragraph (a).

18 (2) The person must not, directly or indirectly, collect, use or
19 disclose information about a debtor obtained because of the
20 issue of the garnishee order, or in performing the person's duties
21 under this Division, except —

22 (a) for the purpose of, or in connection with, performing the
23 duties of the relevant payer or bank under this Division;
24 or

25 (b) if it necessary to do so in carrying on the business affairs
26 of the relevant payer or bank.

27 Penalty for this subsection: [to be drafted].

Division 6 — Miscellaneous

95. Priority of warrant over writs etc.

(1) A warrant (as defined in section 63) has priority over any property (seizure and sale) order issued under the *Civil Judgments Enforcement Act 2004*, despite that Act and section 133 of the *Transfer of Land Act 1893*.

(2) If there are 2 or more warrants (as defined in section 63) issued in respect of a debtor, they have priority according to the time of receipt by the Sheriff.

[Section 95 amended by No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

96. How amounts recovered to be applied

(1) The Sheriff is to apply the money recovered under an enforcement warrant ~~from the sale of property under a warrant~~ (the *proceeds*) in accordance with this section.

(2) Firstly, if the money is recovered from the sale of property under the warrant, the proceeds are to be applied in the payment of the expenses of, and incidental to, the sale and any attempted sale of the property.

(3) Secondly, subject to —

(a) any agreement made by the Sheriff with a person under section 70D; ~~and 82; and~~

(b) any claim admitted by the Sheriff under section 94; and

(c) the rights or entitlements of a person, other than the debtor, having an interest in the property sold, if that interest was registered under the *Personal Properties Securities Act 2009* (Commonwealth), the *Transfer of Land Act 1893*, the *Registration of Deeds Act 1856* or the *Corporations Act 2001* (Commonwealth), in respect of the property before it was seized by the Sheriff,

1 the proceeds are to be applied in the payment of the
2 enforcement fees.

3 (4) Thirdly, the proceeds are to be applied in the payment to the
4 Registrar of —

5 (a) —the amount owed under the warrant; and

6 (b) the amount owed in respect of any other enforceable
7 registered fine (as defined in section 28(1)) of the
8 debtor.

9 (5) Fourthly, the proceeds are to be applied in the payment of any
10 surplus to the debtor.

11 (6) Enforcement fees recovered under a warrant are to be credited
12 to the Consolidated Account.

13 (7) In subsection (3), **registered** includes protected by means of a
14 caveat lodged under the *Transfer of Land Act 1893*.

15 *[Section 96 amended by No. 10 of 2001 s. 220; No. 77 of 2006*
16 *s. 4; No. 42 of 2011 s. 18; No. 48 of 2012 s. 43.]*

17 **97. Warrant may be satisfied at any time**

18 (1) Despite any other provision in this Part, a debtor may at any
19 time before the sale of any property under a warrant, pay to the
20 Sheriff the amount owed under the warrant and the enforcement
21 fees owed.

22 (2) When the amount owed under a warrant and the enforcement
23 fees are paid, or recovered from the sale of property, the warrant
24 ceases to be in force.

25 *[Section 97 amended by No. 48 of 2012 s. 43.]*

26 **98A. Seized property to be released if warrant ceases to be in**
27 **force**

28 If —

29 (a) a warrant ceases to be in force; and

1 (b) at the time of the cessation, property has been seized
2 under the warrant but has not been sold,

3 the Sheriff must release the property from seizure as soon as
4 practicable.

5 *[Section 98A inserted by No. 48 of 2012 s. 35.]*

6 **98. Sheriff exempt from some licensing requirements**

7 (1) The Sheriff and any delegate of the Sheriff may sell property
8 seized under a warrant without holding any licence to do so that
9 is required under a written law.

10 (2) Subsection (1) does not prevent the Sheriff from engaging a
11 person with an appropriate licence under a written law to sell
12 property seized under a warrant.

13 *[Section 98 inserted by No. 59 of 2004 s. 106.]*

14 **99. Sheriff exempt from fees**

15 The Sheriff and any delegate of the Sheriff is exempt from
16 paying fees under the *Transfer of Land Act 1893* or the
17 *Registration of Deeds Act 1856* in connection with any matter
18 arising out of or in connection with the performance of his or
19 her functions under a warrant.

20 *[Section 99 amended by No. 42 of 2011 s. 19.]*

Part 7A — Information

100. Terms used

In this Part —

alleged offender has the meaning given in section 11;

approved sponsor has the meaning given in section 28(1);

contractor has the meaning given in the *Court Security and Custodial Services Act 1999* section 3;

offender has the meaning given in section 28(1);

public authority means —

(a) a department of the Public Service; or

(b) a State agency or instrumentality; or

(c) a court or tribunal to the extent that it is an agency for the purposes of the *Freedom of Information Act 1992*; or

(d) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a written law;

relevant information means —

(a) in relation to the Registrar — information that, in the opinion of the Registrar, is or is likely to be relevant to the performance of any function of the Registrar under this Act or another written law; or

(b) in relation to the Sheriff — information that, in the opinion of the Sheriff, is or is likely to be relevant to the performance of any function of the Sheriff under this Act or another written law;

research means research to promote the development of criminology or corrective services.

100A. Disclosure of information to Registrar or Sheriff

(1) The Registrar or Sheriff (the *requesting officer*) may request a public authority, contractor, electricity corporation or approved

- 1 sponsor to disclose relevant information to the requesting
2 officer.
- 3 (2) A request under subsection (1) —
4 (a) may relate to particular information or information of a
5 particular kind; and
6 (b) may relate to information that may be held from time to
7 time.
- 8 (3) A person to whom a request under subsection (1) is made must
9 disclose information in compliance with the request.
- 10 (4) A person, other than a public authority, who contravenes a
11 request made under subsection (1) is guilty of a contempt of the
12 Magistrates Court.
- 13 (5) Information disclosed under subsection (3) may be used in the
14 performance of the requesting officer's functions under this Act
15 or another written law but not for any other purpose.
- 16 **100B. Disclosure of information by Registrar or Sheriff**
- 17 (1) The Minister may, from time to time, approve circumstances in
18 which, or purposes for which, information relating to an
19 offender or alleged offender may be disclosed by the Registrar
20 or Sheriff to a person or class of persons in a government
21 department or agency of the State, the Commonwealth, another
22 State, a Territory or another country.
- 23 (2) The Registrar or Sheriff may disclose information as approved
24 under subsection (1).
- 25 (3) The Registrar or Sheriff may —
26 (a) disclose information about offenders or fines to
27 approved sponsors for purposes connected with WDPs;
28 or
29 (b) disclose information relating to offenders, alleged
30 offenders, fines or infringement notices to a public
31 authority or other body for use in research; or

s. 100C

1 (c) disclose information prescribed by the regulations in
2 circumstances prescribed by the regulations.

