

Queensland



**OFFENCE NOTICES  
LEGISLATION  
AMENDMENT ACT 1992**

**Act No. 23 of 1992**

Queensland



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AMENDMENT ACT 1992**

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Queensland



**Offence Notices Legislation Amendment Act  
1992**

**Act No. 23 of 1992**

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*An Act to amend the *Justices Act 1886* and the *Traffic Act 1949**

*[Assented to 1 June 1992]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Offence Notices Legislation Amendment Act 1992*.

### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF JUSTICES ACT 1886**

### **Amended Act**

3. The *Justices Act 1886* is amended as set out in this Part.

### **Insertion of new Part**

4. After section 98A—

*insert—*

### **‘PART 4A—ENFORCEMENT OF INFRINGEMENT NOTICES BY REGISTRATION**

#### **‘Application of Part**

‘98B. Sections 98C to 98M apply to an infringement notice under an Act or statutory rule if the provision providing for the infringement notice is prescribed for the purposes of this Part.

**‘Interpretation****‘98C.(1)** In this Part—

**“alleged offence”**, in relation to an infringement notice, means the offence for which the infringement notice was issued;

**“alleged offender”**, in relation to an infringement notice, means the person to whom the infringement notice was issued;

**“enforcement order”** means an order under section 98F;

**“infringement notice”** means a notice under an Act or statutory rule offering the person to whom it is issued an opportunity, by paying an amount specified in the notice, to have an offence alleged in the notice dealt with out of court;

**“infringement penalty”**, in relation to an infringement notice, means the amount specified in the infringement notice as payable in relation to the offence for which the infringement notice was issued;

**“prescribed”** means prescribed by regulation under section 98N;

**“principal enactment”**, in relation to an infringement notice, means the Act or statutory rule under which the infringement notice was issued;

**“reminder notice”** means a notice served under section 98D.

**‘(2)** For the purposes of this Part, an infringement notice that under an Act or statutory rule is to be given or served is taken to be an infringement notice that is to be issued.

**‘Reminder notices****‘98D.(1)** If—

- (a) an infringement notice has been issued; and
- (b) the infringement notice has not been withdrawn under the principal enactment; and
- (c) the time specified in the infringement notice for payment of the infringement penalty has expired; and
- (d) the infringement penalty has not been paid;

a person prescribed for the purposes of this subsection in relation to the

principal enactment may serve a reminder notice on the alleged offender.

**‘(2)** The reminder notice must—

(a) identify—

(i) the infringement notice; and

(ii) the alleged offence;

to which it relates; and

(b) state that—

(i) if the alleged offender wishes to have a complaint of the alleged offence heard and determined by a court, written notice requiring the complaint to be heard and determined by a court must, within the specified time, be given as specified in the reminder notice; and

(ii) if the alleged offender wishes to not have a complaint of the alleged offence heard and determined by a court, the amount specified in the reminder notice to be the amount owing in relation to the alleged offence should be paid within the specified time to a specified person; and

(iii) if action is not taken under paragraph (i) or (ii), payment of the amount specified in the reminder notice and further costs will be enforceable under this Part; and

(iv) include any other prescribed information.

**‘(3)** In a reminder notice—

(a) the amount specified to be the amount owing in relation to the alleged offence must be the total of the infringement penalty that is unpaid and the prescribed amount by way of costs connected with serving the notice; and

(b) the time specified in the notice as the time within which the amount should be paid must be not less than 28 days after the day on which the notice is served on the alleged offender.

**‘Enforcement procedure****‘98E.(1) If—**

- (a) a reminder notice has been served on an alleged offender; and
- (b) the amount specified in the notice to be the amount owing in relation to the alleged offence has not been paid within the time specified in the notice; and
- (c) written notice requiring a complaint of the alleged offence to be heard and determined by a court has not been given;

a person prescribed for the purposes of this section in relation to the principal enactment may, on payment of the prescribed lodging fee, notify the clerk of the court.

