

STATE PENALTIES ENFORCEMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

This Bill will establish the State Penalties Enforcement Registry (to be known by the acronym SPER) which will replace the current SETONS regime. SPER will be responsible for the collection and civil enforcement of most penalty amounts due and owing to the State, including:

- (a) court ordered fines;
- (b) infringement notice penalties and fees;
- (c) compensation and restitution; and
- (d) amounts forfeited under undertakings and recognisances.

SPER will be a whole of government fine enforcement and collection system.

SPER will have the following specific functions imposed by clause 8, to be performed in accordance with a specified charter:

- (a) collecting amounts payable to SPER under the Act;
- (b) administering the making of enforcement orders;
- (c) taking enforcement action under the Act.

The SPER charter in clause 9 includes the following:

- (a) maximising the collection, for victims of offences, of amounts payable under the *Penalties and Sentences Act 1992* by way of restitution or compensation;
- (b) maximising the amount of fines and other money penalties paid before enforcement action is taken;
- (c) promoting a philosophy that community service work is for the needy in the community and not an alternative to payment of a fine for those who can afford to pay the fine;

- (d) reducing the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms;
- (e) promoting public education about the obligations of offenders and the consequences of not satisfying the obligations.

Reasons for the objectives and how they will be achieved

The enforcement of fines has become a growing problem in recent years. Data from the Police POLARIS system shows that as at 3 March 1999, c.\$62.6M in fines and other penalties remain uncollected since 1 July 1995.

Various initiatives have been implemented over time to address the problem. In 1992, the SETONS Court was established by part 4A of the *Justices Act 1886* to allow the enforcement process to be applied on an administrative basis, rather than requiring, as was previously the case, the issue of a complaint and summons in all cases where a fine, imposed by an infringement notice (or "ticket") remained unpaid after the initial period allowed for payment had expired. Despite measures such as these, the problem has continued to escalate, thus calling for more effective solutions to be developed.

Fine option orders, which enable offenders to undertake community service in lieu of the payment of a fine, were devised and extended in the last 10 years. One of the purposes was to deal with special problems faced by impecunious offenders.

One of the greatest impediments to achieving better results under the current SETONS regime is the fact that fine option orders are available for election at any step in the enforcement process and many reminder notices specifically offering community service are required to be sent at various stages by the legislation. After a person has avoided payment for a matter of months or years part 4A of the *Justices Act 1886* still requires the police and SETONS to offer community service when the person is arrested under a warrant for the non-payment.

Consequently, the number of fine option orders granted has grown exponentially in each year, according to Queensland Corrective Services Commission Annual Reports, from 1898 orders in 1991, to 4496 orders in 1994, to 18999 orders in 1998. However, according to Queensland Corrections, there has been a 49% increase in the last 12 months taking the total as at 30 January 1999 to 30649 fine option orders. This last figure

represents a total of approximately 12000 offenders. The completion rate, however, remains low at about 65%.

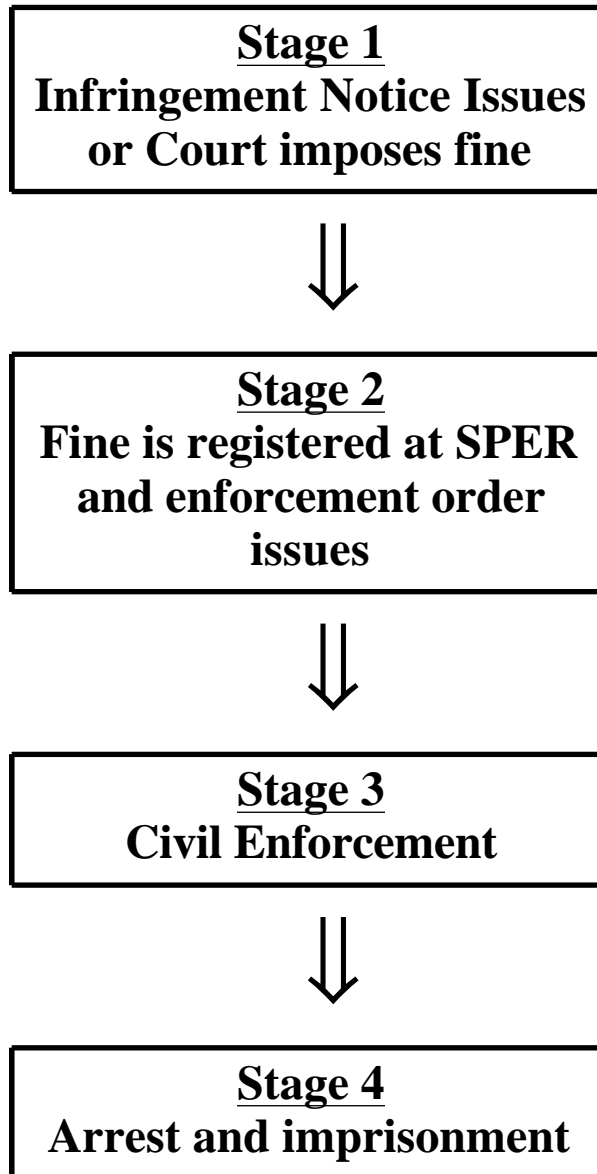
The Bill, when passed, will put in place a more efficient model. The model is designed to achieve three major efficiencies:

- Reduce the cost of fine enforcement,
- Increase the rate of payment prior to enforcement action; and
- Minimise the number of fine defaulters being imprisoned.

To achieve the objectives and efficiencies the SPER model will include the following features:

- Establishment of a call centre (which will not require specific legislation but will be staffed by SPER officers employed under clause 10).
- Fine option orders only for people who genuinely cannot afford to pay.
- Garnishee or attachment of wages.
- Attachment of debts owed to the offender.
- Warrants to seize and sell real and personal property. The use of these warrants is intended be the exception rather than the rule.
- Imposing a charge on property, which may be coupled with a restraining order and registration of interest.
- Registration of interest on any register of title or dealings (for example the Registrar of Titles or the Motor Vehicles Securities Registry), attracting interest as set under the *Supreme Court Act 1995*. (Currently set at 10% p.a.).
- Driver licence suspension for motor vehicle related offences but not as an automatic, universal step for all fine defaulters.
- Warrants for arrest and imprisonment, but only as a last resort.
- The new enforcement process, the responsibility of the new registry, will be run along commercial lines.
- The Act will allow more than one civil enforcement tool to be used by the SPER registrar at any one time.

A flow chart of the State Penalties Enforcement Registry model:



Explanation of the flow chart**Stage 1: Infringement Notice is issued or court imposes fine**

For infringement notices, the offender is given 28 days to make a choice between 3 options:

- (1) Pay in full within 28 days.
- (2) Apply for an extension of time or to pay by instalments (at minimum rates) over an extended period. The first instalment is paid to the issuing authority and the case is passed to SPER to monitor.
- (3) Elect to have the matter heard and decided in a magistrates court.

For court-imposed fines, the person will have whatever time to pay is allowed by the court.

Stage 2: Fine is registered at SPER for enforcement and enforcement order issues

For infringement notices, if at the end of the 28 days in stage 1 the offender has defaulted or "done nothing", the ticket progresses to registration for enforcement purposes and attracts a fee. If the offender defaults in making stage 1 instalment payments the amount is also registered for enforcement purposes and attracts a fee.

For Court fines, if the court has not made a fine option order and the person defaults in paying in the time allowed by the court, the court registrar can either issue a warrant to arrest the person or register the amount at SPER for enforcement purposes, and registration attracts a fee.

An enforcement order, which also serves as a reminder notice (containing a warning about other consequences of enforcement action), is sent and, again, the offender is given 28 days to make a choice between 3 or 4 options:

- (1) Pay in full within 28 days.
- (2) Apply for an extension of time or to pay by instalments (at minimum rates) as above.
- (3) Call the Call Centre for assistance. The offender will be assessed to examine options such as tailored instalment plans and fine option orders to discharge the debt by doing community service.
- (4) If the offence was an infringement notice offence, elect to have the matter heard and decided in a magistrates court.

Throughout this stage a Call Centre will be pro-active in making contact with offenders, skip-tracing and other activities to enhance collection rates.

Stage 3: Civil Enforcement

If at the end of the 28 day period in stage 2 the offender has still "done nothing" or if the offender has defaulted on an instalment plan or failed to complete community service under a fine option order, the Registrar of SPER will exercise discretion about which enforcement action to take to recover the debt, including:

- (1) Issue a fine collection notice for -
 - (a) regular redirection of earnings (garnishee); or
 - (b) regular redirection from a financial institution account; or
 - (c) redirection of a debt owed by a third person to the offender.
- (2) Cause a search warrant to be obtained to search premises to determine if sufficient goods owned by the offender could be seized, for sale, to satisfy the debt, or
- (3) Issue an enforcement warrant directed to all enforcement officers
 - (a) authorising seizure and sale of real or personal property, or
 - (b) imposing a charge on property (eg land, shares etc).
- (4) Issue an order for an oral examination.
- (5) Register a charge creating an interest over land owned by the offender, if the amount outstanding is \$1000 or more.
- (6) Register a charge creating an interest over a motor vehicle or other property owned by the offender, if the amount outstanding is \$1000 or more.
- (7) If the offence was motor vehicle related the registrar may, in limited circumstances, issue a notice of intention to suspend the person's driver licence unless the debt is paid within 14 days. The circumstances would include if a regular redirection from earnings or from a financial institution account fails to discharge the amount (for example, because the enforcement debtor defeats the notice by closing the account), or if the offender fails to co-operate in providing employment or account details, or

defaults in making instalment payments, or is assessed to be unable to make instalment payments (at reduced rates) or as unsuitable to do community service, Suspension can last until the debt is paid or discharged. However if, after 3 months of suspension, the registrar has not already issued a warrant of commitment he must then periodically (at least every 3 months) determine whether to do so.

Property searches and the seizure and sale of property will not be undertaken by an enforcement officer unless and until an attempt is made to obtain sufficient information to impose a garnishee or direct debit or instalment (at reduced rates) method of payment on the offender.

The Call Centre will still be pro-active in this stage.

Stage 4: Arrest and imprisonment

If all enforcement action has failed to secure payment or discharge of the debt, the registrar may issue an arrest and imprisonment warrant for the offender to serve a default term of imprisonment. The registrar may, in some circumstances, issue an arrest and imprisonment warrant without first issuing an enforcement warrant or fine collection notice, for example, if the offender cannot be located or if there is already an arrest and imprisonment warrant outstanding for the person.

For infringement notices, all default periods are to be served cumulatively and at a cut-out rate less than the cut-out rate for community service: to begin with, \$60 per day for default imprisonment and \$120 per day for community service. For court-imposed fines the default period set by the court will be the period served.