3 (4) The Registrar must —

4 (a) establish written procedures for the disclosure of
5 information by the Registrar or Sheriff under this
6 section; and

7 (b) ensure that the procedures are published on the
8 Department's website.

9 **100C. Registrar and Sheriff to have access to records of Director**
10 **General**

11 The Registrar and the Sheriff are entitled, to the extent that it is
12 necessary or convenient for the performance of functions under
13 this Act or another written law, to have access to and make use
14 of the records kept by the Director General under a road law in
15 relation to drivers' licences and vehicle licences.

16 **100D. Regulations relating to information**

17 The regulations may provide for the following —

18 (a) the conditions subject to which information may be
19 disclosed or accessed under this Part;

20 (b) the receipt, use and storage of information disclosed or
21 accessed under this Part;

22 (c) the restriction of access to information disclosed or
23 accessed under this Part;

24 (d) the maximum period for which information disclosed or
25 accessed under this Part may be retained;

26 (e) the circumstances in which information disclosed or
27 accessed under this Part must be destroyed.

28 **100E. Disclosure not subject to other laws**

29 (1) Information may be disclosed or accessed under this Part
30 despite any written law relating to confidentiality or secrecy.

- 1 (2) If information is disclosed or accessed, in good faith, under this
2 Part —
- 3 (a) no civil or criminal liability is incurred in respect of the
4 disclosure or access; and
- 5 (b) the disclosure or access is not to be regarded as a breach
6 of any duty of confidentiality or secrecy imposed by
7 law; and
- 8 (c) the disclosure or access is not to be regarded as a breach
9 of professional ethics or standards or as unprofessional
10 conduct.

11 **100F. Confidentiality**

- 12 (1) A person must not, directly or indirectly, collect, use or disclose
13 information obtained because of the person's office, position,
14 employment or engagement for the purposes of this Act
15 except —
- 16 (a) for the purpose of, or in connection with, performing a
17 function under this Act; or
- 18 (b) as required or allowed under this Act or another written
19 law; or
- 20 (c) for the purposes of any legal proceedings arising under
21 this Act; or
- 22 (d) under an order of a court or other person or body acting
23 judicially; or
- 24 (e) with the written consent of the person to whom the
25 information relates; or
- 26 (f) in prescribed circumstances.
- 27 Penalty for this subsection: [to be drafted].
- 28 (2) A person to whom information is disclosed under section 100B
29 must not, directly or indirectly, collect, use or disclose the
30 information except for the purposes for which the information
31 was disclosed.
- 32 Penalty for this subsection: [to be drafted].

s. 100F

- 1 (3) Subsections (1) and (2) do not extend to the collection, use or
2 disclosure of statistical or other information that could not
3 reasonably be expected to lead to the identification of any
4 person to whom it relates.

Consultation Draft

Part 8 — Miscellaneous

[100. Deleted by No. 78 of 1995 s. 44.]

101. Justices may set aside licence suspension order made under Part 3

(1) A person in respect of whom a licence suspension order has been made under Part 3 (the *applicant*) may apply to the Magistrates Court for an order cancelling the licence suspension order.

(1a) A person cannot apply if the person has previously applied in relation to the licence suspension order or in relation to any other licence suspension order made in respect of the infringement notice to which the licence suspension order relates, and the application was refused.

(2) The application must be made in accordance with the Magistrates Court's rules of court.

(2a) A licence suspension order that is in force at the time when an application is made does not cease to be in force by reason only of the making of the application.

(3) If on an application the applicant satisfies the Court that the applicant received none of the following:

(a) the infringement notice that gave rise to the licence suspension order;

(b) the final demand issued under section 14 in respect of the infringement notice;

(c) the order to pay or elect issued under section 17 in respect of the infringement notice;

(d) the notice of intention to enforce issued under section 18 in respect of the infringement notice;

(e) the notice confirming licence suspension issued under section 19(6),

the Court may make an order cancelling the licence suspension order.

s. 101AA

1 (3a) An order cancelling the licence suspension order is not to be
2 made unless the Commissioner of Police has been given an
3 opportunity to be heard in relation to the application for the
4 order.

5 (4) A licence suspension order that is cancelled by an order made
6 under subsection (3) is to be taken as having been cancelled as
7 at the time the licence suspension order was made.

8 *[Section 101 amended by No. 8 of 1996 s. 6; No. 51 of 2000*
9 *s. 10; No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]*

10 **101AA. Magistrates Court may set aside enforcement warrant**
11 **issued under Part 3**

12 (1) In this section —
13 ***disposed of*** means determined, dismissed or discontinued.

14 (2) A person in respect of whom an enforcement warrant has been
15 issued under Part 3 (the ***applicant***) may apply to the Magistrates
16 Court for an order cancelling the warrant.

17 (3) The application must be made no later than 14 days after the
18 Sheriff gives the applicant the notice under section 68B in
19 respect of the enforcement warrant.

20 (4) A person cannot apply if the person has previously applied in
21 relation to the enforcement warrant or in relation to any other
22 enforcement warrant made in respect of the infringement notice
23 to which the warrant relates, and the application was refused.

24 (5) The application must be made in accordance with the
25 Magistrates Court's rules of court.

26 (6) An enforcement warrant that is in force at the time when an
27 application is made under subsection (2) does not cease to be in
28 force by reason only of the making of the application, but no
29 further action is to be taken under the warrant until the
30 application is disposed of.

- 1 (7) If on an application the applicant satisfies the Court that the
2 applicant received none of the following —
3 (a) the infringement notice that gave rise to the warrant;
4 (b) the final demand issued under section 14 in respect of
5 the infringement notice;
6 (c) the order to pay or elect issued under section 17 in
7 respect of the infringement notice;
8 (d) the notice of intention to enforce issued under section 18
9 in respect of the infringement notice;
10 (e) any notice confirming licence suspension issued under
11 section 19(6) in respect of the infringement notice,

12 the Court may make an order cancelling the enforcement
13 warrant.

