



# **State Penalties Enforcement Act 1999**

**Reprinted as in force on 21 July 2006**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
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Queensland

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# State Penalties Enforcement Act 1999

[as amended by all amendments that commenced on or before 21 July 2006]

**An Act about the issue and enforcement of infringement notices, the enforcement of court ordered fines and certain court ordered debts, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *State Penalties Enforcement Act 1999*.

### 2 Commencement

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

### 3 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 4 Objects

The objects of this Act include—

- (a) maintaining the integrity of fines as a viable sentencing or punitive option for offenders; and
- (b) maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced; and
- (c) reducing the cost to the State of enforcing fines and other money penalties.

**5 Act has limited application to children**

- (1) This Act does not apply to a child within the meaning of the *Juvenile Justice Act 1992* other than to the extent it allows a child to pay a fine stated in an infringement notice for an offence in full or by instalments to an administering authority instead of being prosecuted for the offence.
- (2) However, an enforcement order, fine collection notice or warrant may not be issued under this Act against a child within the meaning of the *Juvenile Justice Act 1992*.

**6 Act binds State, Commonwealth and other States**

- (1) This Act binds the State and, as far as the legislative authority of the Parliament permits, the Commonwealth and the other States.
- (2) However, an entity mentioned in subsection (1) can not be prosecuted for an offence against this Act.

**Part 2 The State Penalties Enforcement Registry****7 The State Penalties Enforcement Registry**

A State Penalties Enforcement Registry (*SPER*) is established.

**8 Functions of SPER**

- (1) SPER has the functions conferred or imposed on it under this or another Act.
- (2) In particular, SPER has the following functions—
  - (a) collecting amounts payable to SPER under this or another Act;
  - (b) administering the making of enforcement orders;
  - (c) taking enforcement action under this Act.

- (3) The functions must be performed in accordance with the SPER charter.

## **9 The SPER charter**

The SPER charter includes the following—

- (a) maximising the collection, for victims of offences, of amounts ordered to be paid 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.

## **10 Registrar and other staff of SPER**

- (1) There is to be a registrar of SPER.
- (2) The registrar and other staff of the registry are to be employed under the *Public Service Act 1996*.
- (3) Also, for enforcing this Act, the registrar may engage under a contract—
  - (a) commercial agents as enforcement officers; and
  - (b) other persons for other purposes.
- (4) Persons engaged under subsection (3) are engaged under this Act and not the *Public Service Act 1996*.
- (5) The registrar must give each enforcement officer employed or engaged by the registrar an identity card.
- (6) The identity card must—

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- (a) contain a recent photograph of the enforcement officer; and
  - (b) be signed by the enforcement officer; and
  - (c) identify the person as an enforcement officer; and
  - (d) state an expiry date.
- (7) A person who ceases to be an enforcement officer must return an identity card given to the officer under subsection (5) to the registrar as soon as practicable, but within 21 days, after the person ceases to be an enforcement officer, unless the person has a reasonable excuse for not returning it in the 21 days.

Maximum penalty—40 penalty units.

## **11 Management of office**

- (1) The registrar, or staff of the registry who are justices of the peace (magistrates court) acting for the registrar, may make or issue an enforcement order, warrant or fine collection notice that may be made or issued by the registrar under this Act.
- (2) A power exercised by someone other than the registrar under subsection (1) may be exercised in the person's own name or in the name of the registrar.
- (3) The registrar and other staff have, for making or issuing an order or warrant under this Act, the same immunities and protection as officers of a court.
- (4) Anything done by the registrar in the name of or for SPER is taken to have been done by SPER.

## **12 Protection from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence, when acting as an official.
- (2) If subsection (1) prevents a civil liability attaching to an official, liability attaches instead to the State.
- (3) In this section—  
*official* means—

- (a) the registrar; or
- (b) another member of the staff of SPER; or
- (c) an enforcement officer.

## **Part 3                      Infringement notices**

### **Division 1                      Service of infringement notices**

#### **13                      Service of infringement notices—generally**

- (1) If an authorised person reasonably believes a person has committed an infringement notice offence, the authorised person may serve an infringement notice on the person for the offence.
- (2) If the infringement notice offence involves a vehicle, the infringement notice may be served under section 14.
- (3) Section 14 does not limit the ways an infringement notice may be served on a person.

#### **14                      Service of infringement notices for infringement notice offences involving vehicles**

- (1) An infringement notice for an infringement notice offence involving a vehicle may be served—
  - (a) on the owner of the vehicle; or
  - (b) on the person named in a known user declaration as the person who was in charge of the vehicle at the relevant time; or
  - (c) 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.
- (2) If the infringement notice is to be served by post, the notice may be addressed to the person—

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- (a) for the owner of the vehicle—at the latest address of the owner in the register of vehicles kept under a registration Act; or
  - (b) for the person named in a known user declaration—at the person’s address stated in the declaration; or
  - (c) for the person named in a sold vehicle declaration—at the person’s address stated in the declaration.
- (3) Also, the infringement notice may be served by securely placing or attaching the notice, addressed to the owner, without further description, on or to the vehicle in a conspicuous position.
- (4) If the infringement notice is served under subsection (3), it is taken to have been served on the owner on the day it is placed on or attached to the vehicle.
- (5) A person must not interfere with an infringement notice placed on or attached to a vehicle unless the person is the owner or the person in charge of the vehicle at the relevant time.

Maximum penalty for subsection (5)—40 penalty units.

**15 Infringement notices**

- (1) An infringement notice must be in the form approved by the administering authority.
- (2) The notice must state the following—
  - (a) a unique number for the notice;
  - (b) the date of the notice;
  - (c) in relation to the alleged offender, unless the notice is served under section 14(3)—
    - (i) the alleged offender’s full name, or surname and any initial, and address; or
    - (ii) the particulars that are, under a regulation, identifying particulars for the alleged offender;
  - (d) in relation to the offence, particulars that are enough to show clearly the nature of the offence, including the following—



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- (i) if the offence is one prescribed under a regulation for this paragraph—the identifying particulars prescribed under the regulation for the offence;
  - (ii) if the offence took place over a period and did not involve a vehicle—the period over which the offence was committed;
  - (iii) the place the offence was committed and, subject to subparagraph (ii), the time and date of the offence;
  - (iv) if the offence involves a vehicle—the identifying particulars prescribed under a regulation for the vehicle;
  - (v) if the offence involves an animal—the identifying particulars prescribed under a regulation for the animal;
- (e) the fine for the offence and how and where the fine may be paid;
  - (f) that the alleged offender must, within 28 days after the date of the notice—
    - (i) pay the fine in full to the administering authority; or
    - (ii) give to the administering authority a written election to have the matter of the offence decided in a Magistrates Court; or
    - (iii) 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;
  - (g) that the notice may be withdrawn before or after the fine is paid;
  - (h) if the offence involves a vehicle, the general effect of section 17.<sup>1</sup>
- (3) The infringement notice must also state—
    - (a) if the fine is at least the threshold amount—

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1 Section 17 (Liability for infringement notice offences involving vehicles)

- (i) the alleged offender may, within 28 days after the date of the infringement notice, apply to the administering authority to pay the fine by instalments of not less than the minimum instalment; and
  - (ii) if the administering authority approves the application and the alleged offender pays the first instalment, the alleged offender may pay all remaining instalments to SPER in any way acceptable to SPER; and
- (b) that if the alleged offender defaults, enforcement action may be taken to recover the amount, including by registering it with SPER, and additional fees may be payable.

## **16 Effect of this part on prosecution**

- (1) 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 against the person or anyone else in a court for the offence.
- (2) This part does not—
  - (a) require the serving of an infringement notice on a person for an offence, as opposed to proceeding against the person in another way; or
  - (b) 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**

### **17 Liability for infringement notice offences involving vehicles**

- (1) If—
  - (a) an infringement notice offence involving a vehicle happens; and

- (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the time of the offence;

the owner is taken to have committed the offence even though the actual offender may have been someone else.

- (2) If the actual offender is someone else, subsection (1) does not affect the liability of the actual offender, but—
  - (a) the owner and the actual offender can not both be punished for the offence; and
  - (b) if a fine is paid or a penalty is imposed on 1 of them for the offence, a further penalty must not be imposed on or recovered from the other person for the offence.
- (3) However, the owner must not be taken under subsection (1) 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.
- (4) The declaration must be made by—
  - (a) if the owner is an individual—the owner; or
  - (b) if the owner is a corporation—an executive officer of the corporation or the responsible operator.
- (5) A declaration by an executive officer of a corporation must be under the common seal of the corporation.

## **18 Effect of illegal user declaration**

- (1) This section applies if—
  - (a) an infringement notice offence involving a vehicle happens; and
  - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
  - (c) the person makes and gives to the administering authority an illegal user declaration for the vehicle.

- (2) In a proceeding for the offence against the owner, a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the vehicle was stolen or illegally taken at the relevant time.

## **19 Effect of known user declaration**

- (1) This section applies if—
- (a) an infringement notice offence involving a vehicle happens; and
  - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
  - (c) the person makes and gives to the administering authority a known user declaration for the vehicle.
- (2) This section and section 17<sup>2</sup> apply as if the person named in the declaration as the person in charge of the vehicle at the relevant time (the *user*) were the owner of the vehicle at that time.
- (3) A proceeding for the offence may be started against the user only if a copy of the declaration has been served on the user.
- (4) In a proceeding for the offence against the user, the declaration is evidence that the user was in charge of the vehicle at the relevant time.
- (5) In a proceeding for the offence against the owner mentioned in subsection (1)(b), a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the owner was not in charge of the vehicle at the relevant time.

## **20 Effect of sold vehicle declaration**

- (1) This section applies if—
- (a) an infringement notice offence involving a vehicle happens; and

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2 Section 17 (Liability for infringement notice offences involving vehicles)

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- (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
  - (c) the person makes and gives to the administering authority a sold vehicle declaration for the vehicle.
- (2) This section and section 17 apply as if the person named in the declaration as the person to whom the vehicle was sold or otherwise disposed of (the *buyer*) were the owner of the vehicle from the time of the sale or disposal.
  - (3) A proceeding for the offence may be started against the buyer only if a copy of the declaration has been served on the buyer.
  - (4) In a proceeding for the offence against the buyer, the declaration is evidence that the buyer was the owner of the vehicle at the relevant time.
  - (5) In a proceeding for the offence against the owner mentioned in subsection (1)(b), a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the owner had sold or disposed of the vehicle before the relevant time and was not in charge of the vehicle at that time.