Payment in full or imprisonment are the only remaining options at this point. Applications for fine option orders will no longer be considered at this stage unless the offender has previously had a fine option order refused but can show a significant change in circumstances has occurred since being refused an order.

Administrative cost to Government of implementation

The projected capital injection for all departments over the 2 year period 1999/2001 will be c.\$11.5 million, with operational costs of c.\$6.4 million in 1999/2000 and recurrent costs of c.\$12.2 million from 2000/2001

onwards. These costs do not include c.\$1.76 million for the implementation of the Ticketable Infringement Notice Automation (TINA) by Queensland Transport (which was planned independently of SPER), nor the impact of SPER on warrant resource sharing agreements between Queensland Transport and Queensland Treasury estimated by Queensland Transport to be between \$2.4 million and \$13 million for 2000/2001 onwards.

The expected additional revenue for the year 2000/2001 is c.\$14.5 million, including c.\$8.2 million from the amnesty. Expected additional annual revenue from 2001/2002 onwards will be c.\$15.3 million. In addition, avoidable costs have been identified by the Department of Corrective Services amounting to c.\$1.8 million in 2000/2001 and c.\$2.6 million in subsequent years.

Fundamental legislative principles

The Bill adopts the infringement notice and user declaration provisions from the current SETONS legislation. Section 98E of the *Justices Act 1886* states that if an infringement notice offence involving a vehicle happens and an infringement notice for the offence is served on the person who is the owner of the vehicle at the time of the offence, then the owner is taken to have committed the offence even though the actual offender may have been someone else. However, in a reversal of the onus of proof, the owner must not be taken to have committed the offence if, within 28 days after the date of an infringement notice or service of a summons for the offence, the owner makes and gives to the administering authority an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration for the vehicle for the offence. Without such a provision it would not be possible to enforce, for example, camera detected offences and parking infringements.

An evidentiary onus is sometimes placed upon a person to prove a matter which is peculiarly within the knowledge of that person. For example, see *Weissensteiner v. The Queen* (1993) 178 CLR 217 and *Cornwell v. Commissioner of Australian Federal Police* (1990) 94 ALR 495.

There is no requirement that the owner prove, necessarily, who the driver was in fact. If an owner does submit one of the declarations its effect is to relieve the owner of responsibility. The section specifically states that the owner must not be taken to have committed the offence. Further, if a proceeding is commenced, the effect of the declaration is that the court can

act on it or other evidence to be satisfied that the owner was not in charge of the vehicle at the relevant time.

In these circumstances, and as the provisions are designed to keep innocent vehicle owners and operators out of trouble, the fundamental legislative principles are not compromised.

Consultation

On 30 November 1998, Cabinet established an Interdepartmental Committee (IDC) to develop a proposed model. The IDC was coordinated by the Department of Justice and Attorney-General and included representative of the Department of the Premier and Cabinet, Treasury Department, the Queensland Police Service, Queensland Corrective Services Commission and the Department of Transport.

The SPER implementation project team have also consulted with the Department of Health, Department of Communication Information Local Government and Planning, Department of State Development, Department of Employment Training and Industrial Relations, Department of Mines and Energy, Department of Education, Department of Public Works, Department of Families Youth and Community Care, Department of Primary Industries, Department of Energy Services, Department of Main Roads, Department of Natural Resources, Office of the Public Service, National Parks and Wildlife Department of Environment, Electoral Commission Queensland, Residential Tenancies Authority, Department of Tourism Sport and Racing, Liquor Licensing Commission, Registrar General Department of Justice and Attorney-General, Department of Housing, Department of Fair Trading, Queensland Police Service, Queensland Transport, Treasury Department, Queensland Corrective Services Commission, Department of the Premier and Cabinet, Stan Deer CSM for the Magistracy, the Aboriginal and Torres Strait Islander Commissioner, Crime Prevention Taskforce Department of Premier and Cabinet, Indigenous Advisory Council Department of Aboriginal and Torres Strait Islander Policy and Development, National Aboriginal and Islander Services Secretariat and the Brisbane City Council.

Other organisations consulted by the Department of Justice in recent times about reforming the fine collection and enforcement system included the Queensland Law Society, the Bar Association, the judiciary and the Local Government Association of Queensland.

No opposition has been expressed to reform of the system and those who have responded to consultation are in favour of the reforms that were proposed.

NOTES ON PROVISIONS

PART 1-PRELIMINARY

Short Title

Clause 1 sets out the Act's short title as being the *State Penalties Enforcement Act 1999*.

Commencement

Clause 2 states that the Act commences on a day to be fixed by proclamation.

Dictionary

Clause 3 states that the dictionary in schedule 2 defines particular words used in the Act.

Objects

Clause 4 provides that the objects of the Act include maintaining the integrity of fines as a viable sentencing or punitive option for offenders, maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced, and reducing the cost to the State of enforcing fines and other money penalties.

Act has limited application to children

Clause 5 provides that the Act does not apply to other than to the extent it allows a child to pay an infringement notice penalty in full or by instalments.

Act binds State, Commonwealth and other States

Clause 6 states that the Act binds the State, the Commonwealth and the other States.

**PART 2-THE STATE PENALTIES ENFORCEMENT
REGISTRY****The State Penalties Enforcement Registry**

Clause 7 establishes the State Penalties Enforcement Registry ("SPER").

Functions of SPER

Clause 8 states that SPER is to have the functions of collecting amounts payable to SPER under the Act, administering the making of enforcement orders, and taking enforcement action under the Act. The functions must be performed in accordance with the charter in the following clause.

The SPER charter

Clause 9 provides that the SPER charter includes maximising the collection, for victims of offences, of amounts by way of restitution or compensation, maximising the amount of penalties paid before taking enforcement action, promoting a philosophy that community service work is for the needy in the community and not an alternative to payment for people who can afford to pay, reducing imprisonment for fine default by encouraging the use of other enforcement mechanisms, and promoting public education about obligations of offenders and consequences of not satisfying the obligations.

Director, registrar and other staff of SPER

Clause 10 establishes the staffing and hiring capacity for SPER. The director, registrar and other staff (including enforcement officers) are to be employed under the *Public Service Act 1996*. Also, the registrar may engage commercial agents as enforcement officers and contractors for other purposes. The Director must give each enforcement officer an identity card.

Management of office

Clause 11 sets out the various roles and powers of, and protection given to, the SPER officers. The director is responsible for managing and controlling the affairs of the office. However, only the registrar or staff of the registry who are justices of the peace (magistrates court) may make or issue an order, warrant or fine collection notice under the Act.

Protection from liability

Clause 12 provides that a SPER official does not incur civil liability for an act done, or omission made, honestly and without negligence, while acting as an official. Civil liability attaches instead to the State.

PART 3-INFRINGEMENT NOTICES***Division 1-Service of infringement notices*****Service of infringement notices-generally**

Clause 13 provides that an authorised person who reasonably believes a person has committed an infringement notice offence may serve an infringement notice on the alleged offender for the offence.

Service of infringement notices for infringement notice offences involving vehicles

Clause 14 provides that in the case of an infringement notice for an infringement notice offence involving a vehicle, it may be served on the owner of the vehicle or on the person named in a known user declaration as the person who was in charge of the vehicle at the relevant time or on the person named in a sold vehicle declaration as the person to whom the vehicle had been sold or otherwise disposed of before the relevant time. Provision is made for service by post or by securely placing or attaching the notice conspicuously to the vehicle. It will be an offence to interfere with an infringement notice attached to a vehicle unless the person is the owner, or the person in charge, of the vehicle at the relevant time. Maximum penalty-40 penalty units.

Infringement notice

Clause 15 provides that an infringement notice must be in the form approved by the administering authority. As well as identifying particulars, the form must state the fine and the options given to the alleged offender to deal with the notice. These are listed in clause 22.

Effect of this part on prosecution

Clause 16 states that the fact that an infringement notice has been, or could be, served on a person for an offence, does not affect the starting or continuation of a proceeding in a court for the offence. Further, the clause states that this does not limit or otherwise affect the penalty that may be imposed by a court for an offence.

Division 2-Liability for infringement notice offences involving vehicles**Liability for infringement notice offences involving vehicle**

Clause 17 declares the liability of the owner of a vehicle for an infringement notice issued in relation to his or her vehicle. Where the owner is not the actual offender the clause provides the mechanisms by which an owner can, within 28 days after the date of an infringement notice or service of a summons for the offence, name the actual offender (ie in an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration). It also provides that two persons cannot be prosecuted in respect of the same offence at the same time.

Effect of illegal user declaration

Clause 18 provides for the effect of an 'illegal user declaration' and that the owner must not be found liable if the court is satisfied that the vehicle was stolen or being illegally used at the time of the infringement.

Effect of known user declaration

Clause 19 provides for the effect of a 'known user declaration' and that the owner must not be found liable if the court is satisfied that the named user or someone else was in charge of the vehicle at the time of the issue of the infringement notice.

Effect of sold vehicle declaration

Clause 20 provides for the effect of a 'sold vehicle declaration' and that the owner must not be found liable if the court is satisfied that the vehicle had been sold to another person and the previous owner was not in charge of the vehicle at the time of the issue of the infringement notice.

Effect of unknown user declaration

Clause 21 provides for the effect of an 'unknown user declaration' and that the owner must not be found liable if the court is satisfied that some unknown person was in charge of the vehicle at the time of issue of the infringement notice.

Division 3-Obligations and options under infringement notices**Ways alleged offender may deal with infringement notice**

Clause 22 lists the ways in which an alleged offender may deal with an infringement notice, that is:

- (a) pay the fine in full; or
- (b) give a written election to have the matter of the offence decided in a Magistrates Court; or
- (c) if relevant-give to the administering authority an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration for the vehicle for the offence; or
- (d) if the fine is at least the prescribed threshold amount the alleged offender may, within 28 days after the date of the infringement notice, apply to pay the fine by instalments.

Application to pay fine by instalments

Clause 23 states that within 28 days after the date of the infringement notice, the alleged offender may apply to the administering authority in the approved form for approval to pay the fine by instalments of not less than the prescribed minimum instalment. The application must be accompanied

by the first instalment. The approved form issued for this section will include a written statement of the consequences of not paying the instalments.

Registration of instalment payments for infringement notices

Clause 24 provides that an administering authority that approves an application to pay an infringement notice fine by instalments must give to SPER, for registration, the prescribed particulars of the offence and of the unpaid amount. No registration fee is payable for registering the particulars. On registration, SPER becomes responsible for the collection of, and may collect, the unpaid amount; and the registrar must give to the person an instalment payment notice. Provision is made for SPER to retain out of each instalment received a management fee prescribed under a regulation.

Alleged offender who pays can not be prosecuted

Clause 25 protects an alleged offender against being prosecuted for an infringement notice offence if the alleged offender pays the fine as required by the infringement notice, including by instalments. This clause is subject to clause 28 below.