- 14 (8) If the Court makes an order cancelling an enforcement warrant
15 Part 3 applies in relation to the infringement notice to which the
16 warrant relates as if the Registrar had never issued the warrant.
17 *[Section 101AA inserted by No. 48 of 2012 s. 36.]*

18 **101A. Justices may set aside licence suspension order made under**
19 **Part 4**

- 20 (1) A person in respect of whom a licence suspension order has
21 been made under Part 4 (the *applicant*) may apply to the
22 Magistrates Court for an order cancelling the licence suspension
23 order.
24 (2) A person cannot apply if the person has previously applied in
25 relation to the licence suspension order or in relation to any
26 other licence suspension order made in respect of the fine to
27 which the licence suspension order relates, and the application
28 was refused.
29 (3) The application must be made in accordance with the
30 Magistrates Court's rules of court.

s. 101B

- 1 (4) A licence suspension order that is in force at the time when an
2 application is made does not cease to be in force by reason only
3 of the making of the application.
- 4 (5) If on an application the applicant satisfies the Court —
- 5 (a) that the applicant did not receive a summons or a notice
6 to attend court in respect of the charge that gave rise to
7 the fine that gave rise to the licence suspension order;
8 and
- 9 (b) that the applicant was not present in court when that fine
10 was imposed; and
- 11 (c) that the applicant received neither of the following:
- 12 (i) the notice of intention to enforce issued under
13 section 42 in respect of that fine;
- 14 (ii) the notice confirming licence suspension issued
15 under section 43(6),
- 16 the Court may make an order cancelling the licence suspension
17 order.
- 18 (6) A licence suspension order that is cancelled by an order made
19 under subsection (5) is to be taken as having been cancelled as
20 at the time the licence suspension order was made.
- 21 *[Section 101A inserted by No. 8 of 1996 s. 7; amended by*
22 *No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]*

23 **101B. Enforcement suspended on appeal etc.**

- 24 (1) For the purposes of this section a person appeals against a fine,
25 or a decision giving rise to a fine, imposed on the person when
26 the person —
- 27 (a) applies under section 71 of the *Criminal Procedure*
28 *Act 2004* and pays any fee required; or
- 29 (b) is granted leave to appeal under Part 2 or 3 of the
30 *Criminal Appeals Act 2004*.

- 1 (2) When the Registrar is notified that a person is appealing against
2 a fine or the decision giving rise to a fine no action is to be
3 taken under this Act except as provided by this section or the
4 regulations.
- 5 (3) If when a person appeals against a fine or the decision giving
6 rise to a fine —
- 7 (a) a time to pay order is in force, the order ceases to have
8 effect;
- 9 (b) a notice of intention to enforce issued under section 42
10 in respect of the fine is current, the notice is to be taken
11 as being cancelled as from that time;
- 12 (c) a licence suspension order made under section 43 is in
13 force in respect of the fine, the order is to be taken as
14 being cancelled as from that time;
- 15 (d) an enforcement warrant issued under section 45 is in
16 force, but —
- 17 (i) no property has been seized under the warrant;
18 and
- 19 (ii) no vehicle has been immobilised under the
20 warrant; and
- 21 (iii) no number plates have been removed from a
22 vehicle under the warrant; and;
- 23 (iv) no money has been deducted under a garnishee
24 order issued under the warrant.
- 25 the warrant is to be taken as being cancelled from that
26 time;
- 27 (da) a work and development permit has been issued under
28 section 46D but not served, the permit is to be taken as
29 being cancelled as from that time;
- 30 (e) an order to attend for work and development has been
31 issued under section 47; ~~47A or 55D~~ but not served, the
32 order is to be taken as being cancelled as from that time;

s. 101B

- 1 (f) an ongoing fine expiation order is in force in relation to
2 the fine, the order continues in force after the appeal is
3 made, subject to section 52J.:
- 4 (4) If when a person appeals against a fine or the decision giving
5 rise to a fine —
- 6 (a) an enforcement warrant issued under section 45 is in
7 force and —
- 8 (i) property has been seized under the warrant; or
9 (ii) a vehicle is or has been immobilised under the
10 warrant; or
11 (iii) number plates have been removed from a vehicle
12 under the warrant; or
- 13 (iv) money has been deducted under a garnishee
14 order issued under the warrant,
15 no further action is to be taken under the warrant or
16 under any garnishee order issued under the warrant;
- 17 (b) a work and development permit issued under
18 section 46D has been served, the permit ceases to have
19 effect;
- 20 ~~[(b) deleted]~~
- 21 (c) an order to attend for work and development issued
22 under section 47, ~~47A or 55D~~ has been served, the order
23 ceases to have effect;
- 24 (d) a work and development order made under section 48 is
25 in force, the order ceases to have effect,
26 until the appeal is disposed of and, if the fine is then still
27 payable, subsection (5) operates.
- 28 (5A) If when a person appeals against a fine or the decision giving
29 rise to a fine —
- 30 (a) subsection (4)(a) applies to an enforcement warrant; and
31 (b) a vehicle is immobilised under the warrant,

the Sheriff must, as soon as practicable, remove the immobilisation of the vehicle (within the meaning of section 63(2)).

(5B) If when a person appeals against a fine or the decision giving rise to a fine —

- (a) subsection (4)(a) applies to an enforcement warrant; and
- (b) number plates have been removed from a vehicle under the warrant; and
- (c) those number plates have not been returned; and
- (d) a vehicle licence cancellation [and disqualification](#) order has not been made under section 95J in respect of the vehicle; and

[\(e\) the person holds the vehicle licence for the vehicle \(whether or not the vehicle licence is suspended\).](#)

~~(e) the vehicle remains licensed in the name of the person,~~

the Sheriff must, as soon as practicable, return the number plates to the person (either in accordance with section 95H(3) or otherwise).

(5C) If when a person appeals against a fine or the decision giving rise to a fine —

- (a) subsection (4)(a) applies to an enforcement warrant; and
- (b) a vehicle licence cancellation [and disqualification](#) order has been made under section 95J in respect of a vehicle under the warrant,

the vehicle licence cancellation [and disqualification](#) order is taken to be cancelled to the extent that the order would disqualify the person from holding or obtaining a vehicle licence in respect of that vehicle, and the Registrar must notify the Director General of that cancellation as soon as practicable.