**21 Effect of unknown user declaration**

- (1) This section applies if—
  - (a) an infringement notice offence involving a vehicle happens; and
  - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
  - (c) the owner makes and gives to the administering authority an unknown user declaration for the vehicle.
- (2) In a proceeding for the offence against the owner, a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise—
  - (a) that—

- (i) if the owner is an individual—the owner was not in charge of the vehicle at the relevant time; or
  - (ii) if the owner is a corporation—the vehicle was not being used for the purposes of the corporation at the relevant time; and
- (b) that the inquiries made to find out the name and address of the person who was in charge of the vehicle at the relevant time—
- (i) were reasonable in the circumstances; and
  - (ii) were carried out with appropriate diligence.

### **Division 3                      Obligations and options under infringement notices**

#### **22      Ways alleged offender may deal with infringement notice**

- (1) If an infringement notice is served on an alleged offender for an offence, the alleged offender must, within 28 days after the date of the infringement notice—
- (a) pay the fine in full to the administering authority; or
  - (b) give to the administering authority an 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.
- (2) Also, if the fine is at least the threshold amount, the alleged offender may, within 28 days after the date of the infringement notice, apply to the administering authority to pay the fine by instalments.

#### **23      Application to pay fine by instalments**

- (1) This section applies if—

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- (a) an alleged offender is served with an infringement notice for an offence; and
  - (b) the fine for the offence is at least the threshold amount.
- (2) 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 minimum instalment.
  - (3) The application must be accompanied by the first instalment, unless the application authorises the payment of the instalment by direct debit from an account the person holds with a financial institution.
  - (4) If the application complies with this section, the administering authority must approve the application.
  - (5) If the administering authority approves the application, the alleged offender may pay all remaining instalments to SPER in any way acceptable to SPER.
  - (6) The approved form provided by an administering authority for subsection (2) must include a statement of the consequences of not paying instalments.
  - (7) Subsection (3) only requires an administering authority to accept payment of an instalment by direct debit if the administering authority is capable of accepting it.

**24 Registration of instalment payments for infringement notices**

- (1) If an administering authority approves an application to pay an infringement notice fine by instalments, the administering authority must give to SPER, for registration, the particulars that are prescribed under a regulation of the offence to which the application relates and of the unpaid amount.
- (2) No registration fee is payable for registering the particulars.
- (3) The registrar must register the particulars, or the amended particulars given under subsection (6), as soon as practicable after receiving them.
- (4) On registration—

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- (a) SPER becomes responsible for the collection of, and may collect, the unpaid amount; and
  - (b) the registrar must give to the person an instalment payment notice.
- (5) SPER may retain out of each instalment received a management fee prescribed under a regulation.
- (6) An administering authority may give to SPER for registration amended particulars mentioned in subsection (1).
- (7) If amended particulars are given and an instalment payment notice for different particulars has already been given to the person, a fresh instalment payment notice must be given to the person.

**25 Alleged offender who pays can not be prosecuted**

- (1) The alleged offender must not be prosecuted in a court for an infringement notice offence if the alleged offender pays the fine as required by the infringement notice, including by instalments.
- (2) Subsection (1) applies even though more than 1 infringement notice has been served on the alleged offender for the offence.<sup>3</sup>
- (3) This section is subject to section 28.<sup>4</sup>

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

- (1) This section applies if a person served with an infringement notice for an offence—
- (a) pays the fine for the offence to the administering authority; or
  - (b) applies to the administering authority to pay the fine for the offence by instalments.

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<sup>3</sup> For the effect of a dishonoured cheque on payment of a fine, see section 150 (Dishonoured cheques etc.).

<sup>4</sup> Section 28 (Administering authority may withdraw infringement notice)



- (2) The person may not elect to have the matter decided by a Magistrates Court.

**27 When infringement notice offence is to be decided by court**

- (1) If, within 28 days after the date of an infringement notice, an alleged offender—
- (a) elects under section 22(1)(b)<sup>5</sup> to have the matter of the offence decided by a Magistrates Court; or
  - (b) takes no action under section 22;
- a proceeding for the offence may be started under the *Justices Act 1886*.
- (2) Subsection (1)(b) does not prevent the administering authority from giving SPER prescribed particulars of the offence for registration under part 4.<sup>6</sup>

**Division 4 Withdrawal and re-issue of infringement notice**

**28 Administering authority may withdraw infringement notice**

- (1) An administering authority may withdraw an infringement notice at any time before the fine is paid or otherwise discharged under this Act.
- (2) For the withdrawal to be effective, the administering authority must—
- (a) serve on the alleged offender a withdrawal notice in the approved form; and
  - (b) repay to the alleged offender any amount paid to the administering authority for the offence; and

<sup>5</sup> Section 22 (Ways alleged offender may deal with infringement notice)

<sup>6</sup> Part 4 (Enforcement orders)

- (c) if prescribed particulars of the infringement notice offence are registered under part 4, give to SPER a copy of the withdrawal notice.
- (3) On complying with subsection (2)—
  - (a) this Act, other than this part, stops applying to the infringement notice offence; and
  - (b) 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.
- (4) No compensation is payable to a person because of the administering authority's refusal to withdraw an infringement notice.

## **29 Cancellation of registration on withdrawal of infringement notice**

- (1) If an administering authority gives to SPER a copy of a withdrawal notice under section 28 for prescribed particulars of an infringement notice offence that are registered under part 4—
  - (a) the registrar must, as soon as practicable after receiving the notice—
    - (i) cancel the registration of the particulars and any enforcement order made because of the registration; and
    - (ii) refund to the person any amount paid to SPER by the person for the offence; and
  - (b) the administering authority must refund to the person any amount paid to the administering authority; and
  - (c) if—
    - (i) an enforcement order has been made against the person; and
    - (ii) the person has performed community service for the offence under a fine option order under this Act;

the administering authority must pay to the person, as compensation for the time spent performing community service, an amount worked out at the relevant cut-out rate for the order, rounded down to the nearest whole dollar.

- (2) The person is not entitled to compensation for performing community service other than compensation under subsection (1)(c).

### **30 Application to cancel infringement notice for mistake of fact**

- (1) If the registrar is satisfied—
  - (a) a person has been incorrectly named in an infringement notice as the alleged offender for an infringement notice offence because of a mistake of fact or the misuse of the name and other particulars of the person named in the infringement notice; and
  - (b) the administering authority has refused to withdraw the relevant infringement notice;the registrar may apply to a Magistrates Court for an order cancelling the infringement notice.
- (2) The court may cancel or refuse to cancel the infringement notice.
- (3) The court may decide an application under subsection (1) on written materials in the absence of a party if the court considers it appropriate.

### **31 Effect of cancellation of infringement notice**

- (1) This section applies if an infringement notice is withdrawn under section 28 or cancelled under section 30.
- (2) If, because of the infringement notice, demerit points have been allocated against the alleged offender for an infringement notice offence under the *Nature Conservation Act 1992* or another law, prescribed under a regulation, that provides for the allocation of demerit points—
  - (a) the demerit points for the offence are cancelled; and

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- (b) the relevant administering authority must make a note on any record it keeps in relation to the person clearly indicating that the demerit points allocated against the person have been cancelled.
- (3) Without limiting subsection (2), if, because of the infringement notice, demerit points have been allocated against the alleged offender's traffic history for an infringement notice offence under the *Transport Operations (Road Use Management) Act 1995*—
  - (a) the demerit points for the offence are cancelled; and
  - (b) the chief executive of the department within which that Act is administered must remove the record of the allocation of the demerit points from the alleged offender's traffic history.
- (4) Further, if, because of the infringement notice, a licence, permit or other authority has been 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.

**32 Proceedings after cancellation of infringement notice**

- (1) This section applies if an infringement notice is withdrawn under section 28 or cancelled under section 30.<sup>7</sup>
- (2) If the infringement notice is withdrawn or cancelled and the name of the actual offender is known, nothing in this or any other Act prevents the administering authority issuing an infringement notice against the actual offender or starting a proceeding in a court for the offence against the actual offender.
- (3) However, the period of limitation within which a proceeding for the offence may be started against the actual offender starts on the day the infringement notice is withdrawn or cancelled.

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<sup>7</sup> Section 28 (Administering authority may withdraw infringement notice) or 30 (Application to cancel infringement notice for mistake of fact)

## **Part 4                      Enforcement orders**

### **Division 1                      Default commences enforcement process**

#### **33                      Default by person served with infringement notice**

- (1) If a person served with an infringement notice has not, within 28 days after the date of the infringement notice—
  - (a) paid the fine in full to the administering authority; or
  - (b) applied to the administering authority to pay the fine by instalments; or
  - (c) given to the administering authority a written election to have the matter of the offence decided in a Magistrates Court; or
  - (d) if relevant, given 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;

the administering authority may give to SPER for registration a certificate (*default certificate*) for the relevant infringement notice offence.

- (2) However, a default certificate must not be given to the registrar after the end of the time within which a person may start a prosecution for the offence, and if given, must not be registered.
- (3) A default certificate given under subsection (1) by an administering authority that is entitled under an Act to retain the amount of any fine paid to it must be accompanied by the registration fee.
- (4) The registrar must register the default certificate as soon as practicable after it is received.
- (5) An authorised person may give an amended default certificate to SPER, for registration, if amendment of an earlier certificate is necessary because of error, the dishonour of a cheque, or for another reason.

- (6) No fee is payable for registering an amended default certificate.