When alleged offender can not elect to have offence decided by court

Clause 26 provides that a person may not elect to have the matter decided by a Magistrates Court if the person either pays the fine to the administering authority; or applies to the administering authority to pay the fine by instalments.

When infringement notice offence is to be decided by court

Clause 27 provides that if, within 28 days after the date of an infringement notice, an alleged offender either elects to have the matter decided by a Magistrates Court or takes no action at all then a proceeding for the offence may be started under the *Justices Act 1886*. In any case the administering authority is not prevented from giving SPER prescribed particulars of the offence for registration under part 4.

Division 4-Withdrawal and re-issue of infringement notice**Administering authority may withdraw infringement notice**

Clause 28 states that an administering authority may withdraw an infringement notice at any time before the fine is paid or otherwise discharged under the Act.

If it is withdrawn the Act, other than this part, stops applying to the infringement notice offence and a proceeding for the offence may be taken against any person (including the alleged offender) as if the notice had not been served on the alleged offender. No compensation is payable to the person because of the administering authority's refusal to withdraw an infringement notice.

Cancellation of registration on withdrawal of infringement notice

Clause 29 provides that if an infringement notice offence is withdrawn and registration at SPER is cancelled, SPER or the administering authority, as the case may be, must refund to the person any amount paid to either of them by the person for the offence. If the person has performed community service for the offence under a fine option order then SPER is to pay an amount as compensation, worked out according to a set formula.

Application to cancel infringement notice for mistake of fact

Clause 30 provides that if the registrar of SPER is satisfied that a person has been incorrectly named in an infringement notice as the alleged offender because of a mistake of fact or the misuse of the name and other particulars of the person named in the infringement notice and the administering authority has refused to withdraw the relevant infringement notice, then the registrar may apply to a Magistrates Court for an order cancelling the infringement notice.

Effect of cancellation of infringement notice

Clause 31 provides that if, because of a cancelled infringement notice, demerit points are allocated against the alleged offender, the demerit points for the offence are also cancelled. Further, if, because of the cancelled infringement notice, a licence, permit or other authority was suspended or

cancelled, the suspension or cancellation stops having effect, unless the person's licence, permit or authority would still be suspended, cancelled or no longer in force for another reason.

Proceedings after cancellation of infringement notice

Clause 32 states that if an infringement notice is cancelled or withdrawn more than 1 year after the date of the infringement notice and the name of the actual offender is known, the administering authority is not prevented from issuing an infringement notice against the actual offender or starting a court proceeding for the offence against the actual offender. The period within which a proceeding for the offence may be started starts on the day the infringement notice is cancelled.

PART 4-ENFORCEMENT ORDERS

Division 1-Default commences enforcement process

Default by person served with infringement notice

Clause 33 provides that if a person served with an infringement notice has not, within 28 days after the date of the infringement notice, made an election as to one of the options available under the infringement notice, then an authorised person may give to SPER a "default certificate" for registration. However, a default certificate must be given to the registrar within the time a person may start a prosecution for the offence. A default certificate must be accompanied by the prescribed registration fee.

Default in paying fine, penalty or other amount under court order

Clause 34 creates a system of registration of unpaid amounts under various types of orders made by a court for the purpose of enforcement by SPER. They include:

- (a) an order fining a person for an offence;
- (b) an order under the *Penalties and Sentences Act 1992* that a person pay an amount of a forfeited recognisance;

- (c) an order that a person pay restitution or compensation under the *Penalties and Sentences Act 1992*;
- (d) an order under the *Bail Act 1980* section 32 or 32A that a person pay an amount on the forfeiture of an undertaking;
- (e) an order made before commencement of the clause that a person pay a stated amount under the *Crown Proceedings Act 1980*, section 13 (Recovery of debts due by recognisance) or section 14 (Recovery of amounts undertaken by surety). Note that these sections are repealed in the schedule and, in effect, re-located to the *Bail Act 1980* and the *Penalties and Sentences Act 1992*.

Effect of registration under this division

Clause 35 states that on registration of court ordered penalty amounts the amount unpaid is increased by the amount of the registration fee and search fee for establishing ownership of a motor vehicle under an infringement notice. SPER becomes responsible for the collection of the unpaid amount.

Default in paying instalment

Clause 36 states that the SPER registrar may cancel an instalment payment notice, without notice to the offender, if on 2 consecutive occasions the person fails to pay an instalment within the time allowed.

Effect of cancellation of instalment payment notice

Clause 37 provides that on the cancellation of an instalment payment notice the registrar must increase the unpaid amount to which the notice relates by the amount of the registration fee and issue to the person an enforcement order for the total of the unpaid amount.

Division 2-Enforcement orders

Issue of enforcement order

Clause 38 provides that on registration of an unpaid amount the registrar must issue to an enforcement debtor an enforcement order to pay the stated amount to SPER within 28 days after the date of the order. The amount

stated in the enforcement order as the unpaid amount for an infringement notice offence involving a vehicle must be the total of the unpaid amount for the offence and the amount prescribed under a regulation as the cost of establishing ownership of the vehicle. This will cover, for example, search fees paid by the Brisbane City Council to establish ownership of vehicles for the issue of parking tickets. As under the SETONS regime, the order may be made in the absence of, and without notice to, the enforcement debtor.

Working out period of imprisonment for enforcement order

Clause 39 provides that the period of default imprisonment to be stated in an enforcement order is the period worked out by dividing the amount stated in the order by the relevant cut-out rate as defined in the dictionary, rounded down and expressed as a number of days. However, the maximum period that may be stated in an enforcement order for an amount a surety must pay under the *Bail Act 1980* or the *Penalties and Sentences Act 1992* must not be more than 2 years.

Service of enforcement order

Clause 40 provides for service of an enforcement order on a person personally or by sending it by ordinary post.

Division 3-Obligations and options under enforcement order

Ways enforcement debtor may deal with enforcement order

Clause 41 provides that if an enforcement order is served on an enforcement debtor for an amount, the enforcement debtor must, within 28 days after the date of the order-

- (a) pay the amount stated in the order in full to SPER; or
- (b) apply to SPER for an extension of time to pay the amount; or
- (c) if the amount is at least the threshold amount-apply to SPER to pay the amount by instalments of not less than the minimum instalment; or

- (d) if no fine option order has been made for the amount-apply to SPER for conversion of the amount to hours of unpaid community service; or
- (e) if the order relates to an infringement notice offence-an election to have the matter decided in a Magistrates Court.

Application for time to pay

Clause 42 provides that an enforcement debtor may, within 28 days after the date of an enforcement order, apply to SPER for either an extension of time to pay the amount or for approval to pay the amount by instalments. The approved form issued will include a statement of the consequences of failing to pay the amount. In exceptional circumstances the registrar may allow the amount to be paid by instalments of less than the minimum instalment as stated in an instalment payment notice for the amount.

Application for fine option order

Clause 43 provides that an enforcement debtor may, within 28 days after the date of an enforcement order, apply to SPER for conversion of the stated amount to hours of unpaid community service under a fine option order. The approved form issued will include a statement of the consequences of failing to pay the amount. The application may also be made by telephone.

When application for fine option order may not be made

Clause 44 states that an enforcement debtor can not apply for a fine option order if the enforcement debtor has contravened a previous fine option order for the same offence, or after the issue of an arrest and imprisonment warrant for the amount stated in the enforcement order. Also no application can be made or accepted if the enforcement debtor has previously applied for and been refused a fine option order for the same offence on the ground that the person could pay the fine unless SPER is satisfied the person's financial position has become significantly worse.

No fine option order if SPER decides applicant can pay

Clause 45 states that if SPER decides the applicant can pay the total amount unpaid, including by instalments or otherwise, SPER must reject the application. SPER must inform the applicant of the decision and the reasons for the decision.

Fine option order only for unpaid fine

Clause 46 states that a fine option order can only be made for an unpaid fine and relevant fees and costs under the Act. Fine option orders will not be available, for example, to deprive victims of compensation or restitution.

If SPER accepts application for fine option order

Clause 47 provides that if SPER accepts an application for a fine option order, SPER must refer the application to the chief executive (corrective services) to decide whether the enforcement debtor is suitable for performing community. SPER must give to the enforcement debtor a notice of the referral and a copy of any information used to make the decision. The enforcement debtor must attend the corrective services office most convenient to the enforcement debtor, unless it is decided to assess the enforcement debtor's suitability by telephone.

Assessment of suitability for fine option order

Clause 48 states that, upon referral, the chief executive (corrective services) must decide whether the enforcement debtor is suitable for performing community service. An enforcement debtor is taken not to be suitable for performing community service he or she has breached a community service order in the previous 12 months. If it is decided that the enforcement debtor is not suitable he or she must be given written notice of the decision and, if the time for taking other action under the enforcement order has not ended, that the enforcement debtor may take the other action within the time available or, if the time available is less than 7 days, within 7 days. If the time for taking other action has ended the enforcement debtor may take the other action within 7 days after the enforcement debtor is given notice of the decision.

If enforcement debtor is suitable for fine option order

Clause 49 states that if it is decided that an enforcement debtor is suitable for performing community service he or she must be given written notice of the number of hours of unpaid community service to perform to satisfy the unpaid, and other matters including when and where the enforcement debtor must report for performing the community service.

Making and registration of fine option order

Clause 50 provides that if the chief executive (corrective services) informs SPER that an enforcement debtor is suitable for performing community service, the registrar may make a fine option order. The order suspends the enforcement order so far as it requires the payment of the unpaid amount stated in the order.

Election for court hearing

Clause 51 provides that if, within 28 days after the date of an enforcement order for an infringement notice offence, the enforcement debtor elects to have the matter of the offence decided in a Magistrates Court or takes no action at all, a proceeding for the offence may be started under the *Justices Act 1886* and the enforcement order stops having effect. The registrar must notify the enforcement debtor and the relevant administering authority that the enforcement order stops having effect.

Division 4-Default after enforcement order**Default after time to pay**

Clause 52 provides that if an enforcement debtor fails to pay an amount stated in an enforcement order within 28 days after the date of the order or fails to pay an amount stated in an instalment payment notice, the registrar may issue an enforcement warrant, a fine collection notice or an arrest and imprisonment warrant for the enforcement debtor for the balance of the unpaid amount. Also, if the failure relates to an instalment payment notice, the registrar may cancel the instalment payment notice without notice to the enforcement debtor. An arrest and imprisonment warrant must state the period of imprisonment of the enforcement debtor. The clause also provides how the period will be worked out.

Default of fine option order

Clause 53 directs that if an authorised person gives to SPER a fine option order breach notice for an amount stated in an enforcement order, the registrar must register the notice as soon as practicable after it is received.