(5) If when the appeal is disposed of the fine is still payable —

- (a) section 32(1) then operates again, but as if the fine had been imposed on the day the appeal was disposed of;

s. 101C

- 1 (b) further action may then be taken under the enforcement
2 warrant;
- 3 (c) the order to attend for work and development then has
4 effect again, but as if it had been served on the day the
5 appeal was disposed of;
- 6 (ca) the work and development permit then has effect again,
7 but as if it had been given to the offender on the day the
8 appeal was disposed of;
- 9 (d) the work and development order then has effect again.
- 10 (6) In this section —
11 ***disposed of*** means determined, dismissed or discontinued.
12 *[Section 101B inserted by No. 8 of 1996 s. 7; amended by*
13 *No. 59 of 2004 s. 107; No. 84 of 2004 s. 45; No. 3 of 2008 s. 15;*
14 *No. 48 of 2012 s. 37 and 43.]*
- 15 **101C. Proving licence suspension orders and service of documents**
- 16 (1) Evidence —
- 17 (a) that a licence suspension order was made under this Act;
18 (b) of the details of a licence suspension order and of the
19 matter to which it relates;
20 (c) that a licence suspension order had not, at a particular
21 time, been cancelled;
22 (d) that a document issued by the Registrar under this Act
23 has been served on a person in accordance with
24 section 5;
25 (e) of any matter relevant to the service of a document
26 issued by the Registrar under this Act,
27 may be given by tendering a certificate to that effect in the
28 prescribed form signed by the Registrar.
- 29 (2A) Evidence —
- 30 (a) that a vehicle licence suspension and disqualification
31 order was made under section 95G or a vehicle licence

s. 101C

- 1 cancellation [and disqualification](#) order was made under
2 section 95J;
- 3 (b) of the details of a vehicle licence suspension [and](#)
4 [disqualification](#) order made under section 95G, or a
5 vehicle licence cancellation [and disqualification](#) order
6 made under section 95J, and of the matter to which it
7 relates;
- 8 (c) that a vehicle licence suspension [and disqualification](#)
9 order made under section 95G had not, at a particular
10 time, been cancelled;
- 11 (d) that a vehicle licence cancellation [and disqualification](#)
12 order made under section 95J had not, at a particular
13 time, been cancelled to the extent that the order would
14 disqualify a person from holding or obtaining a vehicle
15 licence;
- 16 (e) that a document issued by the Sheriff under this Act has
17 been served on a person in accordance with section 5;
- 18 (f) of any matter relevant to the service of a document
19 issued by the Sheriff under this Act,
- 20 may be given by tendering a certificate to that effect in the
21 prescribed form signed by the Sheriff.
- 22 (2) Unless the contrary is proved, it is to be presumed that anything
23 required to be done as a precondition to taking any action under
24 this Act was done and was done in accordance with the law.
- 25 (3) Unless the contrary is proved, it is to be presumed that a
26 certificate purporting to have been signed by the Registrar was
27 signed by a person who at the time was the Registrar.
- 28 (4) Unless the contrary is proved, it is to be presumed that a
29 certificate purporting to have been signed by the Sheriff was
30 signed by a person who at the time was the Sheriff.
- 31 *[Section 101C inserted by No. 8 of 1996 s. 7; amended by*
32 *No. 48 of 2012 s. 38.]*

s. 101D

101D. Validity of certain orders not affected by non-receipt of documents

(1A) In this section —

licence suspension order includes a vehicle licence suspension [and disqualification](#) order made under section 95G.

(1) The validity of a licence suspension order or vehicle licence cancellation [and disqualification](#) order is not affected by the fact that the person to whom the order relates did not receive any document issued under this Act in respect of the matter to which the order relates.

(2) Subsection (1) does not affect the operation of section 101 or 101A.

(3) A court dealing with a matter in which the issue of whether at a particular time a licence suspension order was in force or not is relevant may, if it thinks fit, adjourn the matter so that a person can make an application under section 101 or 101A.

[Section 101D inserted by No. 8 of 1996 s. 7; amended by No. 48 of 2012 s. 39.]

102. Effect of payment by dishonoured cheque

If payment of the whole or a part of a modified penalty, a fine or any enforcement fees is made by means of a dishonoured payment, then either —

(a) proceedings under this Act in relation to the relevant infringement notice or fine or enforcement fees may be commenced or continued as if the payment had not been made; or

(b) civil proceedings may be taken in relation to the dishonoured payment,

but not both.

[Section 102 amended by No. 3 of 2008 s. 4(4).]

103. Exclusion of rules of natural justice

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this Act by the Registrar, [the CEO \(fines enforcement\)](#) or the CEO (corrections).

[Section 103 amended by No. 65 of 2006 s. 64.]

104. Warrants of commitment

- (1) A warrant of commitment issued under this Act in the prescribed form has effect according to its wording.
- (2) A warrant of commitment issued under this Act is to be directed to all members of the Police Force of Western Australia and to the chief executive officer as defined in the *Prisons Act 1981*.

105. Facsimile warrants

- (1) An enforcement warrant ~~or a warrant of commitment~~ issued under this Act may be faxed to a person for the purposes of having that person execute the warrant.
- (2) The fax copy of such a warrant has the same force and effect as the original.

[Section 105 amended by No. 48 of 2012 s. 43.]

105A. Delegation by CEO (fines enforcement)

- (1) The CEO (fines enforcement) may delegate to any person any power or duty of the CEO (fines enforcement) under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO (fines enforcement).
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

s. 106

1 (4) A person exercising or performing a power or duty that has been
2 delegated to the person under this section is taken to do so in
3 accordance with the terms of the delegation unless the contrary
4 is shown.

5 (5) Nothing in this section limits the ability of the CEO (fines
6 enforcement) to perform a function through an officer or agent.

7 **106. Validity of acts not affected by want of form**

8 The validity of anything done in the performance or purported
9 performance of a function under an enforcement warrant or a
10 warrant of commitment issued under this Act is not affected by
11 any defect or want of form in the order in respect of which the
12 warrant was issued or in the warrant.

13 *[Section 106 amended by No. 48 of 2012 s. 43.]*

14 **107. Protection from liability for wrongdoing**

15 (1) In this section, a reference to the doing of anything includes a
16 reference to the omission to do anything.

17 (2) An action in tort does not lie against a person for anything that
18 the person has, in good faith, done in the performance or
19 purported performance of a function under this Act.