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

- (1) This section applies to any of the following orders made by a court, whether before or after the commencement of this section—
- (a) an order fining a person for an offence;
  - (b) an order under the *Penalties and Sentences Act 1992*, section 33A<sup>8</sup> that an amount be paid on the forfeiture of a recognisance;
  - (c) an order that a person pay to someone else an amount by way of restitution or compensation under the *Penalties and Sentences Act 1992*, section 35;<sup>9</sup>
  - (d) an order under the *Bail Act 1980*, section 32 or 32A<sup>10</sup> that a person pay an amount on the forfeiture of an undertaking;
  - (e) an order made before the commencement of this section that a person pay an amount under the *Crown Proceedings Act 1980*, section 13 or 14.
- (2) If all or part of the fine or other amount remains unpaid after the time allowed by the court or the court registrar, the court registrar may give to SPER, for registration, the prescribed particulars of the unpaid amount.
- (3) The registrar must register the particulars as soon as practicable after receiving them.
- (4) Also, the registrar may issue an enforcement order, an enforcement warrant or a fine collection notice against the person concerned for the unpaid amount.

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8 *Penalties and Sentences Act 1992*, section 33A (Failing to obey condition of recognisance)

9 *Penalties and Sentences Act 1992*, section 35 (Order for restitution or compensation)

10 *Bail Act 1980*, section 32 (Forfeiture of deposit or other security) or 32A (Order for payment of amount under forfeited undertaking)

- (5) Subsection (2) applies unless the person is ordered to be imprisoned under the *Penalties and Sentences Act 1992*, section 39 or 185A.<sup>11</sup>

### **35 Effect of registration under this division**

- (1) This section applies if the registrar registers a default certificate under section 33 or prescribed particulars under section 34.
- (2) On registration of the default certificate or particular—
- (a) the amount unpaid is increased by the amount of the registration fee; and
  - (b) SPER becomes responsible for the collection of, and may collect, the unpaid amount; and
  - (c) if the amount is registered because of a default certificate, a proceeding against the person for the offence may be started in a court only under this part.
- (3) In this section—
- amount unpaid*, for an infringement notice offence involving a vehicle, includes the cost of establishing ownership of the vehicle.

### **36 Default in paying instalment**

If, on 2 consecutive occasions, a person served with an instalment payment notice fails to pay an instalment under the notice within the time allowed, the registrar may cancel the instalment payment notice without notice to the person.

### **37 Effect of cancellation of instalment payment notice**

On the cancellation of an instalment payment notice under this division, the registrar must—

- (a) increase the unpaid amount to which the notice relates by the amount of the registration fee; and

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<sup>11</sup> *Penalties and Sentences Act 1992*, section 39 (Directions for enforcing order of imprisonment) or 185A (If offender does not pay penalty under s 185)

- (b) issue to the person an enforcement order for the total of the unpaid amount.

## **Division 2                    Enforcement orders**

### **38            Issue of enforcement order**

- (1) This section applies if—
  - (a) the registrar registers a default certificate for a person; or
  - (b) this Act expressly authorises the registrar to issue an enforcement order against a person.
- (2) The registrar must, in writing, order the person (*enforcement debtor*) to pay the amount stated in the order (*enforcement order*) to SPER within 28 days after the date of the order.
- (3) The amount stated in an enforcement order must be—
  - (a) the amount that is registered as the unpaid amount for an offence; or
  - (b) the amount for which the registrar is expressly authorised to issue the order.
- (4) The enforcement order must also state the period for which the enforcement debtor may be imprisoned for failure to pay the stated amount.
- (5) The enforcement order may be made in the absence of, and without notice to, the enforcement debtor.

### **39            Working out period of imprisonment for enforcement order**

- (1) The period of imprisonment that may be stated in an enforcement order for an amount ordered to be paid by a court must be the period worked out by dividing the amount stated in the order by the relevant cut-out rate for a court order, rounded down to the nearest whole number and expressed as a number of days.
- (2) The period of imprisonment that may be stated in an enforcement order for an infringement notice offence must be



the period worked out by dividing the amount stated in the order by the cut-out rate for an infringement notice offence, rounded down to the nearest whole number and expressed as a number of days.

- (3) 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.

#### **40 Service of enforcement order**

The registrar may serve an enforcement order on a person personally or by sending it by ordinary post to—

- (a) for an individual—the address of the place of residence or business of the person last known to SPER; or
- (b) for a corporation—the head office, a registered office or a principal office of the corporation.

### **Division 3                      Obligations and options under enforcement order**

#### **41 Ways enforcement debtor may deal with enforcement order**

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 enforcement 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 stated in the order; or
- (c) apply to SPER in the approved form for approval 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 under a fine option order; or

- (e) if the order relates to an infringement notice offence—give to SPER an election to have the matter of the offence decided in a Magistrates Court.

## **42 Application for time to pay**

- (1) Within 28 days after the date of an enforcement order, the enforcement debtor may apply to SPER in the approved form for either of the following—
  - (a) an extension of time to pay the amount stated in the order;
  - (b) approval to pay the amount stated in the order by instalments.
- (2) The approved form provided by SPER for subsection (1) must include a statement of the consequences of failing to pay the amount within the time allowed, including by instalments.
- (3) The registrar may—
  - (a) extend the time to pay the amount by a stated period, of not more than 28 days; or
  - (b) allow the amount to be paid by stated instalments, of not less than the minimum instalment.
- (4) The registrar may, if satisfied exceptional circumstances exist, allow the amount to be paid by stated instalments of less than the minimum instalment.
- (5) The registrar must give the enforcement debtor notice of the decision.
- (6) If the registrar decides to allow payment of the amount by instalments, the registrar must also give the enforcement debtor an instalment payment notice for the amount.
- (7) The amount stated in the instalment payment notice may be the total of all amounts payable by the enforcement debtor under this Act.

## **43 Application for fine option order**

- (1) Within 28 days after the date of an enforcement order, the enforcement debtor may, subject to section 44, apply to SPER

in the approved form for conversion of the amount stated in the order to hours of unpaid community service under a fine option order.

- (2) The approved form provided by SPER for subsection (1) must include a statement of the consequences of not complying with a fine option order.
- (3) An application under this section may also be made by telephone.
- (4) If the enforcement debtor applies by telephone, SPER must explain to the enforcement debtor the consequences of not complying with a fine option order and record the fact that the consequences have been explained.

#### **44 When application for fine option order may not be made**

- (1) An enforcement debtor can not apply for a fine option order—
  - (a) if the enforcement debtor has contravened a previous fine option order for the same offence; or
  - (b) after the issue of an arrest and imprisonment warrant for the amount stated in the enforcement order.
- (2) Also, an enforcement debtor can not apply for a fine option order 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.
- (3) If a person makes an application despite subsection (1), SPER must not accept the application.
- (4) Also, if a person makes an application despite subsection (2), SPER must not accept the application unless SPER is satisfied the person's financial position has become significantly worse.
- (5) If SPER does not accept an application because of this section, SPER must inform the applicant that SPER can not make a fine option order for the person because of this section.

**45 No fine option order if SPER decides applicant can pay**

- (1) If, after considering an application for a fine option order, SPER decides the applicant can pay the total amount unpaid, including by instalments or otherwise, SPER must reject the application.
- (2) SPER must inform the applicant of the decision and the reasons for the decision.

**46 Fine option order only for unpaid fine**

A fine option order can only be made for—

- (a) a fine imposed by a court, excluding an ancillary order, or an infringement notice fine; and

*Examples of ancillary orders—*

- 1 Professional fees, witnesses expenses and interpreters' allowances.
  - 2 Royalties or another similar amount, including conservation value payable under the *Nature Conservation Act 1992*.
- (b) fees or costs payable under this Act.

**47 If SPER accepts application for fine option order**

- (1) If SPER accepts an application for a fine option order, SPER must, as soon as reasonably practicable, refer the application to the chief executive (corrective services) for decision about whether the enforcement debtor is suitable for performing community service under a fine option order.
- (2) SPER must give to the enforcement debtor notice of the referral and a copy of any information used to make the decision.
- (3) The notice must state—
  - (a) the purpose of the referral is for enabling the chief executive (corrective services) to decide whether the enforcement debtor is suitable for performing community service under a fine option order; and
  - (b) the enforcement debtor must attend the corrective services office most convenient to the enforcement debtor, unless the chief executive (corrective services)

decides to assess the enforcement debtor's suitability by telephone.

#### **48 Assessment of suitability for fine option order**

- (1) This section applies if SPER refers an application for a fine option order to the chief executive (corrective services) under section 47.
- (2) Unless the chief executive (corrective services) decides to assess the person's suitability by telephone, the enforcement debtor must attend the corrective services office most convenient to the enforcement debtor for assessment.
- (3) The chief executive (corrective services) must decide whether the enforcement debtor is suitable for performing community service under a fine option order.
- (4) Without limiting the matters the chief executive (corrective services) may take into account under subsection (3), an enforcement debtor is taken to be not suitable for performing community service if the enforcement debtor has breached a community service order in the previous 12 months.
- (5) If the chief executive (corrective services) decides the enforcement debtor is not suitable for performing community service under a fine option order, that chief executive must give the enforcement debtor written notice—
  - (a) of the decision; and
  - (b) 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;<sup>12</sup> and
  - (c) if the time for taking other action under the enforcement order has ended—that the enforcement debtor may, within 7 days after the enforcement debtor is given notice of the decision, take the other action.
- (6) The chief executive (corrective services) must also give SPER notice of the decision.

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12 For the other action the enforcement debtor may take, see section 41 (Ways enforcement debtor may deal with enforcement order).

- (7) Subsection (5)(b) and (c) apply, even though the time for taking the action ends more than 28 days after the date of the enforcement order.

#### **49 If enforcement debtor is suitable for fine option order**

- (1) If the chief executive (corrective services) decides an enforcement debtor is suitable for performing community service under a fine option order, that chief executive must give SPER notice of—
- (a) the decision; and
  - (b) the number of hours of unpaid community service the enforcement debtor must perform to satisfy the unpaid amount stated in the enforcement order; and
  - (c) the supervising corrective services office for the order; and
  - (d) when and where the enforcement debtor must report for performing the community service.
- (2) For subsection (1)(b), the number of hours unpaid community service to be performed is the number worked out by dividing the unpaid amount by the cut-out rate for a fine option order, rounded down.