Division 5-Effect of appeal on enforcement order**Effect of appeal on enforcement order**

Clause 54 provides that if, after an enforcement order is made for an offence for which a penalty was imposed by a court, an enforcement debtor appeals against conviction or sentence, the appeal has the effect of suspending the enforcement order. If the appeal is upheld, the registrar must refund any amount paid to SPER. If the appeal is dismissed, the registrar may continue to enforce the enforcement order as if no appeal had been brought.

Division 6-Cancellation of certain enforcement orders**Application of div 6**

Clause 55 provides that division 6 applies to enforcement orders for infringement notice offences, called "relevant enforcement orders."

Applications for cancellation of enforcement orders

Clause 56 provides that an enforcement debtor may apply to SPER, within 6 months after the making of an enforcement order, for the cancellation of the order. An enforcement debtor must not, without the approval of the registrar, make more than 1 application in relation to the same enforcement order. The application can be made for any of three reasons:

- (a) the person did not receive the infringement notice or the enforcement order; or

- (b) the person received the infringement notice or enforcement order after the time allowed for taking action stated in the infringement notice or enforcement order; or
- (c) the person was prevented by accident, illness or another similar reason from taking action in relation to the infringement notice or enforcement order.

Decision on application

Clause 57 directs that the registrar may cancel an enforcement order only if satisfied of the reason stated in the application. The registrar may ask the applicant for any information prescribed under a regulation that will help the registrar decide the application. The registrar may decide to consider the application in the absence of the applicant. If the registrar cancels the enforcement order, the registrar must refer the matter of the offence to the Magistrates Court in the magistrates court district in which the offence is alleged to have been committed to be dealt with, unless the amount payable under the infringement notice is paid immediately on the cancellation of the order. The registrar must give to the applicant notice of the decision and, if the enforcement order is cancelled, a copy of the referral notice.

Appeal against refusal to cancel enforcement order

Clause 58 further directs that if the registrar refuses to cancel an enforcement order, the applicant may apply to the Magistrates Court in the magistrates court district in which the offence is alleged to have been committed to have the original application decided by the court. The court may make any decision about the application that the registrar could have made. The court may decide the application in the absence of the applicant if the court is satisfied the applicant is avoiding service of the notice or can not, after reasonable search and inquiry, be found.

Proceedings for offence if enforcement order cancelled

Clause 59 provides that a Magistrates Court must hear and decide a referred matter as if the relevant enforcement order had previously been made. However, the court must not hear and decide the matter if the amount payable under the infringement notice is paid immediately on cancellation of the order. The court may also make an order for costs.

Provisions relating to cancellation of enforcement order

Clause 60 provides that on an application to cancel an enforcement order the registrar or a Magistrates Court may stay enforcement action on conditions the registrar or court considers appropriate. An application may be for the cancellation of 2 or more enforcement orders. A cancelled enforcement order stops having effect on the making of the order cancelling it and any enforcement action already taken must, if practicable, be reversed. Any amount that has been paid under the order is repayable. Also, the period within which a proceeding for the offence may be started under the *Justices Act 1886* or any other Act starts on the day the order is cancelled.

PART 5-CIVIL ENFORCEMENT***Division 1-Preliminary*****Application of pt 5**

Clause 61 provides that, subject to the clause 62, this part applies if the Act expressly authorises the registrar to issue an enforcement warrant or a fine collection notice for an unpaid amount or if the unpaid amount stated in an enforcement order is not paid within 28 days after the date of the order or the further time allowed and, if relevant, the enforcement debtor has not elected to have the matter decided in a Magistrates Court.

Part does not prevent issue of arrest and imprisonment warrant

Clause 62 provides that if an enforcement debtor may be arrested under a warrant issued under this or another Act because of his or her failure to pay, this part does not prevent the registrar issuing an arrest and imprisonment warrant for the enforcement debtor instead of acting under this part.

Division 2-Enforcement warrants**Issue of enforcement warrant**

Clause 63 provides that the registrar may issue an enforcement warrant for an unpaid amount. An enforcement warrant may be a warrant to either seize and sell real and personal property in which the enforcement debtor has a legal or beneficial interest, or a warrant imposing a charge on specified property. The enforcement warrant may be renewed before it ends for a period of not more than 3 months at any one time. On the issue of the warrant a prescribed civil enforcement fee will be added to the outstanding amount. A copy of the enforcement warrant will be required to be served on the enforcement debtor.

Registrar may cancel, suspend or vary enforcement warrant for seizure of property

Clause 64 gives a person claiming an interest in property that is or is about to be seized or sold under an enforcement warrant, the right to apply to the registrar for the cancellation, suspension or variation of all or part of the warrant, for example, because of facts that arise or are discovered after the warrant was issued. The application must state the facts relied on by the applicant. The registrar may cancel, suspend or vary an enforcement warrant, whether or not on an application.

Enforcement warrant imposing a charge on property

Clause 65 provides that an enforcement warrant imposing a charge on property may charge all or part of the enforcement debtor's interest in specified land, prescribed interests or securities.

Effect of warrant imposing charge on property

Clause 66 provides that an enforcement warrant imposing a charge on property entitles SPER to the same remedies as SPER would have had if the charge had been made in SPER's favour by the enforcement debtor. However, SPER may not take proceedings to obtain a remedy in relation to particular charged property until at least 21 days have passed since the enforcement warrant imposing the charge on property is served on the

enforcement debtor and, for prescribed interests or securities, on the person who issued or administers the property.

Order to set aside or restrain sale, etc. of charged property

Clause 67 provides that the registrar may apply to the Supreme Court for an order restraining the sale, transfer or other dealing with charged property. The Court may restrain the dealing, unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice. Also, the Court may order that property mentioned in the order must not be dealt with or order that certain property be dealt with only in a stated way or circumstance. In addition, the Supreme Court may set aside any dealing with charged property unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.

Offence of dealing with charged or restrained property

Clause 68 creates an offence if an enforcement debtor who is served with a copy of a warrant imposing a charge on property or a restraining order knowingly contravenes the warrant or order by concealing, selling, transferring or otherwise dealing with the property. Maximum penalty-200 penalty units or 3 years imprisonment. If a person who issued or administers the property conceals, sells, transfers or otherwise deals with the property, the person also commits an offence and is, further, liable to SPER for the value or amount of the property dealt with or the amount owing by the enforcement debtor, whichever is smaller.

Enforcement of enforcement warrant may be made conditional

Clause 69 gives the registrar who issues an enforcement warrant a discretion to instruct any or all enforcement officers not to enforce the warrant until the steps in the section are followed. The steps are: The enforcement officer must first attempt to recover the amount owing in full. If the enforcement debtor can not pay the amount in full, the enforcement officer must attempt to interview the enforcement debtor. However, if the enforcement officer reasonably believes the enforcement debtor will not, or is unwilling to, take part in the interview, the enforcement officer may enforce the warrant. If, after interviewing the enforcement debtor, the enforcement officer is satisfied the enforcement debtor is unable to pay the

amount in full, but can pay the amount in either of the ways mentioned below, and the enforcement debtor agrees, the enforcement officer must not enforce the warrant and must ensure the enforcement debtor gives the enforcement officer the information necessary or completes any documents necessary for the amount to be satisfied in the agreed way.

The ways mentioned are: By instalments at the full instalment rate by regular redirection from a financial institution account or by regular redirection from earnings or, if satisfied the enforcement debtor can not pay the amount owing by instalments at the full instalment rate, by regular redirection from a financial institution account at a rate less than the full instalment rate or by performing hours of unpaid community service under a fine option order.

Power of entry to enforce enforcement warrant

Clause 70 gives enforcement officers the power to enter any premises stated in an enforcement warrant at any reasonable time of the day or night for the purposes of executing the warrant. However, an enforcement officer may enter a part of premises used only for residential purposes only if the occupier consents to the entry or if entry is authorised under a search warrant.

Search warrant

Clause 71 enables an enforcement officer who reasonably believes there may be in any premises property that may be seized under an enforcement warrant, to apply to a magistrate or a justice of the peace (magistrates court), but not SPER staff, for the issue of a search warrant. The magistrate or justice may refuse to consider the application until the officer provides all information required about the application. The magistrate or justice may issue the warrant only if satisfied there are reasonable grounds for the enforcement officer's belief. The clause also directs that the warrant must state that an enforcement officer, or all enforcement officers, may enter the place and exercise the powers conferred by clause 72, the hours when the place may be entered (if at night) and that the warrant ends 7 days after it is issued.

Powers under search warrant

Clause 72 limits the enforcement officers powers under a search warrant to the following:

- (a) power to enter and re-enter stated premises and to stay on the premises for the time reasonably necessary to exercise the power in paragraph (b);
- (b) power to search for and seize any property the enforcement officer may seize under an enforcement warrant;
- (c) power to use reasonable help and force for paragraphs (a) and (b).

An enforcement officer does not have power to seize property under any enforcement warrant or order issued under another Act while in premises only under a search warrant under the Act.

Powers supporting seizure

Clause 73 provides that having seized a thing, an enforcement officer may either move the thing from the place of seizure or leave the thing at that place but take reasonable action to restrict access to it.

Return of enforcement warrant

Clause 74 directs that an enforcement officer must give to the registrar a return of the enforcement. The return must be made by giving to the registrar a certificate signed by the enforcement officer stating what was done to enforce the warrant, or what other action, if any, was taken.

Division 3-Fine collection notices**Issue of fine collection notice**

Clause 75 provides that the registrar may issue a fine collection notice for an unpaid amount, including the civil enforcement fee prescribed under a regulation. The notice can take any of three forms, that is a notice:

- (a) to redirect earnings of the enforcement debtor; or
- (b) to redirect all or part of a debt owed to the enforcement debtor; or

- (c) for regular redirection from a financial institution account.

Issue of fine collection notice after enforcement warrant

Clause 76 provides that the issue of the fine collection notice suspends the operation of the enforcement warrant for so long as amounts are deducted under the notice.

Registrar may cancel, suspend or vary fine collection notices

Clause 77 gives to an enforcement debtor the right to apply to the registrar for the cancellation, suspension or variation of all or part of a fine collection notice, for example, because of facts that arise or are discovered after the notice was issued. The application must state the facts relied on by the applicant. The registrar may also cancel, suspend or vary a fine collection notice, whether or not on an application is made.

Copy of notices under this division to be given to enforcement debtor

Clause 78 provides that the registrar must give a copy of any fine collection notice, or notice cancelling, varying or suspending a fine collection notice to the enforcement debtor as soon as practicable after it is issued.

Division 4-Provisions about fine collection notices redirecting earnings

This division is based on, and contains provisions similar to those found in the *Child Support (Registration and Collection) Act 1988* (Cth), parts 4 and 5. The uniformity of approach may be of assistance to employers already familiar with the compliance requirements of the Commonwealth provisions.