20 (3) The protection given by this section applies even though the
21 thing done in the performance or purported performance of a
22 function under this Act may have been capable of being done
23 whether or not this Act had been enacted.

24 (4) This section does not relieve the Crown of any liability that it
25 might have for the doing of anything by a person against whom
26 this section provides that an action does not lie.

27 **108A. Credit for punishment served in error**

28 (1) This section applies if, because of an error in administering this
29 Act, a person (the *offender*) liable to punishment described in
30 subsection (2) is punished for longer than is provided for by
31 law.

- 1 (2) The punishment referred to in subsection (1) is —
 - 2 (a) imprisonment under a warrant of commitment issued
 - 3 under [this Act](#); ~~or section 53; or~~
 - 4 (b) community corrections activities done under a work and
 - 5 development order made under section 48.
- 6 (3) This section applies whether the error was made, or the person
- 7 was punished, before or after the day on which the *Fines,*
- 8 *Penalties and Infringement Notices Enforcement Amendment*
- 9 *(Compensation) Act 2009* section 4 comes into operation.
- 10 (4) The Registrar may credit the offender with an amount of money
- 11 calculated at the rate that, when the amount is credited, applies
- 12 for working out the time for which an offender is to be
- 13 imprisoned or do community corrections activities.
- 14 (5) The Registrar may —
 - 15 (a) pay the amount credited to the offender; or
 - 16 (b) offset the whole or any part of it against any amount that
 - 17 the offender owes for, or because of, a fine registered
 - 18 under [Part 4](#); ~~section 41(1); or~~
 - 19 (c) in circumstances described in subsection (6), apply the
 - 20 whole or any part of it to payment of the whole or any
 - 21 part of the modified penalty and enforcement fees
 - 22 payable in respect of an infringement notice registered
 - 23 under section 16.
- 24 (6) The Registrar may apply an amount in accordance with
- 25 subsection (5)(c) if —
 - 26 (a) under section 18(1), the Registrar could, in respect of
 - 27 the infringement notice, issue a notice of intention to
 - 28 enforce; or
 - 29 (b) the Registrar has issued a notice of that kind and the
 - 30 alleged offender has not made an election under
 - 31 section 21.

s. 108B

- 1 (7) Whether or not the Registrar gives the offender a credit under
2 this section, the State is not liable in respect of punishment
3 inflicted as a result of the error.

4 *[Section 108A inserted by No. 4 of 2009 s. 4; amended by*
5 *No. 48 of 2012 s. 43.]*

6 **108B. Amounts to be credited to agency special purpose account**

7 An amount equal to the amounts credited to the Consolidated
8 Account under sections 27(2), 55(2) and 96(6) is to be —

- 9 (a) credited to an agency special purpose account that is —
10 (i) established under the *Financial Management*
11 *Act 2006* section 16 for the purposes of the
12 department of the Public Service principally
13 assisting the Minister in the administration of
14 this Act; and
15 (ii) nominated by the Minister in writing for the
16 purposes of this section;

17 and

- 18 (b) charged to the Consolidated Account,

19 and this section appropriates the Consolidated Account
20 accordingly.

21 *[Section 108B inserted by No. 48 of 2012 s. 40.]*

22 **108. Regulations**

- 23 (1) The Governor may make regulations prescribing all matters that
24 are required or permitted by this Act to be prescribed, or are
25 necessary or convenient to be prescribed for giving effect to the
26 purposes of this Act.

- 27 (2) Without limiting subsection (1), regulations may be made —

- 28 (a) as to the action that may be taken under this Act in
29 relation to the enforcement of —
30 (i) an infringement notice that has been the subject
31 of a successful application under section 101;

- 1 (ii) the payment of a fine that has been the subject of
2 a successful application under section 101A;
- 3 (iii) the payment of a fine that is still payable after
4 proceedings of a kind referred to in
5 section 101B(1) in relation to it or the decision
6 giving rise to it have been disposed of and where
7 section 101B(3) has operated;
- 8 (b) for means testing alleged offenders and offenders for the
9 purposes of this Act; ~~applying for time to pay orders;~~
- 10 (c) requiring alleged offenders and offenders to verify
11 information supplied for the purposes of a means test by
12 a statutory declaration or by other means;
- 13 (d) providing for offences against the regulations and
14 prescribing penalties for those offences not exceeding a
15 fine of \$5 000.-
- 16 (3) Without limiting subsection (1), regulations may be made
17 prescribing as enforcement fees in connection with proceedings
18 under Part 3 —
- 19 (a) a fee for issuing a final demand to be imposed on an
20 alleged offender when the final demand is issued;
- 21 (b) a fee for preparing an enforcement certificate to be
22 imposed on an alleged offender when the infringement
23 notice is registered;
- 24 (c) a fee for registering an infringement notice to be paid by
25 the prosecuting authority when registering the notice
26 and to be imposed on the alleged offender when the
27 notice is registered;
- 28 (d) a fee for issuing a notice of intention to enforce to be
29 imposed on an offender either when a licence
30 suspension order is made or when an enforcement
31 warrant is issued, but not twice;
- 32 (ea) a fee for issuing an enforcement warrant to be imposed
33 on an alleged offender when the warrant is issued;

s. 108

- 1 (e) any amount charged by a financial institution in
2 connection with a dishonoured payment received in
3 purported payment.
- 4 (4) Without limiting subsection (1), regulations may be made
5 prescribing as enforcement fees in connection with proceedings
6 under Part 4 —
- 7 (a) a fee for issuing a notice of intention to enforce to be
8 imposed on an offender either when a licence
9 suspension order is made or when an enforcement
10 warrant is issued, but not twice;
- 11 (b) a fee for issuing an enforcement warrant to be imposed
12 on an offender when the warrant is issued;
- 13 (ba) a fee for the service of a summons under Part 4
14 Division 3E Subdivision 3;
- 15 (c) any amount charged by a financial institution in
16 connection with a dishonoured payment received in
17 purported payment.
- 18 (5) Without limiting subsection (1), regulations may be made
19 prescribing as enforcement fees, fees to be charged by the
20 Sheriff and payable by a debtor (as defined in section 63) in
21 connection with the exercise of powers under an enforcement
22 warrant.
- 23 (6) If under subsection (5) it is inappropriate to prescribe a set fee
24 in connection with the performance of a particular function, the
25 regulations may provide for a fee to be calculated according to
26 the cost of performing that function.
- 27 (7) Regulations made under subsection (3) may exempt a specified
28 prosecuting authority from payment of the fee for registering an
29 infringement notice.
- 30 (8) The amount of an enforcement fee prescribed under this section
31 may be more than the amount, or an estimate of the amount,
32 needed to allow recovery of expenditure —

- 1 (a) incurred in connection with the matter in relation to
- 2 which the enforcement fee is imposed; or
- 3 (b) that is relevant to the scheme or system under which the
- 4 enforcement fee is imposed.