#### **50 Making and registration of fine option order**

- (1) If the chief executive (corrective services) informs SPER an enforcement debtor is suitable for performing community service under a fine option order, the registrar must make a fine option order for the enforcement debtor.
- (2) The registrar must—
- (a) register the fine option order as soon as practicable after it is made; and
  - (b) give to the enforcement debtor notice of the making of the fine option order and its terms.
- (3) The fine option order—
- (a) takes effect on its registration; and

- (b) suspends the enforcement order so far as it requires the payment of the unpaid amount stated in the order.

## **51 Election for court hearing**

- (1) If, within 28 days after the date of an enforcement order made against an enforcement debtor for an infringement notice offence for which the fine is unpaid, the enforcement debtor—
  - (a) elects under the order to have the matter of the offence decided in a Magistrates Court; or
  - (b) takes no action under section 42 or 43;<sup>13</sup>a proceeding for the offence may be started under the *Justices Act 1886*.
- (2) If either of the following happens, any enforcement order for the offence stops having effect—
  - (a) the enforcement debtor elects under subsection (1)(a) to have the matter of the offence decided in a Magistrates Court;
  - (b) the enforcement debtor is granted a rehearing of the complaint for the offence in a Magistrates Court under the *Justices Act 1886*, section 142.<sup>14</sup>
- (3) Also, if a proceeding against the enforcement debtor for the offence is reopened under the *Justices Act 1886*, section 147A,<sup>15</sup> any enforcement order for the offence stops having effect.
- (4) The registrar must notify the enforcement debtor and the relevant administering authority of the effect of subsection (2) or (3).
- (5) The notification under subsection (4) must be given as soon as practicable after the registrar knows that the enforcement order stops having effect because of this section.

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13 Section 42 (Application for time to pay) or 43 (Application for fine option order)

14 *Justices Act 1886*, section 142 (Proceedings in absence of defendant)

15 *Justices Act 1886*, section 147A (Power of justices to reopen proceedings and rectify orders)

## **Division 4                      Default after enforcement order**

### **52            Default after time to pay**

- (1) This section applies if an enforcement debtor—
  - (a) fails to pay an amount stated in an enforcement order within 28 days after the date of the order or the later time allowed under section 42;<sup>16</sup> or
  - (b) fails to pay an amount stated in an instalment payment notice issued under section 42 in accordance with the notice.
- (2) 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 stated in the enforcement order or instalment payment notice.
- (3) Also, if the failure relates to an instalment payment notice, the registrar may cancel the instalment payment notice without notice to the enforcement debtor.
- (4) If the registrar decides to issue an arrest and imprisonment warrant, the warrant must be for the arrest and imprisonment of the enforcement debtor for the period stated in the warrant worked out for the unpaid amount in the same way as the period of imprisonment for an amount stated in an enforcement order is worked out under section 39.<sup>17</sup>

### **53            Breach of fine option order**

- (1) This section applies if an authorised corrective services officer gives to SPER a fine option order breach notice for an amount stated in an enforcement order.
- (2) The registrar must register the notice as soon as practicable after it is received.

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16 Section 42 (Application for time to pay)

17 Section 39 (Working out period of imprisonment for enforcement order)



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

### **54                      Effect of appeal on enforcement order**

- (1) This section applies if, after an enforcement order is made for a penalty imposed by a court for an offence, the enforcement debtor appeals against the conviction or sentence for the offence.
- (2) The appeal suspends the enforcement order.
- (3) If the appeal is upheld, the registrar must refund to the enforcement debtor any amount paid to SPER for the offence.
- (4) If the appeal is dismissed, the suspension of the enforcement order is lifted and the registrar may continue to enforce the order.
- (5) As soon as the registrar becomes aware of the appeal mentioned in subsection (1), the registrar must ensure that any steps taken under this Act to enforce the enforcement order are discontinued immediately and no further action is taken until the appeal is decided.

## **Division 6                      Cancellation of certain enforcement orders**

### **55                      Application of div 6**

This division applies to an enforcement order for an infringement notice offence (*relevant enforcement order*).

### **56                      Applications for cancellation of enforcement orders**

- (1) An enforcement debtor may apply in writing to SPER for the cancellation of the relevant enforcement order for any of the following reasons—
  - (a) the person did not receive—
    - (i) the infringement notice; or

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- (ii) any reminder notice the relevant administering authority sent to the person about the infringement notice; or
    - (iii) the enforcement order;
  - (b) the person received a notice or order mentioned in paragraph (a) after the time allowed for taking action stated in the notice or order;
  - (c) the person was prevented by accident or illness or for another similar reason from taking action in relation to the infringement notice or enforcement order.
- (2) The application must be made within the earlier of the following—
- (a) 14 days after the debtor becomes aware of the existence of the order;
  - (b) 6 months after the issue of the relevant enforcement order.
- (3) A person must not, without the approval of the registrar, make more than 1 application in relation to the relevant enforcement order.

**57 Decision on application**

- (1) The registrar may cancel the relevant enforcement order only if the registrar is satisfied the order should be cancelled for the reason stated in the application.
- (2) The registrar may ask the applicant to give to the registrar any information prescribed under a regulation that will help the registrar decide the application.
- (3) The registrar may consider the application in the absence of the applicant.
- (4) If the registrar cancels the relevant enforcement order, the registrar must refer the matter of the offence to a Magistrates Court in the Magistrates Court district in which the offence is alleged to have been committed to be dealt with under section

59,<sup>18</sup> unless the amount payable under the infringement notice is paid immediately on the cancellation of the order.

- (5) The registrar must give the applicant notice of the decision and, if the enforcement order is cancelled, a copy of the referral notice.
- (6) A referral under subsection (4), must be made in the approved form (*referral notice*).

## **58 Appeal against refusal to cancel enforcement order**

- (1) If, within 14 days after the date of the notice of the decision under section 57(5) and, after considering an application to cancel an enforcement order, the registrar refuses to cancel the order, the applicant may apply in writing to a 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.
- (2) The application must be filed with the relevant court registrar.
- (3) The court registrar must, as soon as practicable, refer the matter to the court and notify the applicant and the registrar of when and where the application is to be decided.
- (4) The court may make any decision about the application that the registrar could have made.
- (5) 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.
- (6) Also, the court may decide the application if it is satisfied that no party to the application will be prejudiced by the non-service of, or any error or omission in, the referral notice.

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18 Section 59 (Proceedings for offence if enforcement order cancelled)

**59 Proceedings for offence if enforcement order cancelled**

- (1) A Magistrates Court must hear and decide a matter referred to it under section 57<sup>19</sup> as if the relevant enforcement order had not previously been made.
- (2) The court may hear and decide the matter immediately or at a later sitting of the court.
- (3) The court must not hear and decide the matter if the amount payable under the infringement notice to which it relates is paid immediately on cancellation of the order.
- (4) The court may make an order for costs.
- (5) For hearing and deciding a matter under this section, the referral notice and any attachment or certificate is taken—
  - (a) to be a complaint for the offence; and
  - (b) to have been filed when it was made; and
  - (c) to have been filed by the authorised person who served the relevant infringement notice.
- (6) The authorised person who served the infringement notice, or an appropriate officer nominated by that person, is taken to be the complainant.

**60 Provisions relating to cancellation of enforcement order**

- (1) On an application under section 56 or 58,<sup>20</sup> the registrar or a Magistrates Court may stay enforcement action under a relevant enforcement order on the conditions the registrar or the court considers appropriate.
- (2) A single application may be made for the cancellation of 2 or more relevant enforcement orders against the same person.
- (3) A relevant enforcement order that is cancelled stops having effect on the making of the order cancelling it and any enforcement action already taken must, if practicable, be reversed.

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19 Section 57 (Decision on application)

20 Section 56 (Applications for cancellation of enforcement orders) or 58 (Appeal against refusal to cancel enforcement order)

- (4) Without limiting subsection (3), if a relevant enforcement order is cancelled—
- (a) enforcement costs are not payable for the issue of the order; and
  - (b) any amount that has been paid under the order is repayable to the person by whom it was paid; and
  - (c) the period of limitation within which a proceeding for the offence to which the order relates may be started for the matter starts on the day the order is cancelled.
- (5) Also, section 31 applies as if the infringement notice to which the relevant enforcement order relates were cancelled under section 30.

## **Part 5                      Civil enforcement**

### **Division 1                  Preliminary**

#### **61            Application of pt 5**

Subject to section 62, this part applies—

- (a) if—
  - (i) 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 under section 42;<sup>21</sup> and
  - (ii) if relevant, the enforcement debtor has not elected under section 51<sup>22</sup> to have the matter of an offence decided in a Magistrates Court; or
- (b) if this Act expressly authorises the registrar to issue an enforcement warrant or a fine collection notice for an unpaid amount.

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21 Section 42 (Application for time to pay)

22 Section 51 (Election for court hearing)

**62 Part does not prevent issue of arrest and imprisonment warrant**

Nothing in this part prevents the registrar, instead of acting under this part, issuing an arrest and imprisonment warrant for an enforcement debtor who may be arrested under this or another Act because of the enforcement debtor's failure to pay an amount.

**Division 2 Enforcement warrants****63 Issue of enforcement warrant**

- (1) The registrar may issue a warrant (*enforcement warrant*) under this division for an unpaid amount.
- (2) An enforcement warrant may be a warrant—
  - (a) to seize and sell real and personal property in which the enforcement debtor has a legal or beneficial interest; or
  - (b) imposing a charge on specified property.
- (3) An enforcement warrant must—
  - (a) be in the approved form; and
  - (b) be directed to all enforcement officers; and
  - (c) state the date and time of issue and the date, within 3 months after the warrant's issue, the warrant ends; and
  - (d) include any other particulars required under section 140 or 141.<sup>23</sup>
- (4) Before an enforcement warrant ends, the warrant may be renewed by the registrar for a period of not more than 3 months at any one time, from the date the warrant ends.
- (5) On the issue of an enforcement warrant, the amount owing by the enforcement debtor is increased to the total of the amount unpaid before the warrant was issued and the civil enforcement fee.

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<sup>23</sup> Section 140 (Enforcement warrant to seize and sell property) or 141 (Enforcement warrant imposing a charge on property)

- (6) A copy of the enforcement warrant must be served on the enforcement debtor.