When registrar may issue of fine collection notice for redirection of earnings

Clause 79 deals with the power of the registrar to issue to the employer of an enforcement debtor a fine collection notice for redirection of the enforcement debtor's earnings. It may be issued only if he or she is

satisfied about certain listed criteria including that the enforcement debtor will have enough money available to satisfy the unpaid amount after deducting the necessary living expenses of the enforcement debtor and his or her dependants and that the amount of earnings to be redirected would not impose unreasonable hardship.

Two or more employers of 1 employee

Clause 80 states that if an enforcement debtor receives earnings from 2 or more employers, the registrar may treat any of the employers as the only employer of the enforcement debtor or treat any 2 or more of the employers as joint employers of the enforcement debtor.

Duty of employer to make deductions

Clause 81 states that the employer must deduct an amount from the earnings in accordance with the notice. In addition to imposing a maximum penalty of 20 penalty units on the conviction of a person for an offence of failing to make the deductions, the court may order the employer to pay to SPER, as a debt, an amount of not more than the total of the amount the person did not deduct under the fine collection notice.

Working out amount to be deducted

Clause 82 states the way that an employer works out how much to deduct by applying the weekly deduction rate specified in the notice to the period for which the earnings are paid. However, the employer must not deduct an amount from the employee's earnings if the deduction would eat into defined protected earnings.

Provisions for working out earnings for s 82

Clause 83 applies for working out the amount of earnings an employer pays to an employee over a period if, for example, the payment is made for either piecework, for services under a contract that is wholly or principally for the labour of the employee, or for other work performed or services provided, but not for a particular period. For this calculation, the amount of any earnings is taken to be the amount of the earnings after deducting any amount the employer is required to deduct from earnings under the *Income Tax Assessment Act 1936* (Cth), part 6, division 2, such as PAYE.

Additional duties of employers

Clause 84 obliges an employer who deducts an amount from an employee's earnings, to pay the amounts deducted to the registrar and give to the registrar a return in the approved form within 7 days after the end of the month in which the amount is deducted. Maximum penalty-50 penalty units or 6 months imprisonment. An employer who does not deduct a required amount in a particular month must, within 7 days after the end of the month give to the registrar a return in the approved form. Maximum penalty-15 penalty units.

The clause further directs that an employer must give to the employee a notice stating the amount deducted or, if no deduction is made, that no deduction has been made under the notice. Maximum penalty-15 penalty units. Finally, if an employee to whom a fine collection notice relates stops being an employee while the notice is in force, the employer must notify that fact to the registrar in the approved form within 7 days after the end of the month in which the employment ended or the longer period the registrar allows. Maximum penalty-10 penalty units.

Discharge of enforcement debtor's liability to registrar and employer's liability to enforcement debtor

Clause 85 provides that if an employer deducts an amount from earnings, the enforcement debtor is, to the extent of the amount deducted, discharged from liability to make payments to the registrar and the employer is discharged from liability to pay the amount to any person other than the registrar.

Payment by trustees of deducted amounts

Clause 86 provides that if an amount is payable to the registrar by an employer whose property has become vested in, or if control of the property has passed to, a trustee, then the trustee is liable to pay the amount to the registrar.

Penalty for late payment to registrar of deducted amounts

Clause 87 provides that if an employer other than a government body fails to pay an amount deducted under a fine collection notice to the registrar the employer must pay a late payment penalty, plus interest to SPER.

Penalty for failure etc. to make deductions from earnings

Clause 88 provides that if an employer other than a government body fails to deduct an amount required under a fine collection notice the employer must pay a late payment penalty to SPER.

When late payment penalty may be waived

Clause 89 empowers the registrar to waive all or part of a late payment penalty if the registrar is satisfied the employer has taken reasonable steps to avoid or minimise the effects of the circumstances, or if it would otherwise be fair and reasonable to waive all or part of the late payment penalty.

Application of interest payable on judgment debt

Clause 90 provides that if a court gives judgment for the State for the payment of a relevant amount under this part, then the relevant amount is not to be taken to have stopped being payable only because of the judgment. In addition, interest payable on the judgment debt must be applied to reduce the amount of interest that would otherwise be payable under this Act. Because section 48 of the *Supreme Court Act 1995* provides that where judgment is given by a court for the payment of money, interest shall, unless the court otherwise orders, be payable from the date of the judgment on so much of the money as is from time to time unpaid, this clause prevents double dipping into interest from the date of judgment to the extent of overlap with provisions in this part imposing interest.

Penalty is alternative to prosecution for certain offences against part

Clause 91 provides that if a proceeding for an offence is started against an employer any amount payable as a late payment is not payable unless and until the prosecution is withdrawn. The period of the prosecution can not be counted for calculating the late payment penalty.

Employers not to prejudice employees because of action under this part

Clause 92 creates an offence if an employer, because another person is an enforcement debtor, prejudices the employee's employment, promotion or earnings prospects or takes, or intimidates, coerces, imposes a penalty on,

or takes any disciplinary action against, the person. Maximum penalty-100 penalty units or 2 years imprisonment. The court may also, whether or not it imposes any penalty for the offence, order the offender to pay compensation to the enforcement debtor for loss or damage suffered because of the offence and/or order the taking of action to remedy or reduce the loss or damage suffered by the enforcement debtor,

Employers not to disclose information etc.

Clause 93 also creates an offence where an employer or an employee discloses or communicates any information about the financial affairs of an enforcement debtor that is disclosed or obtained under this division and acquired by the person because of the employer's duties. Maximum penalty-25 penalty units or 6 months imprisonment.

Records to be kept by employers

Clause 94 states the record keeping obligations of an employer to whom a fine collection notice is given. In some circumstances the registrar may dispense with the necessity to keep certain records.

Access to premises etc.

Clause 95 provides that for enforcing this part against an employer, the registrar may give an enforcement officer written authority to exercise powers to enter premises of an employer unless used exclusively as a residence, to inspect or examine any business records relevant to the employer's obligations under this Act, to make copies of, or take extracts from, any document the enforcement officer considers are reasonably necessary for ensuring compliance with the Act and to require the occupier of the premises to give the enforcement officer reasonable help. A person required to give an officer reasonable help must comply with the request, unless the person has a reasonable excuse for not doing so (for example, self-incrimination). Maximum penalty-20 penalty units. However, the enforcement officer can not enter without first producing the written authority and an identity card.

Application of amounts paid or credited if 2 or more debts due

Clause 96 provides that if 2 or more debts are payable to SPER by an employer under this part and an employer pays an amount, or the registrar credits an amount towards a debt, then division 9 (order of satisfaction of fines) applies to the amount despite any direction of the employer to the contrary.

Division 5-Provisions about fine collection notice for redirection of a debt**When debt redirected under fine collection notice**

Clause 97 provides that a fine collection notice authorising redirection of a debt belonging to an enforcement debtor from a third person (other than a financial institution) must be served on the third person to have effect. The debt is redirected in the hands of the third person to SPER to the extent of the amount stated in the notice. This clause will not limit the right of the third person to dispute liability to pay all or part of the debt to the enforcement debtor or of another interested person to claim an entitlement to all or a part of the debt or to a charge or lien on it.

Payment to enforcement debtor despite redirection

Clause 98 provides that if, despite the fact a third person acts with reasonable diligence to give effect to the redirection, the third person deals with the redirected debt in a way that satisfies, as between the third person and the enforcement debtor, all or part of the redirected debt (for example by payment to the enforcement debtor) the registrar may vary or cancel the fine collection notice, that is, if the amount available for redirection is less than the amount owed to SPER.

Discharge of the third person

Clause 99 provides that a payment to SPER made by a third person in compliance with a fine collection notice is a valid discharge of the person's liability to the enforcement debtor to the extent of the amount paid.

Division 6-Provisions about regular redirection from a financial institution account**Application of division**

Clause 100 applies division 6 to an enforcement debtor who has an account with a financial institution into which another person (a "depositor") regularly deposits earnings into the account (a "regular deposit").

Service of fine collection notice for regular redirection from a financial institution account

Clause 101 requires that the fine collection notice for regular redirection from a financial institution account be served on the enforcement debtor and on the financial institution. The notice does not have effect until the end of 7 days after the day on which the notice is served. The notice continues in force until the total amount stated in it is paid or it is cancelled, varied or expires according to its terms.

Financial institution to make payments

Clause 102 provides that for each regular deposit the financial institution must deduct the amount stated in the notice within 2 days after the deposit, and pay it to SPER as stated in the notice. The financial institution may deduct from the account an administration charge (as defined) and keep it as a contribution towards the administrative cost of making the payments. It must also give to the enforcement debtor a notice detailing the deductions and when they were made. The clause also makes a deduction paid or kept by a financial institution a valid discharge of the financial institution's liability to the enforcement debtor for that amount.

Offence of intentionally defeating notice for regular redirection from a financial institution account

Clause 103 requires that an enforcement debtor who is served with a copy of a fine collection notice for regular redirection from a financial institution account must ensure that enough funds remain in the account. Also, the enforcement debtor is required to notify SPER if the depositor discontinues regular payment of earnings or if the enforcement debtor

closes the account or arranges for the depositor to pay the enforcement debtor in another way. The clause also creates an offence of intentionally defeating a notice for regular redirection from a financial institution account. Maximum penalty-20 penalty units.

Division 7-Suspension of driver licence

Criteria for suspending driver licence

Clause 104 provides that division 7 applies if the offence to which an infringement notice or conviction relates involved a motor vehicle and the enforcement debtor has a driver licence. In such a case the registrar can only suspend an enforcement debtor's driver licence under this division for a reason stated in subsection (3) or (4).

The first reason is that the registrar is satisfied the enforcement debtor has defaulted in paying instalments or failed to start or complete community service under a fine option order, or made no election to have the matter of the offence decided in a court. The second reason is that the registrar is satisfied an enforcement officer has attempted unsuccessfully to enforce an enforcement warrant including under clause 69.

Suspension of driver licence

Clause 105 provides that if the registrar decides to suspend a driver licence the registrar must serve on the enforcement debtor a notice of intention to suspend the licence. Then, if the enforcement debtor does not pay the unpaid amount stated in the notice within 14 days, the enforcement debtor's driver licence is suspended by force of the Act. Suspension lasts until the enforcement debtor pays the unpaid amount or the amount is otherwise discharged under the Act.

General effect of suspension of driver licence

Clause 106 provides that the suspension of a driver licence operates to suspend a driver licence issued outside Queensland while the enforcement debtor is in Queensland. A renewal or replacement of a suspended driver licence does not affect the suspension. The suspension does not affect the powers a court or another person may exercise under another Act to

suspend or cancel the licence. Also, the clause provides that if a person does not hold a driver licence, the person is disqualified from applying for or obtaining a driver licence until all amounts payable for vehicle related offences are paid. See also schedule 1 amendments to the *Transport Operations (Road Use Management) Act 1995*, clause 7.