- 5 (9) Subsection (8) does not apply to an enforcement fee prescribed
- 6 in accordance with subsection (6).

7 *[Section 108 amended by No. 8 of 1996 s. 8; No. 24 of 2000*
8 *s. 51; No. 51 of 2000 s. 11; No. 3 of 2008 s. 4(5) and (6); No. 48*
9 *of 2012 s. 41 and 43.]*

10 **109. Imposition of tax**

11 To the extent that any fee that the regulations prescribe under
12 section 108 is a tax, the fee is imposed.

13 *[Section 109 inserted by No. 28 of 2012 s. 4.]*

14 **109A. Review of amendments made by Fines, Penalties and** 15 **Infringement Notices Enforcement Amendment Act 2019** 16 **Part [to be drafted]**

17 (1) The Minister must review the operation and effectiveness of the
18 amendments made to this Act by the Fines, Penalties and
19 Infringement Notices Enforcement Amendment Act 2019 Part [to
20 be drafted - the Part dealing with the amendments other than
21 WDPs], and prepare a report based on the review, as soon as
22 practicable after the 3rd anniversary of the day on which the
23 Fines, Penalties and Infringement Notices Enforcement
24 Amendment Act 2019 section [to be drafted - section of
25 amending Bill that inserts this section] comes into operation.

26 (2) The Minister must cause the report to be laid before each House
27 of Parliament as soon as practicable after it is prepared, but not
28 later than 12 months after the 3rd anniversary.

s. 109B

109B. Review of amendments made by *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019* Part [to be drafted]

(1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019* Part [to be drafted - the Part dealing with the amendments for WDPs], and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019* section [to be drafted - section of amending Bill that inserts this section] comes into operation.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Part 9 — Transitional and validation provisions

[Heading inserted by No. 48 of 2012 s. 42.]

Division 1 — Provisions for *Fines, Penalties and Infringement*
Notices Enforcement Amendment Act 2012

110. Transitional provisions as to warrants of execution

- (1) A warrant of execution in force immediately before the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* section 43 comes into operation is, on and after the coming into operation of that section and until it ceases to be in force under this Act, taken to be an enforcement warrant for the purposes of this Act.

- (2) Despite subsection (1), a warrant of execution referred to in that subsection does not authorise any action that can be taken to enforce the payment of the fine under Part 7 Division 6A.

[Section 110 inserted by No. 48 of 2012 s. 42.]

111. Transitional provisions as to notices of intention to suspend licences issued under s. 18

- (1) In this section —
commencement means the coming into operation of the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* section 11¹.

- (2) A notice of intention to suspend licences issued before commencement is, on and after commencement, taken for the purposes of this Act —

- (a) to be a notice of intention to enforce given in accordance with section 18 as in force after commencement; and
(b) to have been issued on the day when the notice of intention to suspend licences was issued.

[Section 111 inserted by No. 48 of 2012 s. 42.]

1 **112. Transitional provisions as to notices of intention to suspend**
2 **licences issued under s. 42**

3 (1) In this section —

4 **commencement** means the coming into operation of the *Fines,*
5 *Penalties and Infringement Notices Enforcement Amendment*
6 *Act 2012* section 20¹.

7 (2) A notice of intention to suspend licences issued under
8 section 42 before commencement is, on and after
9 commencement, taken for the purposes of this Act —

10 (a) to be a notice of intention to enforce given in accordance
11 with section 42 as in force after commencement; and

12 (b) to have been issued on the day when the notice of
13 intention to suspend licences was issued.

14 *[Section 112 inserted by No. 48 of 2012 s. 42.]*

15 **113. Transitional provisions as to infringement notices**

16 (1) In this section —

17 **commencement** means the coming into operation of the *Fines,*
18 *Penalties and Infringement Notices Enforcement Amendment*
19 *Act 2012* section 14¹;

20 **transitional period** means the period of 12 months beginning on
21 commencement.

22 (2) This section applies despite any other provision of a written law.

23 (3) An infringement notice issued under a written law —

24 (a) before commencement; or

25 (b) during the transitional period,

26 is not invalid merely because the infringement notice does not
27 inform the alleged offender of action that may be taken under
28 this Act only because of the amendments to this Act made by
29 the *Fines, Penalties and Infringement Notices Enforcement*
30 *Amendment Act 2012*.

[Section 113 inserted by No. 48 of 2012 s. 42.]

114. Validation

Regulations made, or purporting to have been made, under section 108 before the commencement of this section are, and are taken to have always been, as effective as they would have been if section 108(8) had been enacted and commenced before those regulations were made.

Division 2 — Provisions for *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019*

115. Terms used

In this Division —

commencement day means the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019* section [to be drafted] comes into operation;

former Act means this Act as in force immediately before commencement day;

period of concurrent imprisonment, in relation to a warrant of commitment issued under this Act, means any period or term of imprisonment the offender is serving concurrently with imprisonment under the warrant of commitment (other than a period of imprisonment under another warrant of commitment issued under this Act).

116. Application of amendments

(1) Subject to this Division, the amendments made by the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2019* Part [to be drafted - amendments other than WDPs] apply to and in relation to —

(a) an infringement notice whether it was issued or registered with the Registry for enforcement before, on or after commencement day; and

- 1 (b) a fine whether it was imposed or registered with the
2 Registry for enforcement before, on or after
3 commencement day.
- 4 (2) Subject to this Division, the amendments made by the *Fines,*
5 *Penalties and Infringement Notices Enforcement Amendment*
6 *Act 2019 Part [to be drafted - WDPs]* apply to and in relation to
7 a fine whether it was imposed or registered with the Registry for
8 enforcement before, on or after the day on which that Part
9 comes into operation.
- 10 **117. Offender not yet arrested under warrant of commitment**
11 **issued before commencement day**
- 12 (1) This section applies if —
- 13 (a) a warrant of commitment has been issued under the
14 former Act before commencement day in relation to an
15 offender and a fine; and
- 16 (b) immediately before commencement day, the offender
17 has not been arrested under the warrant.
- 18 (2) The warrant of commitment is cancelled on commencement
19 day.
- 20 (3) The cancellation of a warrant of commitment in relation to an
21 offender and a fine under this section does not prevent the
22 Registrar from —
- 23 (a) applying under section 52M for a warrant of
24 commitment inquiry to be held in relation to the
25 offender and the fine; or
- 26 (b) taking any other enforcement action under Part 4 in
27 relation to the offender and the fine.