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

- (1) A person claiming an interest in property that is or is about to be seized or sold under an enforcement warrant may apply to the registrar for the cancellation, suspension or variation of all or part of the warrant, including because of facts that arise or are discovered after the warrant was issued.
- (2) The application must state the facts relied on by the applicant.
- (3) The registrar may, by order, cancel, suspend or vary an enforcement warrant.

**65 Enforcement warrant imposing a charge on property**

- (1) An enforcement warrant imposing a charge on property may charge all or part of the enforcement debtor's interest in specified land, interests in managed investment schemes or securities.
- (2) The registrar may issue an enforcement warrant imposing a charge on property belonging to a partnership only if the registrar has given the partners—
- (a) notice of intention to issue the warrant; and
  - (b) at least 10 days to give reasons the warrant should not be issued.
- (3) For this section, service on each partner who resides in the State is sufficient service on any partner who resides outside the State.

**66 Effect of warrant imposing charge on property**

- (1) 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.

- (2) However, SPER may not take proceedings to obtain a remedy in relation to particular charged property until—
  - (a) the enforcement warrant imposing the charge is served on the enforcement debtor and, for interests in managed investment schemes or securities, the person who issued or administers the interests or securities; and
  - (b) 21 days have passed since the later service.

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

- (1) The registrar may apply to the Supreme Court for an order restraining the sale, transfer or other dealing with property under an enforcement warrant imposing a charge on property.
- (2) The Supreme Court may restrain the sale, transfer or other dealing, unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.
- (3) Also, the Supreme Court may—
  - (a) order that property mentioned in the order must not be sold, transferred or otherwise dealt with; or
  - (b) order that property mentioned in the order be sold, transferred or otherwise dealt with only in a stated way or circumstance.
- (4) In addition, the Supreme Court may set aside any sale, transfer or other dealing with property charged under an enforcement warrant, unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.

### **68 Offence of dealing with charged or restrained property**

- (1) An enforcement debtor who is served with a copy of an enforcement warrant imposing a charge on property or an order made under section 67, must not knowingly contravene the warrant or order by concealing, selling, transferring or otherwise dealing with the property.

Maximum penalty—200 penalty units or 3 years imprisonment.



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- (2) A person who is served with a copy of an enforcement warrant imposing a charge on property or an order made under section 67 and issued or administers the charged property must not conceal, sell, transfer or otherwise deal with the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (3) If, despite subsection (2), the person who issued or administers the charged property conceals, sells, transfers or otherwise deals with the property, the person is liable to SPER for the value or amount of the charged property dealt with or the amount owing by the enforcement debtor, whichever is smaller.

## **69 Enforcement of enforcement warrant may be made conditional**

- (1) If the registrar issues an enforcement warrant to seize and sell real and personal property, the registrar may also instruct any or all enforcement officers not to enforce the warrant until the steps in this section are followed.
- (2) The enforcement officer must first attempt to recover the amount owing in full.
- (3) If the enforcement debtor can not pay the amount owing in full, the enforcement officer must attempt to interview the enforcement debtor.
- (4) 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.
- (5) If, after interviewing the enforcement debtor, the enforcement officer is satisfied the enforcement debtor is unable to pay the amount owing in full, but can pay the amount in a way mentioned in subsection (6) or (7), and the enforcement debtor agrees, the enforcement officer—
- (a) must not enforce the warrant; and
  - (b) must ensure the enforcement debtor gives the enforcement officer the information necessary or

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completes any documents necessary for the amount to be satisfied in the agreed way.

- (6) If the enforcement officer is satisfied the enforcement debtor can pay the amount owing by instalments at the full instalment rate, the ways the amount may be paid are as follows—
  - (a) by regular redirection from a financial institution account at the full instalment rate;
  - (b) by regular redirection from earnings.
- (7) If the enforcement officer is satisfied the enforcement debtor can not pay the amount owing by instalments at the full instalment rate, the ways the amount may be paid are as follows—
  - (a) by paying the amount by regular redirection from a financial institution account at a rate less than the full instalment rate;
  - (b) by performing hours of unpaid community service under a fine option order.

**70 Power of entry to enforce enforcement warrant**

- (1) An enforcement officer may, at any reasonable time of the day or night, enter any premises stated in an enforcement warrant for the purposes of executing the warrant.
- (2) However, an enforcement officer may enter a part of premises used only for residential purposes only if the occupier consents to the entry or entry is authorised under a search warrant.

**71 Search warrant**

- (1) If an enforcement officer reasonably believes there may be in any premises property that may be seized under an enforcement warrant, the enforcement officer may apply to a magistrate or a justice of the peace (magistrates court) who is

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not an official within the meaning of section 12,<sup>24</sup> for the issue of a search warrant under this section.

- (2) The magistrate or justice (*issuer*) may refuse to consider the application until the enforcement officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

*Example—*

The issuer may require additional information about the application to be given by statutory declaration.

- (3) The issuer may issue the warrant only if satisfied there are reasonable grounds for believing there is in the premises property an enforcement officer may seize under an enforcement warrant.
- (4) The warrant must be in the approved form and state—
- (a) that a stated enforcement officer, or all enforcement officers, may enter the place and exercise the powers under section 72; and
  - (b) if the warrant is to be enforced at night—the hours when the place may be entered; and
  - (c) the warrant ends 7 days after it is issued.

## **72 Powers under search warrant**

- (1) An enforcement officer has the following powers under a search warrant—
- (a) power to enter and re-enter stated premises and to stay on the premises for the time reasonably necessary to exercise the power mentioned 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).

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24 Section 12 (Protection from liability)

- (2) However, an enforcement officer does not have power under this section to seize property under any enforcement warrant or order issued under another Act while the person is in premises only under a search warrant under this Act.

### **73 Powers supporting seizure**

Having seized a thing, an enforcement officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- 1 Sealing a thing and marking it to show access to it is restricted.
- 2 Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

### **74 Return of enforcement warrant**

- (1) An enforcement officer must give to the registrar a return about the enforcement or otherwise of an enforcement warrant.
- (2) 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**

### **75 Issue of fine collection notice**

- (1) The registrar may issue a notice (*fine collection notice*) under this division for an unpaid amount.
- (2) A fine collection notice may be 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;

- (c) for regular redirection from a financial institution account.
- (3) On the issue of a fine collection notice, the amount owing by the enforcement debtor is increased to the total of the amount unpaid before the notice was issued and the civil enforcement fee prescribed under a regulation.

## **76 Issue of fine collection notice after enforcement warrant**

- (1) This section applies if an enforcement debtor agrees under section 69<sup>25</sup> to satisfy an amount for which an enforcement warrant has been issued by payments under a fine collection notice.
- (2) The issue of the fine collection notice suspends the operation of the enforcement warrant for so long as amounts are deducted under the notice.

## **77 Registrar may cancel, suspend or vary fine collection notices**

- (1) An enforcement debtor may apply to the registrar for the cancellation, suspension or variation of all or part of a fine collection notice, including because of facts that arise or are discovered after the notice was issued.
- (2) The application must state the facts relied on by the applicant.
- (3) The registrar may cancel, suspend or vary a fine collection notice.
- (4) If the registrar cancels, suspends or varies a fine collection notice for redirection of the enforcement debtor's earnings, the registrar must give notice of the cancellation, suspension or variation to the enforcement debtor's employer.
- (5) If the registrar cancels, suspends or varies a fine collection notice for regular redirection from a financial institution account, the registrar must give notice of the cancellation, suspension or variation to the financial institution named in the notice.

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25 Section 69 (Enforcement of enforcement warrant may be made conditional)

- (6) If the registrar cancels, suspends or varies a fine collection notice for regular redirection of a debt owing to the enforcement debtor, the registrar must give notice of the cancellation, suspension or variation to the third person to whom the fine collection notice was given.
- (7) The cancellation, suspension or variation of a fine collection notice for regular redirection from a financial institution account does not take effect until the end of 7 days after the day notice of the cancellation, suspension or variation to is given to the financial institution.

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

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**

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

- (1) The registrar may issue to the employer of an enforcement debtor a fine collection notice for redirection of the enforcement debtor's earnings only if the registrar is satisfied of the following—
  - (a) the person is the enforcement debtor's employer;
  - (b) the enforcement debtor will have enough money available to satisfy the unpaid amount after deducting—
    - (i) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants; and
    - (ii) any other known liabilities of the enforcement debtor;

- (c) the amount of earnings to be redirected would not impose unreasonable hardship on the enforcement debtor.
- (2) If the registrar considers it necessary or desirable to cancel or vary a fine collection notice, the registrar must, as soon as is practicable, give written notice to the employer of the cancellation or variation of the relevant notice.

## **80 Two or more employers of 1 employee**

If an enforcement debtor receives earnings from 2 or more employers, the registrar may—

- (a) treat any of the employers as the only employer of the enforcement debtor; or
- (b) treat any 2 or more of the employers as joint employers of the enforcement debtor.

## **81 Duty of employer to make deductions**

- (1) Subject to section 82, an employer who pays earnings to an employee for whom a fine collection notice for redirection of the enforcement debtor's earnings is in force must, when paying the earnings, deduct an amount from the earnings as required under this division.

Maximum penalty—20 penalty units.

- (2) On the conviction of a person for an offence against subsection (1), the court may, in addition to imposing a penalty, order the person 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.

## **82 Working out amount to be deducted**

- (1) The amount an employer must deduct from an enforcement debtor's earnings for each week under a fine collection notice is the weekly deduction amount specified in the notice.
- (2) However, if the deduction of an amount under subsection (1) would reduce the enforcement debtor's earnings for the period to less than the protected earnings amount, the employer must

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deduct only the amount, if any, that would reduce the enforcement debtor's earnings for the period to an amount equal to the protected earnings amount.

*Examples for subsection (2)—*

- 1 If the employee earns \$250 and the protected earning rate is \$275, no deduction may be made.
- 2 If the employee earns \$290, the protected earnings rate is \$275 and the amount to be deducted is \$25, the employer may only deduct the difference between the protected earnings rate and the amount actually earned or \$15.