Review of suspension of driver licence

Clause 107 provides that if an enforcement debtor's driver licence is suspended for 3 months or more the registrar must review the suspension as soon as practicable after the end of each 3 months of the suspension. If the registrar is satisfied the enforcement debtor is not taking steps to satisfy the unpaid amount stated in the notice of intention to suspend the driver licence, the registrar may then issue an arrest and imprisonment warrant.

Effect of suspension of driver licence on vehicle insurance

Clause 108 prevents a person's vehicle insurance policy being terminated by driver licence suspension. Also, a claim under a vehicle insurance policy can not be refused just because a person's driver licence is suspended. The section will have effect despite anything to the contrary in a vehicle insurance policy or any other agreement. For this clause, "vehicle insurance policy" is defined to mean a policy of insurance for damage or loss caused by or arising out of the use or operation of a vehicle, but does not include a CTP insurance policy within the meaning of the *Motor Accident Insurance Act 1994*.

Division 8-Other enforcement options

Making of fine option order after enforcement warrant

Clause 109 provides for the making of fine option orders after the issue of an enforcement warrant. The making of the fine option order suspends the operation of the enforcement warrant for so long as the enforcement debtor complies with the fine option order. However, if the enforcement debtor contravenes the fine option order, the registrar may cancel the order and the enforcement warrant and issue an arrest and imprisonment warrant.

Registration of interests

Clause 110 provides that if the total amount owing by an enforcement debtor is more than \$1000, the registrar, as well as or instead of issuing an enforcement warrant or fine collection notice, may register with the registrar of titles or any other person required or permitted to keep a register about dealing with property an interest in land or in any other property, for example, a motor vehicle. On registration of an interest, the amount accrues interest at the annual rate prescribed under the *Supreme Court Act 1995*, part 4, division 20, and the amount and any accruing interest becomes a charge on the debtor's interest in the land or other property ranking, subject to any other Act, in priority according to the time of registration of the interest.

Division 9-Order of satisfaction of fines etc.**Order of satisfaction of fines for infringement notice offences**

Clause 111 applies if at any stage an enforcement debtor pays all or part of the amount payable for an infringement notice offence. The amount must be applied first to any amount required to be paid as fees and then to the amount of the fine.

However, if the enforcement debtor also has an amount unpaid under an enforcement order for amounts other than for an infringement notice offence, the amount paid must be applied in accordance with clause 112 until all relevant amounts under that clause are paid before it is applied under this clause.

Order of satisfaction of other amounts

Clause 112 applies if at any stage an enforcement debtor pays all or part of an unpaid amount payable other than for an infringement notice offence. Subject to clause 113 the amount must be applied towards satisfying the unpaid amount in the following order:

- (a) compensation;
- (b) restitution;
- (c) damages;
- (d) a fixed portion of a penalty;

- (e) court fees;
- (f) witnesses' expenses payable under the decision;
- (g) professional costs;
- (h) any other fees or costs;
- (i) any other amount ordered to be paid, including a fine.

Order of satisfaction if more than 1 enforcement order

Clause 113 deals with a variation to the preceding scenario. If there are 2 or more orders, warrants or notices, for amounts other than for infringement notice offences, to which the amount could be applied, the amount paid must first be applied to satisfy all outstanding amounts in the first relevant category in the preceding clause in the order in which they became payable. Then, after all amounts in the first relevant category are satisfied, any remaining amount paid must be applied to satisfy unpaid amounts in the next relevant category and then to each other relevant category in the same way until each relevant category is satisfied. Examples of the operation of these concepts are included in the clause.

Division 10-General provisions

Power of person serving fine collection notice or enforcing warrant to demand name and address etc.

Clause 114 confers power to an enforcement officer serving a fine collection notice or enforcing a warrant under the Act to require a person the enforcement officer reasonably suspects to be the person named to provide the person's full name and address, employment details, bank account details, driver licence number, who owns specified property, pension details and the person's income and expenditure. Also, if it would be reasonable to expect the person to be in the possession of evidence of the correctness of the information or to otherwise be able to provide the evidence, an enforcement officer may require the person to provide evidence of the correctness of the information but the enforcement officer must warn the person that, unless the person has a reasonable excuse, it is an offence to fail to provide information required, or to fail to provide evidence of the

correctness of information provided. Maximum penalty-10 penalty units. However, a person does not commit an offence if the person is not proved to be the person named in the notice, order or warrant.

Effect of particular proceedings

Clause 115 provides that if a person served with an infringement notice pays the amount in full or applies to pay by instalments or applies for a fine option order; or if an enforcement warrant or an arrest and imprisonment warrant is enforced then the proceedings that may be brought against, and the penalties that may be imposed on, the person for the offence are limited to proceedings and penalties that could be brought or imposed if the person had already been convicted of, and punished for, the offence (for example, the person may be required to show cause why a driver licence should not be cancelled). However, this restriction stops applying if the enforcement order is withdrawn or cancelled after the amount is paid.

The clause further provides that the making of the enforcement order is not a conviction for the offence and payment of an amount for the offence is not an admission for any civil or criminal proceeding arising out of the event for which the infringement notice was issued. Finally, the Governor may waive all or part of an unpaid amount stated in an enforcement order, whether or not any part of the amount is payable other than to the State, and the enforcement order stops having effect to the extent of the waiver.

Offence of obstructing enforcement officer

Clause 116 creates an offence if a person obstructs or assaults an enforcement officer acting in the performance of duties. Maximum penalty- 50 penalty units or 12 months imprisonment.

Offence of defacing or removing seizure tags

Clause 117 creates an offence if a person interferes with an item seized and left at the place of seizure or with a seizure tag or sticker placed on it. Maximum penalty- 10 penalty units.

PART 6-IMPRISONMENT

Good behaviour order when imprisonment not appropriate

Clause 118 provides that if, after an enforcement warrant or a fine collection notice has been issued and the registrar is satisfied, after considering a report from a doctor, that for a medical or psychiatric reason the enforcement debtor is not suitable for performing community service, can not pay or continue to pay the unpaid amount, and it may be inappropriate to enforce the payment of the amount by issuing an arrest and imprisonment warrant, the registrar may order that the enforcement debtor must be of good behaviour, for the period, of not longer than 3 years, on the conditions the registrar considers appropriate. Before making an order the registrar must give the enforcement debtor 7 days notice of intention to make the order. If the registrar is satisfied the enforcement debtor has contravened a good behaviour order the registrar may issue an arrest and imprisonment warrant.

Enforcement by imprisonment

Clause 119 provides that if, after attempting to enforce an enforcement warrant, the registrar is satisfied the unpaid amount can not be satisfied in any other authorised way, the registrar may issue an arrest and imprisonment warrant for a stated period. However, the warrant stops having effect if the amount is paid before the person is imprisoned. The period of imprisonment an enforcement debtor must serve under the warrant is cumulative on any other period of imprisonment the person must serve under any other warrant or under an order of a court.

Satisfaction of fine by imprisonment

Clause 120 provides that if a person serves the total period of imprisonment under an arrest and imprisonment warrant, the unpaid amount stated in the warrant is taken to be satisfied. If, after an arrest and imprisonment warrant is issued, but before the named person is imprisoned, the person pays part of the unpaid amount, the warrant has effect as if the period of imprisonment stated in it were the balance remaining after taking into account the relevant cut-out rate. The clause also sets out how to calculate the balance owing if a person who is imprisoned wants to pay the balance of the unpaid amount stated in the warrant.

Order of satisfaction of fines if enforcement debtor imprisoned

Clause 121 provides that if an enforcement debtor is imprisoned, the period of imprisonment discharges the unpaid amount in the reverse order to the order of satisfaction to that which would have applied under part 5, division 9 (order of satisfaction of fines) if the person had not been imprisoned. That is, compensation and restitution are cut out last.

**PART 7-GENERAL PROVISIONS ABOUT FINE
OPTION ORDERS****Requirements of fine option order**

Clause 122 sets out the requirements of a fine option order. The number of hours of community service stated in the order must be performed within 1 year. Also, a fine option order must be accompanied by a notice stating that failure to comply with the order, or revocation of the order, may result in the imprisonment of the person or suspension of the person's driver licence, or both.

Directions under fine option order

Clause 123 provides that a direction given by an authorised corrective services officer under a fine option order must, as far as practicable, avoid conflicting with the person's religious beliefs, interfering with any times during which the person usually works or attends an educational or training establishment and interfering with the person's family responsibilities.

Extension of period of fine option order

Clause 124 provides that a relevant person or an authorised corrective services officer may apply to the registrar for an extension of the compliance period. The application may only be made during the compliance period. The registrar may decide the application in the person's absence. The registrar may extend the compliance period by not more than 1 year.

Community service to be performed cumulatively

Clause 125 provides that all community service required to be performed under a fine option order under the Act is to be performed cumulatively with any community service required to be performed under a community service order or a fine option order made for the same person by a court under another Act. Multiple fine option orders in force at the same must be performed in the sequence in which the orders were made.

Performance of community service to be credited against fine etc.

Clause 126 provides that if a relevant person performs community service under a fine option order, the unpaid amount to which the order relates is to be reduced by an amount worked out by multiplying the hours of community service performed by the cut-out rate for a fine option order (see dictionary in schedule 2).

Payments and application of payments

Clause 127 provides that if, after a fine option order is made, payment of part of the fine or amount originally required to be paid is made, the payment must be applied in accordance with the part 5, division 9 (order of satisfaction of fines). The payment reduces the number of hours of community service remaining to be performed by the number obtained by applying the cut-out rate for a fine option order.

Failing to comply with fine option order

Clause 128 provides that a corrective services supervisor who reasonably believes the relevant person has contravened a requirement of the fine option order may give to the person a notice requiring the person to stop contravening the order or to give the supervisor a reasonable explanation for the contravention within a stated time, of at least 5 days but not more than 14 days. The notice will state that failure to give a reasonable explanation for the contravention may result in the fine option order being revoked in the person's absence. If the supervisor is not satisfied a reasonable explanation has been given, the supervisor must give to SPER a fine option order breach notice.

Revocation of fine option order

Clause 129 provides that the registrar may revoke a fine option order for which the registrar is given a fine option order breach notice if satisfied the person concerned has contravened the order without reasonable excuse. The registrar may also revoke any other fine option orders made against the relevant person. The registrar must give notice of the revocation to the person. The notice of revocation must state that the person may apply within a stated reasonable time, of at least 14 days, for a review of the decision to revoke the order.