118. Offender in custody under warrant of commitment issued before commencement day

(1) This section applies if —

(a) 1 or more warrants of commitment (the *relevant warrants*) have been issued under the former Act before commencement day in relation to an offender and 1 or more fines (the *relevant fines*); and

(b) immediately before commencement day, the offender is imprisoned under the relevant warrants (whether or not the offender is serving 1 or more periods of concurrent imprisonment).

(2) If immediately before commencement day the offender is not serving any period of concurrent imprisonment —

(a) the relevant warrants are cancelled on commencement day; and

(b) the offender is to be released from imprisonment on commencement day; and

(c) the liability of the offender to pay the amount owed in respect of each of the relevant fines is taken to be wholly discharged under section 53 on commencement day, even though only a part of the period for which the offender was to be imprisoned under each of the relevant warrants has been served.

(3) If immediately before commencement day the offender is serving 1 or more periods of concurrent imprisonment —

(a) the relevant warrants are cancelled on commencement day; and

(b) the liability of the offender to pay the amount owed in respect of each of the relevant fines is taken to be wholly discharged under section 53 on commencement day, even though only a part of the period for which the offender was to be imprisoned under each of the relevant warrants has been served; and

- 1 (c) the offender's liability to serve the periods of concurrent
2 imprisonment is not affected.

3 **119. Time to pay orders**

- 4 (1) A time to pay order made before commencement day under
5 section 27A of the former Act is, on and from commencement
6 day, taken to be a time to pay order made under section 21C.

- 7 (2) If an alleged offender has made a request under section 27A of
8 the former Act before commencement day but the Registrar has
9 not made a decision on the request immediately before
10 commencement day, the request is, on and from commencement
11 day, taken to be both an application for a time to pay order
12 under section 21B and a request under section 20A.

- 13 (3) A time to pay order made before commencement day under
14 section 55A of the former Act is, on and from commencement
15 day, taken to be a time to pay order made under section 33.

- 16 (4) If an offender has made a request under section 55A of the
17 former Act before commencement day but the Registrar has not
18 made a decision on the request immediately before
19 commencement day, the request is, on and from commencement
20 day, taken to be both an application for a time to pay order
21 under section 33 and a request under section 44A.

22 **120. Enforcement warrant issued before commencement day**
23 **authorises issue of garnishee order**

- 24 (1) This section applies if an enforcement warrant issued under
25 Part 3 or 4 is in force immediately before commencement day.

- 26 (2) The Sheriff may issue a garnishee order in relation to the debtor
27 under the warrant under section 95O or 95V even though —

- 28 (a) Part 7 Division 6B was not in force when the warrant
29 was issued; and

- 30 (b) the terms of the warrant do not refer to garnishment.

- 1 (3) At least 28 days before issuing a garnishee order as referred to
 2 in subsection (2), the Sheriff must serve on the debtor a notice
 3 in the approved form explaining that a garnishee order can be
 4 issued under the enforcement warrant.

5 **121. Instruments issued under provisions of former Act**

6 An instrument of a kind specified in column 1 of an item of the
 7 Table that was made or issued before commencement day is, on
 8 and from commencement day, taken to be an instrument of the
 9 kind specified in column 2 of that item.

10

Table

<u>Item</u>	<u>Column 1</u>	<u>Column 2</u>
1.	<u>Licence suspension order</u> <u>made under —</u> (a) <u>section 27C of the</u> <u>former Act; or</u> (b) <u>section 68A of the</u> <u>former Act in</u> <u>relation to an</u> <u>enforcement</u> <u>warrant issued</u> <u>under Part 3</u>	<u>Licence suspension order</u> <u>made under section 19</u>
2.	<u>Licence suspension order</u> <u>made under —</u> (a) <u>section 48A, 53A,</u> <u>55C of the former</u> <u>Act; or</u> (b) <u>section 68A of the</u> <u>former Act in</u> <u>relation to an</u> <u>enforcement</u> <u>warrant issued</u>	<u>Licence suspension order</u> <u>made under section 43</u>

**Fines, Penalties and Infringement Notices Enforcement Amendment Bill
2019**

Part 9 Transitional and validation provisions

Division 2 Provisions for

s. 122

<u>Item</u>	<u>Column 1</u>	<u>Column 2</u>
	<u>under Part 4</u>	
<u>3.</u>	<u>Order to attend for work and development issued under section 47A or 55D of the former Act</u>	<u>Order to attend for work and development issued under section 47(1)</u>
<u>4.</u>	<u>Vehicle licence suspension order issued under section 95G of the former Act</u>	<u>Vehicle licence suspension and disqualification order issued under section 95G</u>
<u>5.</u>	<u>Vehicle licence cancellation order issued under section 95J of the former Act</u>	<u>Vehicle licence cancellation and disqualification order issued under section 95J</u>

122. Arrangements for access to information under road laws

Any administrative arrangements made between the Registrar and the Director General for the purposes of section 10 of the former Act are, on and from commencement day, taken to be made for the purposes of section 100C.

Part 3 — Other Acts amended

Division 1 — *Criminal Investigation Act 2006* amended

4. Act amended

This Division amends the *Criminal Investigation Act 2006*.

5. Section 125 amended

In section 125(2)(a) delete “relevant court;” or and insert:

relevant court or, in the case of an arrest warrant issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52P(1)(b), released under section 52ZA of that Act;

Division 2 — *Cross-Border Justice Act 2008* amended

6. Act amended

This Division amends the *Cross-border Justice Act 2008*.