**83 Provisions for working out earnings for s 82**

- (1) This section applies for working out the amount of earnings an employer pays to an employee.
- (2) Any amount an employer pays to an employee for piecework is taken to have been paid to the employee for the period that started when the employee started the work and ended when the work ended.
- (3) Any amount an employer pays to an employee for services under a contract that is wholly or principally for the labour of the employee is taken to have been paid to the employee for the period that started when the employee started to provide the services and ended when the provision of the services ended.
- (4) Any amount an employer pays for other work performed or services provided, but not for a particular period, is taken to have been paid for the period of 52 weeks ending the day before the day the amount is paid.
- (5) If the employee is entitled to be paid an amount for a period of more than 1 week, the employer is taken to have paid an amount of earnings to the employee for each week or part of a week in the period, worked out by dividing the amount of earnings actually paid by the number of days in the period and multiplying the result—
  - (a) for each week—by 7; and
  - (b) for a part of a week—by the number of days in the part of the week.



- (6) If an employer pays earnings for a week or part of a week in 2 or more separate amounts, the amounts must be aggregated, and the employer may make a deduction from 1 amount or partly from 2 or more amounts.
- (7) For this section, 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 the earnings under the *Income Tax Assessment Act 1936* (Cwlth), part 6, division 2.<sup>26</sup>

## **84 Additional duties of employers**

- (1) An employer who deducts an amount from an employee's earnings under a fine collection notice must, within 7 days after the end of the month in which the amount is deducted or the longer period, of not more than 21 days, the registrar allows—

- (a) pay to the registrar the amounts deducted; and
- (b) give to the registrar a return in the approved form.

Maximum penalty—50 penalty units or 6 months imprisonment.

- (2) An employer who does not deduct an amount from an employee's earnings under a fine collection notice relating to an employee in a particular month must, within 7 days after the end of the month, or the longer period, of not more than 21 days, the registrar allows, give to the registrar a return in the approved form.

Maximum penalty—15 penalty units.

- (3) An employer who pays earnings to an employee while a fine collection notice relating to the employee is in force must give to the employee a written notice stating—

- (a) the amount deducted under the notice; or
- (b) if no deduction is made, that no deduction has been made under the notice.

Maximum penalty—15 penalty units.

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<sup>26</sup> *Income Tax Assessment Act 1936* (Cwlth), part 6 (Collection and recovery of tax), division 2 (Collection by instalments of tax on persons other than companies)

- (4) If an employee to whom a fine collection notice relates stops being an employee while the notice is in force, the employer must give to the registrar notice of that fact 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 for subsection (4)—10 penalty units.

### **85 Discharge of enforcement debtor's liability to registrar and employer's liability to enforcement debtor**

If an employer deducts an amount under this division from the earnings of an enforcement debtor—

- (a) the enforcement debtor is, to the extent of the amount deducted, discharged from the enforcement debtor's liability to make payments to the registrar; and
- (b) the employer is discharged from liability to pay the amount to any person other than the registrar.

### **86 Payment by trustees of deducted amounts**

- (1) This section applies if—
- (a) an amount is payable to the registrar by an employer; and
  - (b) the property of the employer has become vested in, or the control of the property of the employer has passed to, a trustee.
- (2) The trustee is liable to pay the amount to the registrar.

### **87 Penalty for late payment to registrar of deducted amounts**

- (1) If an employer other than a government body fails to pay an amount deducted under a fine collection notice (*deducted amount*) to the registrar in accordance with section 81,<sup>27</sup> the employer must pay to SPER, as a penalty (*late payment penalty*)—

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27 Section 81 (Duty of employer to make deductions)

- (a) 10% of the deducted amount; and
  - (b) interest at the rate of 10% each year on the daily balance of the unpaid deducted amount.
- (2) Interest is payable on the deducted amount from the day after the amount should have been paid until the day the amount is actually paid.

### **88 Penalty for failure to make deductions from earnings**

- (1) If an employer other than a government body fails to deduct an amount that could have been deducted from an employee's earnings under a fine collection notice (*undeducted amount*), the employer must pay to SPER, as a penalty (*late payment penalty*), interest at the rate of 10% each year on the undeducted amount.
- (2) Interest is payable on the undeducted amount from the day the undeducted amount should have been deducted until the day the amount is actually paid.

### **89 When late payment penalty may be waived**

- (1) The registrar may waive all or part of a late payment penalty if the registrar is satisfied of any of the following—
- (a) if the circumstances that contributed to the delay were not caused directly or indirectly by an act or omission of the employer—the employer has taken reasonable steps to avoid or minimise the effects of the circumstances;
  - (b) if the circumstances that contributed to the delay were directly or indirectly caused by an act or omission of the employer—
    - (i) the employer has taken reasonable steps to avoid or minimise the effects of the circumstances; and
    - (ii) having regard to the nature of the circumstances, it would be fair and reasonable to waive the penalty or part of the penalty;
  - (c) there are special circumstances because of which it would be fair and reasonable to waive all or part of the penalty.

- (2) If the registrar decides to waive part only of a late payment penalty, or not to waive any part of a late payment penalty, the registrar must give written notice of the decision to the employer concerned and the reasons for the decision.

## **90 Application of interest payable on judgment debt**

- (1) This section applies if a court gives judgment for the State for the payment of an amount that is or is part of a relevant amount (*judgment debt*).
- (2) The relevant amount, or part of the relevant amount, must not be taken, for this division, to have stopped being payable only because of the judgment.
- (3) However, interest payable on the judgment debt must be applied to reduce the amount of interest that would otherwise be payable under this Act.
- (4) In this section—  
*relevant amount* means—
  - (a) a deducted amount; or
  - (b) the amount of a late payment penalty; or
  - (c) an undeducted amount.

## **91 Penalty is alternative to prosecution for certain offences against part**

- (1) If a prosecution is started against an employer for an offence against section 81,<sup>28</sup> any amount payable by the employer as a late payment penalty in the circumstances of the contravention is not payable.
- (2) If—
  - (a) a person who must pay a late payment penalty to the registrar under this division pays an amount to the registrar in full or partial discharge of the person's liability for the penalty; and

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28 Section 81 (Duty of employer to make deductions)

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- (b) a prosecution is started against the person for an offence against section 81 in the circumstances in which the late payment penalty became payable;

the registrar must either refund the amount to the person, or apply the amount in full or partial discharge of another debt the person owes to SPER under this Act.

- (3) However, if the prosecution is withdrawn, the person again becomes liable to pay the late payment penalty.
- (4) For subsection (3), the period of the prosecution is not counted for the purpose of calculating a late payment penalty under section 87 or 88.

**92 Employers not to prejudice employees because of action under this part**

- (1) An employer must not, because another person is an enforcement debtor—
- (a) refuse to employ or pay earnings to the person; or
  - (b) dismiss, or threaten to dismiss, the person from employment; or
  - (c) terminate or threaten to terminate the payment of earnings to the person; or
  - (d) prejudice or threaten to prejudice the person in the person's employment or otherwise in the receipt of earnings; or
  - (e) intimidate, coerce, impose a money or other penalty on, or take any other disciplinary action against, the person.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) On the conviction of an employer for an offence against subsection (1), the court may, whether or not it imposes any penalty for the offence, make either or both of the following orders—
- (a) order the offender to pay compensation to the enforcement debtor for loss or damage suffered because of the offence;

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- (b) order the taking of action to remedy or reduce the loss or damage suffered by the enforcement debtor because of the offence.
- (3) The enforcement debtor may recover compensation ordered to be paid under subsection (2)(a) as a debt.
- (4) Subsection (2) does not limit the powers of a court under the *Penalties and Sentences Act 1992*, part 3, division 4.

**93 Employers not to disclose information etc.**

- (1) This section applies to a person who is or has been—
  - (a) an employer of an enforcement debtor; or
  - (b) a person employed by, or performing services for, an employer of an enforcement debtor.
- (2) The person must not directly or indirectly disclose or communicate to another person any information about the financial affairs of the enforcement debtor that is disclosed or obtained under this division and acquired by the person because of, or in performing, the employer's duties under this division, other than—
  - (a) for this Act; or
  - (b) for performing the employer's duties under this Act; or
  - (c) for carrying on the employer's business affairs.

Maximum penalty for subsection (2)—25 penalty units or 6 months imprisonment.

**94 Records to be kept by employers**

- (1) An employer must keep written records, in English, of—
  - (a) all amounts deducted or required to be deducted from earnings under a fine collection notice; and
  - (b) other acts done, or required to be done, by the employer under this division.

Maximum penalty—25 penalty units or 6 months imprisonment.

- (2) The employer must—

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- (a) keep the records in a way that correctly records and explains the matters to which they relate; and
- (b) keep a particular record for 5 years after it is made.

Maximum penalty—25 penalty units or 6 months imprisonment.

- (3) This section does not require a person to keep records if the registrar has notified the person, in writing, that keeping the records is not required.
- (4) In a proceeding for an offence against subsection (2)(a), it is a defence for the employer to prove that the employer did not know, and could not reasonably be expected to have known, that the record to which the proceeding relates did not correctly record and explain the matter to which the record relates.

**95 Access to premises etc.**

- (1) For enforcing this part against an employer, the registrar may give an enforcement officer written authority to exercise powers under this section.
- (2) The enforcement officer may not exercise powers under this section unless the enforcement officer first produces the written authority for inspection by the employer and an identity card.
- (3) The powers the enforcement officer has under this section are as follows—
  - (a) power, at all reasonable times, to enter premises of an employer, other than premises used exclusively as a residence, and remain on the premises for the time reasonably necessary to exercise powers under this section;
  - (b) power to inspect or examine any business records relevant to the employer's obligations under this Act on the employer's premises;
  - (c) power to make copies of, or take extracts from, any document the enforcement officer considers is reasonably necessary for ensuring compliance with this Act;

- (d) power to require the occupier of the premises to give the enforcement officer reasonable help to exercise a power mentioned in paragraph (a), (b) or (c).
- (4) A person required under subsection (3)(d) to give an officer reasonable help must comply with the request, unless the person has a reasonable excuse for not doing so.

Maximum penalty—20 penalty units.

- (5) To the extent reasonable help required by an enforcement officer would involve the production of a document or the giving of information, it is a reasonable excuse for the purposes of subsection (4) that the production of the document or the giving of the information would tend to incriminate the person.