Review of revocation of fine option order

Clause 130 provides that a person dissatisfied by a decision to revoke a fine option order may apply in writing to the registrar of the Magistrates Court nearest to the person's residence for a review of the revocation. If the relevant court registrar is satisfied the fine option order should not have been revoked, that registrar may reinstate it. The review may be conducted in the absence of, and without notice to, the applicant. A decision of the court registrar is final.

PART 8-RECIPROCAL ENFORCEMENT OF FINES**Definitions for pt 8**

Clause 131 defines a number of words used in this part.

Declaration of reciprocating court

Clause 132 states that if another State has laws providing for the enforcement of a Queensland fine, the Governor in Council may, under a regulation, declare a court that exercises criminal jurisdiction in the other State to be a reciprocating court for this Act.

Enforcement of Queensland fine by reciprocating court

Clause 133 provides that the registrar may, on the registrar's own initiative or on the request of the registrar of a Queensland court, give to the relevant officer of the reciprocating court a written request for the enforcement of a particular Queensland fine in that State. Money received from a reciprocating court in satisfaction of all or part of a Queensland fine must be applied as if the amount had been paid to SPER.

Enforcement of fine imposed by reciprocating court

Clause 134 provides a mechanism for the registration of a fine under a conviction of a reciprocating court, upon the written request from the relevant officer of the reciprocating court for the enforcement of the fine. On registration of the conviction the conviction is taken to be a conviction of a Queensland court and the registrar must make an enforcement order for the purpose of recovering the amount stated as unpaid. The registrar must pay the amount of any fine recovered by SPER under the enforcement order into the consolidated fund, unless the amount must be dealt with in another way under an agreement between the Minister and the relevant Minister of the other State.

PART 9-MISCELLANEOUS***Division 1-Content of certain notices, orders and warrants*****Default certificate for fine under infringement notice**

Clause 135 lists the minimum requirements for the content of the approved form for a default certificate.

Instalment payment notice

Clause 136 lists the minimum requirements for the content of the approved form for an instalment payment notice.

Enforcement order

Clause 137 lists the minimum requirements for the content of the approved form for an enforcement order

Notice accompanying a fine option order

Clause 138 lists the minimum requirements for the content of the approved form for a notice accompanying a fine option order.

Fine option order breach notice

Clause 139 lists the minimum requirements for the content of the approved form for a fine option order breach notice.

Enforcement warrant to seize and sell property

Clause 140 lists the minimum requirements for the content of the approved form for an enforcement warrant to seize and sell property.

Enforcement warrant imposing a charge on property

Clause 141 lists the minimum requirements for the content of the approved form for an enforcement warrant imposing a charge on property

Fine collection notice for regular redirection of earnings

Clause 142 lists the minimum requirements for the content of the approved form for a fine collection notice for regular redirection of earnings

Fine collection notice for redirection of a debt

Clause 143 lists the minimum requirements for the content of the approved form for a fine collection notice for redirection of a debt.

Fine collection notice for regular redirection from financial institution account

Clause 144 lists the minimum requirements for the content of the approved form for a fine collection notice for regular redirection.

Notice of intention to suspend driver licence

Clause 145 lists the minimum requirements for the content of the approved form for a notice of intention to suspend a driver licence.

Arrest and imprisonment warrant

Clause 146 lists the minimum requirements for the content of the approved form for an arrest and imprisonment warrant.

Division 2-Other enforcement related provisions**Effect of notices, orders and warrants**

Clause 147 provides that a notice, order or warrant issued by the registrar or staff of the registry is taken to be a notice, order or warrant of the Brisbane Central Magistrates Court.

Electronic transmission of particular documents

Clause 148 provides that a notice, order or warrant, or any document required or permitted by the Act to be given by someone to someone else may be transmitted electronically. The enforcement officer to whom it is transmitted must arrange for a copy of the notice or warrant to be converted into written form, and to be completed in the way required under a regulation.

Enforcement costs and their allocation

Clause 149 provides that a regulation may prescribe the enforcement costs payable for any step taken for enforcing payment of a fine, penalty or another amount under the Act. If no enforcement costs are prescribed, no enforcement costs are payable. The amount prescribed as enforcement costs may include costs payable to an entity other than SPER for the matter to which the enforcement warrant relates, for example, search fees paid by local government in respect of vehicle related offences.

Dishonoured cheques etc.

Clause 150 provides that when a full or part payment of a fine or another amount is made by cheque that is dishonoured on presentation or by credit card, direct debit or in another electronic way acceptable to SPER and the way of making the payment is not successful, then payment is taken not to have been made until the cheque is honoured or payment in cash or in another way acceptable to the administering authority or to SPER is made in place of the cheque or, in any other case, payment is made in cash or in another way acceptable to SPER.

Information from commissioner of police service

Clause 151 provides that the commissioner of police may, on the registrar's written request, give to the registrar information about a stated person for the purposes of taking action against the person to enforce payment of an amount under the Act. The information that may be given is the person's criminal history, any address known to the commissioner, and any assets of the person known to the commissioner. Criminal history is defined in the dictionary to have the meaning in the *Criminal Law (Rehabilitation of Offenders) Act 1986* so that the rehabilitation period will apply to offences which could be listed on the criminal history provided to SPER. Information given to the registrar under this clause must only be used for enforcing payment of the amount. This clause will also apply subject to the *Police Powers and Responsibilities Act 1997*.

Information from entities other than police service

Clause 152 provides that for enforcing the Act, the registrar may ask a State entity, or a local government, prescribed under a regulation (other than the Queensland Police Service) to give to the registrar information about the current and any previous address of a stated person as shown in any records kept. The information must be given to the registrar as soon as practicable after receiving the request, unless there is a reasonable suspicion that disclosing the information is likely to endanger the person's safety. The registrar must not disclose the information to anyone else, and a person to whom information is disclosed must not disclose the information to anyone else, unless for the purpose of the Act or under the express authority of another Act. Maximum penalty - 40 penalty units or 18 months imprisonment.

Register

Clause 153 requires that the registrar keep a state penalties enforcement register. The register must include particulars of the orders, notices and warrants, payments made and any enforcement action taken by the registrar.

No fees payable for registration under other Acts

Clause 154 provides that no fee is payable by SPER for lodging any order or instrument for registration or for transfer of property to the State or for anything else for which registry fees are fixed.

Non-reviewable decision

Clause 155 lists the decisions that are exempt from judicial review. Those listed are either decisions made as an intermediate step before an ultimate decision is made, or decisions from which appeals and reviews are allowed under the Act, or which can be nullified by applying to cancel an enforcement order or to withdraw an infringement notice.

Responsibility for acts or omissions of representatives

Clause 156 provides that in a proceeding for an offence against the Act, if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority and that the representative had the state of mind.

Evidentiary provisions

Clause 157 details evidentiary provisions whereby an administering authority or the SPER registrar may certify as to certain evidentiary matters.

Service of document

Clause 158 details the methods of service of documents allowed by the Act.

Proceedings for offences

Clause 159 provides that a proceeding for an offence against the Act may be taken by way of summary proceedings under the Justices Act 1886 within 1 year after the commission of the offence or within 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

Division 3-General**Delegation by administering authority**

Clause 160 allows delegation of authority to an appropriately qualified person by the chief executive officer of an administering authority of powers under the Act.

Delegation by registrar

Clause 161 allows delegation of authority to an appropriately qualified person by the SPER registrar.

Approval of forms by administering authority

Clause 162 provides that an administering authority may approve forms for use as infringement notices under the Act.

Approval of other forms

Clause 163 provides that the chief executive officer may approve forms for use under the Act other than forms for use as infringement notices by other departments. Therefore the chief executive officer may approve forms for use as infringement notices by his or her own department.

Review of Act

Clause 164 requires the Minister to review the operation of the Act within 18 months after the end of the amnesty period.

Regulation-making power

Clause 165 empowers the Governor in Council to make regulations under the Act.

Acts amended

Clause 166 declares that schedule 1 amends each Act it mentions.

PART 10-TRANSITIONAL PROVISIONS**Amnesty period**

Clause 167 makes provision for an amnesty period of a least 2 months duration at the commencement of SPER's operations. All outstanding amounts for which warrants of commitment have already been issued may be paid without fear of execution of the warrant. No new warrants will be issued for these matters during the amnesty, unless the person is already a prisoner under the *Corrective Services Act 1988*. Also, if payment is made during the amnesty, the warrant issue fee on the warrant will be waived.

Saving of infringement notice

Clause 168 provides that an infringement notice issued under the *Justices Act 1886*, part 4A as in force before the commencement of clause 167 is taken to be an infringement notice issued under the Act, and the penalty stated in the infringement notice is taken to be a fine under the notice.

Saving of enforcement orders

Clause 169 applies to enforcement orders issued under the *Justices Act 1886*, section 98O for an existing penalty and in force immediately before the commencement of this clause. Each enforcement order continues to have effect until the registrar issues an enforcement order or an enforcement warrant or fine collection notice under this clause.

Issue of infringement notices by local governments

Clause 170 provides a 6 month transitional period for local governments.

Existing warrant of commitment

Clause 171 gives the SPER registrar the power to recall and cancel a warrant of commitment issued against a person under the *Justices Act 1886* or the *Penalties and Sentences Act 1992* for non-payment of an amount that may be registered under the Act if it was not enforced before the commencement of this clause. If, at the end of the amnesty period the amount has not been paid, the SPER registrar may then issue a new enforcement order under the Act for the amount stated in the cancelled warrant, but is not required to serve a copy of the enforcement order on the person or to give the person any further time to pay the amount before taking enforcement action under part 5 or 6.

Existing fine option order

Clause 172 provides that a fine option order made for a person on an application under the *Justices Act 1886*, section 98U and in force immediately before the commencement of this clause will be taken to be a fine option order made under the Act. If the fine option order is revoked, the registrar may issue an enforcement warrant or a fine collection notice under the Act for the amount concerned but is not required to serve a copy of the warrant or notice on the person.

Expiry of pt 10

Clause 173 provides for the expiry of this part 1 year after it commences.

SCHEDULE 1**ACTS AMENDED****BAIL ACT 1980**

Clause 1 omits section 32(2),

Clause 2 renumbers section 32(1A) as section 32(2).

Clause 3 inserts a new section 32A (Order for payment of amount under forfeited undertaking) after section 32. The new section replaces section 14 of the *Crown Proceedings Act 1980*, which is repealed in this schedule. The new section will require that a court that orders the payment of an amount under section 32 for which there is a surety must also order that the surety pay the amount undertaken to the proper officer of the court immediately or within the time or by the instalments stated in the order and that in default of payment of the amount, the surety be imprisoned for the term stated in the order, of not more than 2 years. Then, if all or part of the amount remains unpaid after the time allowed by the court, the proper officer may register the amount under the *State Penalties Enforcement Act 1999*.