**‘(2) The notification must—**

- (a) identify—
  - (i) the alleged offender; and
  - (ii) the alleged offence; and
- (b) state that—
  - (i) an infringement notice was, on a specified day, issued to the alleged offender under the principal enactment in relation to the alleged offence; and
  - (ii) a reminder notice was, on a specified day, served on the alleged offender under this Part in relation to the alleged offence; and
  - (iii) the day on which the reminder notice was served on the alleged offender under this Part was after the time for payment of the penalty specified in the infringement notice had expired; and
  - (iv) at the time of the notification—
    - (A) the time specified in the reminder notice as the time within which the amount owing in relation to the alleged offence should be paid had expired; and



- (B) the amount specified in the reminder notice to be the amount owing in relation to the alleged offence has not been paid; and
- (C) written notice that the alleged offender required a complaint of the alleged offence to be heard and determined by a court has not been given to a person specified for that purpose in the reminder notice; and
- (D) a proceeding has not been started (other than under this Part) against the alleged offender in relation to the alleged offence; and
- (E) a proceeding under this Part against the alleged offender in relation to the alleged offence has not been withdrawn under section 98M.

‘(3) If a limit is imposed by law on the time within which a court proceeding for an alleged offence may be started, a notification must not be given under subsection (1) in relation to the alleged offence after the time.

‘(4) On the giving of the notification—

- (a) the amount owing in relation to the alleged offence is the total of—
  - (i) the amount specified in the reminder notice that is unpaid; and
  - (ii) the amount of the lodging fee; and
  - (iii) the prescribed amount by way of costs, other than the lodging fee, that are connected with preparation and giving of the notification; and
- (b) the amount mentioned in paragraph (a) may only be paid to the clerk of the court or the clerk’s agent.

‘(5) The clerk of the court must cause the notification to be registered in a register kept by the clerk of the court for the purposes of this Part.

‘(6) After the giving of the notification, a proceeding may not be started in a court otherwise than under this Part against the alleged offender in relation to the alleged offence.

‘(7) A person can only be prescribed for the purposes of this section in relation to a principal enactment if the person is authorised to make complaints of offences under the principal enactment.

**‘Enforcement orders**

‘98F.(1) On registering a notification given under section 98E, the clerk of the court must make an order that—

- (a) the alleged offender pay to the clerk of the court the amount owing in relation to the alleged offence within a time specified in the order; and
- (b) in default of payment—
  - (i) if the alleged offender is an individual—the alleged offender be imprisoned for—
    - (A) the prescribed period; or
    - (B) if there is not a prescribed period—the number of days determined in accordance with the following formula (rounded upwards to the nearest number)—

amount then remaining unpaid

number of days = \_\_\_\_\_

amount of 1 penalty unit ; or

- (ii) if the alleged offender is not an individual—the amount is to be levied under a warrant to seize property of the alleged offender.

‘(2) The order is taken to be an order of the court.

‘(3) For the purposes of subsection (1)(a), the time specified in the order must be not less than 7 days after the alleged offender is served with notice of the order.

‘(4) For the purposes of subsection (1)(b)(i)(A), the prescribed period must not exceed the maximum period of imprisonment a court could impose on a person on conviction for the alleged offence in default of payment of a penalty equal to the amount owing in relation to the alleged offence.

**‘Notice of enforcement order**

**‘98G.(1)** On the making of an enforcement order, the clerk of the court must, by certified mail, notify the alleged offender.

**‘(2)** The notice must—

(a) identify—

- (i) the infringement notice to which the order relates; and
- (ii) the alleged offence in relation to which the infringement notice was issued; and

(b) inform the alleged offender that—

- (i) an order has been made under section 98F for the payment by the alleged offender of an amount in relation to the infringement notice; and

(ii) within the time specified in the notice—

(A) the amount must be paid as specified in the notice; or

(B) if the alleged offender wishes to have a complaint of the alleged offence heard and determined by a court, an election to have the alleged offence heard and determined by a court must be made under section 98L; and

(iii) if payment is not made and an election is not made, a warrant will be issued under this Part in relation to the infringement notice.

**‘Applications for time to pay**

**‘98H.(1)** A person against whom an enforcement order is made may apply to the clerk of the court who made the order for—

(a) an extension of the time within which payment under the enforcement order may be made; or

(b) permission for payment to be made by instalments.

**‘(2)** An application may not be made after the issue of a warrant under

section 98I in relation to the enforcement order.

‘(3) The clerk of the court may order that the enforcement order be varied by—

- (a) extending the time within which payment is required by the enforcement order; or
- (b) permitting payment to be made by specified instalments.

‘(4) The clerk of the court must notify the alleged offender of the variation.

### **‘Issue of warrants**

‘98L(1) If—

- (a) the amount specified in an enforcement order has not been paid as required by the order; and
- (b) an election has not been made under section 98L;

the clerk of the court may—

- (c) if the alleged offender is an individual—issue a warrant of commitment against the alleged offender; or
- (d) if the alleged offender is not an individual—issue a warrant of execution against the property of the alleged offender.