7. Section 7 amended

In section 7(1) in the definition of *non-custodial order* paragraph (a)(iii) delete “section 47 or 47A; or” and insert:

section 47; or

8. Section 120 amended

In section 120 delete the definition of *fines enforcement agency* and insert:

fines enforcement agency, of another participating jurisdiction, means —

- 1 (a) if the jurisdiction is South Australia — the
2 Chief Recovery Officer referred to in the *Fines*
3 *Enforcement and Debt Recovery Act 2017*
4 (South Australia) section 4; or
5 (b) if the jurisdiction is the Northern Territory —
6 the Fines Recovery Unit as defined in the *Fines*
7 *and Penalties (Recovery) Act 2001* (Northern
8 Territory) section 5;
9

10 **9. Section 122 amended**

11 Delete section 122(a) and insert:
12

- 13 (a) cancel any order, permit or unexecuted warrant
14 in force in relation to the fine under the Fines
15 Enforcement Act Part 4; and
16

17 **10. Section 127 amended**

18 In section 127 delete “issue a warrant of commitment under the
19 Fines Enforcement Act section 53(1)” and insert:
20

21 apply for a warrant of commitment inquiry under the Fines
22 Enforcement Act section 52M
23

24 **11. Various references to Northern Territory legislation**
25 **amended**

26 Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 8(3)(a)	<i>Cross-Border Justice Act</i>	<i>Cross-Border Justice Act 2009</i>
s. 97(a)	<i>Mental Health and Related Services Act</i>	<i>Mental Health and Related Services Act 1998</i>
s. 97(b)	<i>Sentencing Act</i>	<i>Sentencing Act 1995</i>
s. 119(2)	<i>Youth Justice Act</i>	<i>Youth Justice Act 2005</i>

Division 3 — Electricity Corporations Act 2005 amended

12. Act amended

This Division amends the *Electricity Corporations Act 2005*.

13. Section 40 deleted

Delete section 40.

14. Section 72 inserted

At the end of Part 3 Division 1 Subdivision 8 insert:

72. Disclosure of information in compliance with request under Fines, Penalties and Infringement Notices Enforcement Act 1994

(1) A corporation given a request to disclose information under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 100A must disclose information in compliance with the request.

1 (2) The information disclosed in compliance with a request
2 referred to in subsection (1) may include the names and
3 addresses of customers of the corporation but must not
4 include photographs or signatures of those customers.

5 (3) The disclosure of information is to be free of charge.
6

7 **Division 4 — *Road Traffic (Administration) Act 2008* amended**

8 **15. Act amended**

9 This Division amends the *Road Traffic (Administration) Act*
10 *2008*.

11 **16. Section 13C replaced**

12 Delete section 13C and insert:
13

14 **13C. Disclosure of information in compliance with**
15 **request under *Fines, Penalties and Infringement***
16 ***Notices Enforcement Act 1994***

17 (1) If the CEO is given a request to disclose information
18 under the *Fines, Penalties and Infringement Notices*
19 *Enforcement Act 1994* section 100A, the CEO must
20 disclose information in compliance with the request.

21 (2) The information disclosed in compliance with a request
22 referred to in subsection (1) may include the
23 following —

- 24 (a) driver's licence information;
25 (b) permit information;
26 (c) vehicle licence information.

27 (3) The disclosure of information under subsection (1) is to
28 be free of charge.
29

1 **Division 5 — *Road Traffic (Vehicles) Act 2012* amended**

2 **17. Act amended**

3 This Division amends the *Road Traffic (Vehicles) Act 2012*.

4 **18. Section 5 amended**

5 In section 5(3):

6 (a) in paragraph (i) delete “suspension order” and insert:

7

8 suspension and disqualification order

9

10 (b) in paragraph (j) delete “cancellation order” and insert:

11

12 cancellation and disqualification order

13

14 **19. Section 16 amended**

15 (1) In section 16(2A) delete “suspension order” and insert:

16

17 suspension and disqualification order

18

19 (2) In section 16(4) delete “cancellation order” and insert:

20

21 cancellation and disqualification order

22

23 **Division 6 — *Sentence Administration Act 2003* amended**

24 **20. Act amended**

25 This Division amends the *Sentence Administration Act 2003*.

21. Section 78 amended

- (1) In section 78(1) in the definition of *minimum hours requirement* delete paragraph (c) and insert:

(c) in relation to a WDO — means the requirement in the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 50(1)(b) to do the number of hours of community corrections activities specified in the WDO (including the WDO as amended under section 50(2A) of that Act);

- (2) In section 78(2)(d) delete “fit, but they must not total more than 12 weeks.” and insert:

fit.

Division 7 — *Sentencing Act 1995* amended

22. Act amended

This Division amends the *Sentencing Act 1995*.

23. Section 57A amended

- (1) Delete section 57A(5) and insert:

(5) The court must not make a fine enforcement (WDO) order unless the offender is personally present in court.

(5A) In considering whether to make a fine enforcement (WDO) order, the court must take into account the following matters —

- 1 (i) whether the offender has the means to pay the
2 fine, either within 28 days or pursuant to a time
3 to pay order;
- 4 (ii) whether the offender has any personal property
5 that could be seized under an enforcement
6 warrant issued under the *Fines, Penalties and*
7 *Infringement Notices Enforcement Act 1994* to
8 satisfy, wholly or partly, the fine;
- 9 (iii) the likelihood of the offender having the means
10 to pay referred to in subparagraph (i), or personal
11 property referred to in subparagraph (ii), within a
12 reasonable time after the fine is imposed;
- 13 (iv) whether the offender is mentally and physically
14 capable of performing the requirements of a
15 WDO.
- 16 (5B) The court may satisfy itself of any of the matters
17 referred to in subsection (5A) by evidence on oath from
18 the offender.
19

- 20 (2) Delete section 57A(8) and insert:
21

22 The *Fines, Penalties and Infringement Notices Enforcement Act*
23 *1994* applies to and in respect of a WDO served pursuant to a
24 fine enforcement (WDO) order as if it were a WDO made under
25 section 48 of that Act.
26

27 **24. Section 57B amended**

- 28 (1) In section 57B(4) delete “section 57A(5)(b) and (c),” and insert:
29
30 section 57A(5A),
31

1 **25. Section 136G amended**

2 (1) In section 136G delete the definition of *CEO* and insert:

3

4 *CEO* means —

5 (a) in relation to a CRO — the CEO of the
6 department of the Public Service principally
7 assisting the Minister in the administration of
8 Part 7; or

9 (b) in relation to CSI or a CBO, ISO or PSO — the
10 CEO (corrections);

11

12 (2) In section 136G in the definition of *conditional order* delete
13 paragraph (b) and insert:

14

15 (aa) a CBO;

16 (b) CSI;

17

18