The clause will also insert a new section 32B (Variation or revocation of order forfeiting bail undertaking). The new section replaces section 15 of the *Crown Proceedings Act 1980*, which is repealed in this schedule. The defendant or the surety under a bail undertaking may apply to the court that made the order or, for a Magistrates Court, a magistrate for an order revoking or varying the forfeiture order.

Clause 4 inserts a new ‘part 5 - Transitional Provisions’ after section 37. Section 38 will provide for the continuation of an order under section 14 of the *Crown Proceedings Act 1980* if, on the commencement of the section, a surety has not paid an amount under the order. The order continues to have effect as an order made under section 32A of the Act, any amount that has not been paid under the order continues to be payable until it is paid or otherwise satisfied and despite the repeal of the *Crown Proceedings Act 1980*, section 15, an application may be made under section 32B as if the order were made under section 32A. Any warrant that has not been enforced may be enforced according to its terms as if the repealed law had not been repealed.

CROWN PROCEEDINGS ACT 1980

Clause 1 omits sections 13 to 18 inclusive.

ELECTORAL ACT 1992

Clause 1 omits references to the *Justices Act 1886*, part-4A and inserts a reference to the *State Penalties Enforcement Act 1999*.

JUDICIAL REVIEW ACT 1991

Clause 1 adds the *State Penalties Enforcement Act 1999* to the list of enactments that provides for non-review or limited review of decisions.

JUSTICES ACT 1886

Clause 1 omits part 4A.

Clause 2 omits subsection 266(2)(c).

JUVENILE JUSTICE ACT 1992

Clause 1 omits subsection 55(2).

LAND TITLE ACT 1994

Clause 1 replaces the definition of "enforcement warrant" in Schedule 2 of the Act and, in effect, adds an enforcement warrant under section 62 of the *State Penalties Enforcement Act 1999* as an enforcement warrant for the purposes of the Act. Therefore, this will enable, for example, caveats to be lodged to protect the State's registrable interest, whether as a charge on specified property or because of the issue of a warrant to seize and sell property.

LOCAL GOVERNMENT ACT 1993

Clause 1 redefines the terms "infringement notice" and "infringement notice offence" in terms of the *State Penalties Enforcement Act 1999*.

PENALTIES AND SENTENCES ACT 1992

Clause 1 replaces subsection 5(1)(a) and states that for the *State Penalties Enforcement Act 1999* or an infringement notice under that Act the value of a penalty unit is \$75.

Clause 2 inserts after section 39 (Directions for enforcing order of imprisonment) a new section 39A (Other orders available on failure to comply). The new section gives the courts options which are consistent with the SPER system including, where the court considers the order for default imprisonment should not be enforced immediately, accepting a payment in full, ordering payment by instalment, or causing the proper officer to register the unpaid amount with SPER for enforcement under the *State Penalties Enforcement Act 1999*.

Clause 3 omits from section 41 the word 'compensation' and replaces it with 'an amount' so that the section covers both compensation and restitution.

Clause 4 inserts after section 33 a new 'division 3A - Provisions relating to forfeited recognisance', and a new section 33A (Order for payment of amount under a forfeited recognisance). The new section will require a court, on the forfeiture of a recognisance, to order that the stated amount be paid to the proper officer immediately or within the time or by the instalments stated in the order and that in default of payment the person be imprisoned for a term of not more than 2 years. If all or part of the amount remains unpaid after the time allowed by the court, the proper officer may register the amount under the *State Penalties Enforcement Act-1999*.

The clause also inserts a new section 33B (Variation or revocation of order forfeiting recognisance). The new section replaces section 15 of the *Crown Proceedings Act 1980*, which is repealed in this schedule. The offender or the surety under a recognisance may apply to the court that made the order or, for a Magistrates Court, a magistrate for an order revoking or varying the forfeiture order.

Clause 5 omits section 56 which requires courts to send a notice to an offender warning of the impending issue of a warrant of commitment.

Clause 6 replaces subsections s56A(3),(4) so as to provide that an application for a fine option order can not be made after a warrant of commitment has been issued.

Clause 7 amends the test in subsections 58(1) (c) and 58(2) (c) for reconsidering an offender's financial position, if a fine option order has been previously refused, from being "worse" to "significantly worse".

Clause 8 omits references in a number of sections to repealed section 56.

Clause 9 amends subsection 62(4)(b) by inserting the words 'under section 58' after the words 'original order'.

Clause 10 amends section 70 by inserting the words 'under section 58' after the words 'for the offender'.

Clause 11 replaces section 74 which details the action to be taken by an authorised corrective service officer on an offender's failure to comply with a fine option order. It removes the requirement to bring the offender back before the court if he or she fails to comply with a fine option order, and it imposes a breach mechanism consistent with that under the *State Penalties Enforcement Act 1999*.

Clause 12 omits section 75 (Matter may be heard and determined in offender's absence) as a consequence of the amendment to section 74.

Clause 13 amends the heading to section 76 by replacing the word 'Court' with 'proper officer'.

Clause 14 amends section 76 (Court to determine hours of community service) by replacing the word 'court' with "proper officer" as a consequence of the amendment to section 74.

Clause 15 further amends section 76 by omitting the word 'it' and inserting 'the proper officer'.

Clause 16 omits section 77 (Failure to comply not question for jury) as a consequence of the amendment to section 74.

Clause 17 amends subsection 78(1) by replacing the word 'court' with "proper officer" as a consequence of the amendment to section 7

Clause 18 omits subsection 78(2) (Effect of revoking orders under s 74) as a consequence of the amendment to section 74.

Clause 19 amends the time for appealing in subsection 85(2)(a) from "25 business days" to "1 calendar month". This is now consistent with appeal periods found in the *Criminal Code* and *Mental Health Act 1974*.

Clause 20 updates the reference in section 88(1)(e) from "74(4)(b)" to "74" as a consequence of the amendment to section 74.

Clause 21 omits section 182B (Warrant for arrest and imprisonment) as a consequence of the amendment in the following clause.

Clause 22 replaces section 185A. If an offender does not pay a penalty under section 182A or section 185 immediately or within the time allowed by a court section 185A will give to a proper officer of the court a choice between issuing a warrant for arrest and imprisonment or to register the unpaid amount with SPER under the *State Penalties Enforcement Act 1999*.

Clause 23 omits the reference to section 182B in section 185B.

Clause 24 amends section 186(1) (Reduction of imprisonment) by stating in plain English the calculation for the term to be served if a part payment is made or part satisfaction is achieved by execution against property.

Clause 25 amends section 186(2) by stating in plain English the calculation for the term to be served if a part payment is made in prison.

Clause 26 inserts a new section 207 (Transitional provisions for State Penalties Enforcement Act 1999) after section 206. Section 207 will provide for the continuation of an order under section 13 of the *Crown Proceedings Act 1980* if, on the commencement of the section, an offender or surety has not paid an amount under the order. The order continues to have effect as an order made under section 43B of the Act, any amount that has not been paid under the order continues to be payable until it is paid or otherwise satisfied and despite the repeal of the *Crown Proceedings Act 1980*, section 15, an application may be made under section 43A as if the order were made under section 43B. Any warrant that has not been enforced may be enforced according to its terms as if the repealed law had not been repealed.

REFERENDUMS ACT 1997

Clause 1 omits a reference in section 45(2) to the "*Justices Act 1886*, part 4A" and inserts a reference to the "*State Penalties Enforcement Act 1999*".

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

Clause 1 inserts a new offence in section 78 and establishes the penalty for driving whilst under suspension under the *State Penalties Enforcement Act 1999*. It also provides a defence if the person whose licence is suspended proves that he or she did not receive the notice of intention to suspend a driver licence.

Clause 2 updates subsection 106(3)(b) with a reference to the *State Penalties Enforcement Act 1999*.

Clause 3 omits a reference in section 108 to the "*Justices Act 1886, part 4A*" and inserts a reference to the "*State Penalties Enforcement Act 1999*".

Clause 4 updates part of the existing definition of 'camera detected offence' under section 113 with reference to the *State Penalties Enforcement Act 1999*.

Clause 5 updates existing section 114(5)(b) with reference to the *State Penalties Enforcement Act 1999*.

Clause 6 replaces section 121 of the Act with reference to the *State Penalties Enforcement Act 1999*. Any inconsistencies between Act and the *State Penalties Enforcement Act 1999*, so far as they apply to camera detected offences, shall be resolved in favour of the Act.

Clause 7 inserts a new section 129A which details the effects of suspension of a driver licence under the *State Penalties Enforcement Act 1999*. A licence is not extended if it is due to expire while suspended. A person must not apply for another licence until the penalty is paid. However, if the Act requires a person to hold a licence for a stated period, the stated period is extended by the period of the suspension. If a person is disqualified from applying for or obtaining a driver licence under section 106(4) of the *State Penalties Enforcement Act 1999* it is an offence to apply for or obtain a licence. Maximum penalty - 20 penalty units or 18 months imprisonment.

Clause 8 amends section 131 (Appeals with respect to issue of licences) by providing that the section does not apply to a licence that is suspended under the *State Penalties Enforcement Act 1999*.

Clause 9 amends the heading in section 139 (Service of determinations, notices, orders and directions of the Commissioner) by inserting 'or the chief executive' after 'Commissioner'.

Clause 10 amends section 139 so that service can be effected by publication in the gazette not only by the commissioner of police but also by the chief executive.

SCHEDULE 2

DICTIONARY

The dictionary defines words and phrases used throughout the Act.

For example:

“cut-out rate”, for a fine or unpaid amount, means-

- (a) for a court order under which an offender is required to serve a term of default imprisonment for failing to pay a penalty or a forfeited recognisance under the *Penalties and Sentences Act 1992*-the rate worked out by dividing the penalty or the amount of the recognisance by the number of days of imprisonment ordered, expressed in dollars for each day; or
- (b) for a court order under which an offender is not required to serve a term of default imprisonment for failing to pay a penalty under the *Penalties and Sentences Act 1992*-\$60 per day, unless otherwise prescribed under a regulation; or
- (c) for a court order under which a surety is required to serve a term of default imprisonment for failing to pay an amount under the *Bail Act 1980* or the *Penalties and Sentences Act 1992*-the rate worked out by dividing the amount by the number of days of imprisonment ordered, expressed in dollars for each day; or
- (d) for a fine option order-\$15 per hour (or equivalent to \$120 per 8 hour day), unless otherwise prescribed by regulation; or
- (e) for an infringement notice offence-\$60 per day, unless otherwise prescribed under a regulation.

“fine” includes-

- (a) an amount stated in an infringement notice as the fine for a stated infringement notice offence and, in relation to a particular infringement notice, the fine stated in the infringement notice; and
- (b) any amount payable under an ancillary order of a court in relation to an offence for which a fine is imposed; and
- (c) for part 8 (reciprocal enforcement)-see clause 129.