‘(2) The warrant—

- (a) is to be directed to all police officers; and
- (b) takes effect as a warrant issued by a justice.

‘(3) On the issue of the warrant, the amount owing in relation to the alleged offence is—

- (a) the amount that was outstanding before the warrant was issued; and
- (b) the amount of the execution fee prescribed.

**‘Effect of proceedings under this Part**

**‘98J.(1)** If, in relation to an infringement notice—

- (a) the amount owing in relation to the alleged offence is paid in full under this Part; or
- (b) a warrant is executed under this Part in relation to the alleged offence;

the proceedings that may be brought against, and the penalties that may be imposed on, the alleged offender in relation to the alleged offence are limited to proceedings and penalties that could be brought or imposed if the alleged offender had already been convicted of, and punished for, the alleged offence.

**‘(2)** The making of an enforcement order does not constitute a conviction in relation to an alleged offence.

**‘(3)** Payment of an amount under this Part in relation to an alleged offence is not an admission for the purposes of any proceeding, whether civil or criminal, arising out of the event for which the infringement notice was issued.

**‘(4)** Subsection (3) does not apply so far as the principal enactment provides that payment of the infringement penalty under the principal enactment is to be regarded as an admission.

**‘(5)** Section 177 applies to an enforcement order in the same way as it applies to a conviction.

**‘Fine option orders**

**‘98K.** Division 3 of Part 5 of the *Corrective Services Act 1988* applies to an enforcement order made under this Part as if—

- (a) the amount specified in the infringement notice were a fine; and
- (b) the enforcement order were an original order made by a Magistrates Court directing that the alleged offender be imprisoned for a period in default of payment of the amount required to be paid by the order within the time fixed by the order.

**‘Election for court hearing**

**‘98L.(1)** Despite any other provision of this Part, after an enforcement order is made in relation to an alleged offence, but before—

- (a) the amount outstanding under this Part is paid; or
- (b) a warrant under this Part is issued;

the alleged offender may elect, by writing given to the clerk of the court who made the order, to have a complaint of the alleged offence heard and determined by a court.

**‘(2)** On the making of an election—

- (a) any order issued under this Part in relation to the alleged offence ceases to have effect; and
- (b) the clerk of the court must notify—
  - (i) the alleged offender; and
  - (ii) the person who gave the relevant notice under section 98E(1);

that this Part no longer applies to the alleged offence.

**‘(3)** On the giving of the notices under subsection (2)(b), the provisions of this Act (other than this Part) apply in relation to the alleged offence.

**‘Withdrawal from acting under this Part**

**‘98M.(1)** If—

- (a) a reminder notice has been served in relation to an infringement notice; and
- (b) a warrant under this Part has not been issued in relation to the alleged offence; and
- (c) the matter has not been dealt with by a court;

a person, prescribed for the purposes of this subsection in relation to the principal enactment, may (whether or not payment has been made of the amount owing in relation to the alleged offence) withdraw from acting under this Part in relation to the alleged offence.

‘(2) The withdrawal must be effected by—

- (a) serving on the alleged offender a notice in a form approved by the chief executive of the department; and
- (b) refunding any amount paid under this Part by the alleged offender in relation to the alleged offence; and
- (c) if a notice has been given under section 98E in relation to the alleged offence—giving to the clerk of the court a copy of the notice.

‘(3) After the action required by subsection (2) has been taken—

- (a) any notification or enforcement order under this Part in relation to the alleged offence ceases to have effect; and
- (b) if a court proceeding has started under section 98L(3)—the proceeding is, by the operation of this section, discontinued.

### ‘Regulations

‘98N. The Governor in Council may make regulations for the purposes of this Part.’.

## **PART 3—AMENDMENT OF TRAFFIC ACT 1949**

### **Amended Act**

5. The *Traffic Act 1949* is amended as set out in this Part.

### **Insertion of new s.44V**

6. After section 44U—

*insert—*

### **‘Effect of action under Part 4A of Justices Act**

‘44V. A reminder notice must not be served on an alleged offender

under section 98D of the *Justices Act 1886* in relation to an alleged offence if, within 21 days after service of a notice under section 44R, the alleged offender supplies a statutory declaration mentioned in section 44Q(2)(c) in relation to the alleged offence.’