## **96 Application of amounts paid or credited if 2 or more debts due**

- (1) This section applies if—
  - (a) 2 or more debts are payable to SPER by an employer under this part; and
  - (b) an employer pays an amount, or the registrar credits an amount towards a debt.
- (2) Division 9<sup>29</sup> 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**

### **97 When debt redirected under fine collection notice**

- (1) A fine collection notice authorising redirection of a debt belonging to an enforcement debtor from a third person must be served on the third person to have effect.

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29 Division 9 (Order of satisfaction of fines etc.)



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- (2) On service of the notice on the third person, the debt is redirected in the hands of the third person to SPER to the extent of the amount stated in the notice.
- (3) However, this section does not limit the right of—
  - (a) the third person to dispute liability to pay all or part of the debt to the enforcement debtor; or
  - (b) another interested person including, for example, a person other than an enforcement debtor, to claim an entitlement to all or a part of the debt or to a charge or lien on it.
- (4) This section does not apply to a regular redirection of a regular debt belonging to an enforcement debtor from a financial institution.

**98 Payment to enforcement debtor despite redirection**

- (1) This section applies if, after redirection of a debt in the hands of a third person—
  - (a) the third person acts with reasonable diligence to give effect to the redirection; and
  - (b) despite the third person acting with reasonable diligence, 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, including, for example, by payment to the enforcement debtor.
- (2) If, after acting under subsection (1), the amount still available for redirection is less than the amount owing to SPER, the registrar may vary or cancel the fine collection notice.

**99 Discharge of the third person**

- (1) 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.
- (2) Subsection (1) applies even if, after payment, the fine collection notice is cancelled.

## **Division 6                      Provisions about regular redirection from a financial institution account**

### **100      Application of div 6**

This division applies if—

- (a) an enforcement debtor has an account with a financial institution; and
- (b) another person (*depositor*) regularly deposits earnings into the account (a *regular deposit*).

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

- (1) This section applies if the registrar issues a fine collection notice for regular redirection from a financial institution account under section 75.<sup>30</sup>
- (2) The notice must be served on the enforcement debtor and on the financial institution.
- (3) The notice does not have effect until the end of 7 days after the day on which the notice is served on the financial institution.
- (4) The notice continues in force until the total amount stated in the notice is paid or the notice is cancelled or varied or expires according to its terms.

### **102      Financial institution to make payments**

- (1) For each regular deposit into the enforcement debtor's account while the fine collection notice for regular redirection is in force, the financial institution—
  - (a) within 2 days after the deposit, must deduct from the account the amount stated in the notice and pay it to SPER as stated in the notice; and

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30      Section 75 (Issue of fine collection notice)

- (b) may deduct from the account an administration charge and keep it as a contribution towards the administrative cost of making payments under the notice; and
  - (c) must give to the enforcement debtor a notice of the deductions and when they were made.
- (2) However, in applying subsection (1)(a) to the last deduction, the financial institution must deduct the amount, not more than the amount stated in the notice for deduction for each regular deposit, that results in the total amount deducted by the financial institution being the total amount to be deducted under the notice.
- (3) A deduction paid or kept by a financial institution under subsection (1) is a valid discharge of the financial institution's liability to the enforcement debtor to the extent of the deduction.

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

- (1) 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 enforcement debtor's account with the financial institution after each regular deposit for the deduction from the account of the amount stated in the notice.
- (2) The enforcement debtor must notify SPER if—
- (a) the depositor discontinues regular payments of earnings to the enforcement debtor; or
  - (b) the enforcement debtor closes the account or arranges for the depositor to pay the enforcement debtor in another way.
- (3) An enforcement debtor who contravenes subsection (1) or (2) with intent to defeat a notice for regular redirection from a financial institution account commits an offence.

Maximum penalty for subsection (3)—20 penalty units.

## **Division 7                      Suspension of driver licence**

### **104      Criteria for suspending driver licence**

- (1) This division applies—
  - (a) if the offence to which an infringement notice or conviction relates involved a motor vehicle; and
  - (b) whether or not the enforcement debtor has a driver licence.
- (2) The registrar may suspend an enforcement debtor's driver licence under this division for a reason stated in subsection (3), (4) or (5).
- (3) The first reason is that the registrar is satisfied the enforcement debtor has—
  - (a) defaulted in paying instalments under an instalment payment notice; or
  - (b) failed to start or complete community service under a fine option order made under this Act; or
  - (c) taken no action to have the matter of the offence decided in a court.
- (4) The second reason is that the registrar is satisfied an enforcement officer has attempted unsuccessfully to enforce an enforcement warrant, including under section 69.<sup>31</sup>
- (5) The third reason is that the registrar has issued an enforcement order in relation to the offence under section 34(4) and the enforcement debtor has not paid the amount stated in the enforcement order within 28 days after the date of the order or a further time allowed under section 42.<sup>32</sup>

### **105      Suspension of driver licence**

- (1) If the registrar decides to suspend an enforcement debtor's driver licence the registrar must serve on the enforcement debtor a notice of intention to suspend the licence.

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31 Section 69 (Enforcement of enforcement warrant may be made conditional)

32 Section 42 (Application for time to pay)

- (2) 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.
- (3) The driver licence is suspended until the enforcement debtor pays the unpaid amount or the amount is otherwise discharged under this Act.

### **106 General effect of suspension of driver licence**

- (1) Despite any other Act, the suspension of a driver licence under section 105 operates to suspend the driver licence of an enforcement debtor who holds a driver licence issued outside Queensland while the person is in Queensland.
- (2) A renewal or replacement of a driver licence suspended under this section does not affect the suspension.
- (3) Also, the suspension of a driver licence under this section does not affect the powers a court or another person may exercise under another Act to suspend or cancel the licence.
- (4) If a person does not hold a driver licence, the person is also disqualified from holding or obtaining a driver licence until all amounts payable for vehicle related offences are paid.

### **107 Review of suspension of driver licence**

- (1) This section applies if an enforcement debtor's driver licence is suspended for 3 months or more.
- (2) As soon as practicable after the end of each 3 months of the suspension, the registrar must review the suspension.
- (3) 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 issue an arrest and imprisonment warrant for the enforcement debtor for the amount, without notice to the enforcement debtor.

## 108 Effect of suspension of driver licence on vehicle insurance

- (1) The suspension of a person's driver licence under this Act does not terminate a vehicle insurance policy.
- (2) Also, a claim under a vehicle insurance policy can not be refused only because a person's driver licence is suspended under this Act.
- (3) This section has effect despite anything to the contrary in a vehicle insurance policy or any other agreement.
- (4) In this section—

*vehicle insurance policy* means 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

### 109 Making of fine option order after enforcement warrant

- (1) This section applies if an enforcement debtor agrees under section 69<sup>33</sup> to apply under this Act for a fine option order.
- (2) Sections 44 and 46 to 50<sup>34</sup> apply to the application as if it had been made after the issue of an enforcement order.
- (3) 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.
- (4) 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

33 Section 69 (Enforcement of enforcement warrant may be made conditional)

34 Sections 44 (When application for fine option order may not be made), 46 (Fine option order only for unpaid fine), 47 (If SPER accepts application for fine option order), 48 (Assessment of suitability for fine option order), 49 (If enforcement debtor is suitable for fine option order) and 50 (Making and registration of fine option order)

warrant for the enforcement debtor, without notice to the enforcement debtor.

## **110 Registration of interests**

- (1) This section applies if—
  - (a) the total amount owing by an enforcement debtor is more than \$1000; and
  - (b) the registrar issues an enforcement warrant for the amount.
- (2) The registrar 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.
- (3) On registration of an interest in land or other property, the amount accrues interest at the annual rate prescribed under the *Supreme Court Act 1995*, part 4, division 20.<sup>35</sup>
- (4) Also, the amount and any accruing interest becomes a charge on the debtor's interest in the land or other property ranking in priority according to the time of registration of the interest.
- (5) Subsection (4) applies subject to any other Act.

## **Division 9 Order of satisfaction of fines etc.**

### **111 Order of satisfaction of fines for infringement notice offences**

- (1) This section applies if an enforcement debtor pays all or part of the amount payable under an enforcement order, enforcement warrant, fine collection notice or an arrest and imprisonment warrant for an infringement notice offence.
- (2) The amount must be applied as follows—
  - (a) first, to any amount required to be paid as fees;

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<sup>35</sup> *Supreme Court Act 1995*, part 4 (Provisions from Common Law Practice Act 1867), division 20 (Practice at the trial)

- (b) then to the amount of the fine.
- (3) However, if the enforcement debtor also has an amount unpaid under an enforcement order to which section 112 applies, the amount paid must be applied in accordance with section 112 until all relevant amounts under that section are paid before it is applied under subsection (2).

## **112 Order of satisfaction of other amounts**

- (1) This section applies if an enforcement debtor pays all or part of an unpaid amount payable under an enforcement order, enforcement warrant, fine collection notice or an arrest and imprisonment warrant other than for an infringement notice offence.
- (2) Subject to section 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.
- (3) For subsection (2)(i), subject to any direction given in relation to the amount, the amounts must be applied in the way fines, penalties, or forfeitures are applied.
- (4) This section applies subject to any direction in the Act under which the relevant amount is ordered to be paid.

## **113 Order of satisfaction if more than 1 enforcement order**

- (1) This section applies if an enforcement debtor pays all or part of an unpaid amount stated in an enforcement order, enforcement warrant, fine collection notice or an arrest and



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imprisonment warrant other than for an infringement notice offence and there are 2 or more orders, warrants or notices to which the amount could be applied.

- (2) The amount must first be applied to satisfy all outstanding amounts in the first relevant category in section 112(2) in the order in which they became payable.
- (3) After all amounts in the first relevant category are satisfied, any remaining amount 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 for subsection (3)—*

- 1 If the enforcement debtor has been ordered to pay the following amounts under a court order—

- (a) \$200 for a fine, \$80 costs of court, \$50 witness expenses, \$250 professional fees and \$300 restitution, under an order made on 2 January 1999; and
- (b) \$500 for a fine, \$80 costs of court, \$50 witness expenses, \$600 professional fees and \$350 restitution, under an order made on 4 January 1999;

any part payments must first satisfy the restitution amounts ordered on 2 January 1999 and 4 January 1999 in that order before any other part payments may be applied to satisfy amounts outstanding in the next relevant category.

- 2 If the enforcement debtor must pay the following outstanding amounts—

- (a) \$172 (\$130 for a speeding fine and \$42 for the SPER registration fee) under an enforcement order made on 1 January 1999; and
- (b) \$200 for a fine, \$80 costs of court, \$50 witness expenses, \$250 professional fees and \$300 restitution, under a court order made on 2 January 1999; and
- (c) \$222 (\$180 for a speeding fine and \$42 for the SPER registration fee) under an enforcement order made on 3 January 1999; and
- (d) \$500 for a fine, \$80 costs of court, \$50 witness expenses, \$600 professional fees and \$350 restitution, under a court order made on 4 January 1999;

any part payments must first be applied to discharge the amounts ordered as restitution on 2 January 1999 and 4 January 1999, in order, before any other part payment may be applied to satisfy

amounts outstanding in the next relevant category for the orders made on 2 and 4 January 1999. Once those orders are satisfied, the part payments must then be applied to satisfy all outstanding amounts for the speeding fines.

## **Division 10                      General provisions**

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

- (1) An enforcement officer serving a fine collection notice or enforcing a warrant under this Act may require a person the enforcement officer reasonably suspects to be the person named in the notice or warrant to provide any of the following information that is relevant to the notice or warrant or the exercise of powers under this Act because of the notice or warrant—
  - (a) the person's full name and address;
  - (b) the person's employment details;
  - (c) the person's bank account details;
  - (d) the person's driver licence number;
  - (e) who owns specified property;
  - (f) the person's pension details;
  - (g) the person's income and expenditure;
  - (h) the person's date of birth.
- (2) Also, an enforcement officer may require the person to provide evidence to the officer of the correctness of the information if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the information or to otherwise be able to give the evidence.
- (3) When making a requirement under subsection (1), the enforcement officer must warn the person that, unless the person has a reasonable excuse, it is an offence not to provide the information required.

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- (4) When making a requirement under subsection (2), the enforcement officer must warn the person that, unless the person has a reasonable excuse, it is an offence to fail to provide evidence of the correctness of information provided by the person.
- (5) A person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.  
Maximum penalty—10 penalty units.
- (6) A person does not commit an offence against subsection (5) if the person given the requirement is not proved to be the person named in the notice or warrant.

**115 Effect of particular proceedings**

- (1) If, for an offence—
  - (a) a person served with an infringement notice—
    - (i) pays the amount owing under an enforcement order for the offence in full; or
    - (ii) applies to pay the amount owing under an enforcement order for the offence by instalments; or
    - (iii) applies to convert the amount owing under an enforcement order for the offence to unpaid hours of community service under a fine option order; or
  - (b) an enforcement warrant or an arrest and imprisonment warrant is enforced against a person served with an infringement notice for the amount owing under an enforcement order for the offence;

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.

- (2) Subsection (1)(a) stops applying if the enforcement order is withdrawn or cancelled after the amount is paid.
- (3) The making of the enforcement order is not a conviction for the offence.

- (4) 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.
- (5) 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 to someone other than the State, and on the giving of the waiver the enforcement order stops having effect to the extent of the waiver.

### **116 Offence of obstructing enforcement officer**

A person must not obstruct or assault an enforcement officer acting in the performance of duties under this Act.

Maximum penalty—50 penalty units or 1 year's imprisonment

### **117 Offence of defacing or removing seizure tags**

A person must not interfere with an item seized by an enforcement officer left at the place of seizure or a seizure tag or sticker placed on it.

Maximum penalty—10 penalty units.

## **Part 6 Imprisonment**

### **118 Good behaviour order when imprisonment not appropriate**

- (1) This section applies if—
  - (a) an enforcement warrant or a fine collection notice has been or may be issued for an enforcement debtor for an unpaid amount; and
  - (b) the registrar is satisfied, after considering a report about the enforcement debtor from a doctor, that for medical or psychiatric reasons—

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- (i) the enforcement debtor is not suitable for performing community service under a fine option order; and
  - (ii) the enforcement debtor can not pay or continue to pay all or part of the unpaid amount; and
  - (iii) in the particular circumstances, it may be inappropriate to enforce the payment of the amount by issuing an arrest and imprisonment warrant for the enforcement debtor.
- (2) The registrar, with the consent of the enforcement debtor, may order that the enforcement debtor must be of good behaviour, for the period, of not longer than 3 years, stated in the order on the conditions the registrar considers appropriate.
- (3) Before making an order (*good behaviour order*) under subsection (2), the registrar must give the enforcement debtor 7 days written notice of intention to make the order.
- (4) The notice must state—
  - (a) the good behaviour order the registrar intends to make and the effect of the order; and
  - (b) the order can not be made without the enforcement debtor's consent; and
  - (c) that if the registrar does not make the order, the registrar may issue an arrest and imprisonment warrant for the enforcement debtor for the unpaid amount.
- (5) If the registrar is satisfied the enforcement debtor has contravened a good behaviour order, including, for example, by incurring a further fine, the registrar may, without notice to the enforcement debtor, issue an arrest and imprisonment warrant for the enforcement debtor for the unpaid amount.
- (6) The warrant must be for the arrest and imprisonment of the enforcement debtor for the period, stated in the warrant, worked out for the unpaid amount in the same way as the period of imprisonment for an amount stated in an enforcement order is worked out under section 39.<sup>36</sup>

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36 Section 39 (Working out period of imprisonment for enforcement order)

- (7) If the period stated in the good behaviour order ends without the registrar issuing an arrest and imprisonment warrant for the enforcement debtor, the unpaid amount is no longer payable.

## **119 Enforcement by imprisonment**

- (1) This section applies if, after attempting to enforce an enforcement warrant against an enforcement debtor, the registrar is satisfied the unpaid amount under the enforcement warrant can not be satisfied in any other way authorised under this Act.
- (2) This section also applies if the registrar issues an instalment payment notice or fine collection notice or makes a fine option order for an enforcement debtor after attempting to enforce an enforcement warrant and the enforcement debtor fails to comply with the notice or order.
- (3) The registrar may issue a warrant (*arrest and imprisonment warrant*), directed to all police officers, for the arrest and imprisonment of the enforcement debtor for the period stated in the warrant.
- (4) The period of imprisonment is to be worked out for the unpaid amount in the same way as the period of imprisonment for an amount stated in an enforcement order is worked out under section 39.
- (5) However, if the registrar issues the warrant without first taking action under part 5 for which a civil enforcement fee may be added to an unpaid amount, the unpaid amount for subsection (4) is increased by the amount of the warrant issue fee prescribed under a regulation.
- (6) The warrant stops having effect if the unpaid amount is paid before the enforcement debtor is imprisoned.
- (7) The period of imprisonment an enforcement debtor must serve under the warrant is cumulative on any other period of imprisonment the debtor must serve under any other warrant or an order of a court.

**120 Satisfaction of fine by imprisonment**

- (1) 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.
- (2) If, after an arrest and imprisonment warrant is issued, but before the person named in the warrant is imprisoned, the person pays part of the unpaid amount stated in the warrant, the warrant has effect as if the period of imprisonment stated in it were the balance remaining to be paid divided by—
  - (a) for a court ordered amount—the relevant cut-out rate for the court order, rounded down to the nearest whole number and expressed as a number of days; or
  - (b) for an infringement notice offence—the cut-out rate for the infringement notice offence, rounded down to the nearest whole number and expressed as a number of days.

*Example for subsection (2)(a)—*

B is fined \$1000 and ordered to serve 14 days imprisonment if the fine is not paid. Before B is imprisoned, B pays \$600 of the fine. The cut-out rate is \$71.42 and the period for which B may be imprisoned is reduced to 5 days.

*Example for subsection (2)(b)—*

J owes SPER a total of \$350 for an infringement notice offence and charges for which J may be imprisoned for 6 days. Before J is imprisoned, J pays \$110. If the cut-out rate is \$60, the period for which J may be imprisoned is 4 days.

- (3) If a person who is imprisoned under an arrest and imprisonment warrant wants to pay the balance of the unpaid amount stated in the warrant, the balance is the amount worked out by multiplying the number of days remaining to be served by the relevant cut-out rate.

*Example for subsection (3)—*

B is imprisoned for failing to pay a fine of \$1000. After serving 5 days imprisonment, B decides to pay the balance of the amount. If the cut-out rate is \$60, B must pay \$660.

- (4) On the satisfaction of the unpaid amount under this section, the person's imprisonment ends and the person must be released.

**121 Order of satisfaction of fines if enforcement debtor imprisoned**

If an enforcement debtor is imprisoned, the period of imprisonment discharges the unpaid amount in the reverse order to the order of satisfaction that would have applied under part 5, division 9<sup>37</sup> if the person had not been imprisoned.

**Part 7 General provisions about fine option orders****122 Requirements of fine option order**

- (1) A fine option order must contain requirements that the person (the *relevant person*) named in the order—
  - (a) report to an authorised corrective services officer at the place, and within the time, stated in the order; and
  - (b) perform the community service directed by an authorised corrective services officer—
    - (i) for the number of hours stated in the order; and
    - (ii) at the times directed by the officer; and
    - (iii) in a way satisfactory to the officer; and
  - (c) comply with each reasonable direction of an authorised corrective services officer; and
  - (d) report to, and receive visits from, an authorised corrective services officer as directed by the officer; and
  - (e) notify an authorised corrective services officer of a change of the relevant person's place of residence or employment within 2 business days after the change happens; and
  - (f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer.

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37 Part 5 (Civil enforcement), division 9 (Order of satisfaction of fines etc.)



- (2) The number of hours of community service stated in a fine option order must be performed within 1 year, or another time allowed in the order, after the making of the order (the *compliance period*).
- (3) A direction given under subsection (1)(b)(ii) applies to all fine option orders made for the relevant person by the registrar on the same day.
- (4) 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 relevant person or suspension of the person's driver licence, or both.

### **123 Directions under fine option order**

A direction given by an authorised corrective services officer under a fine option order must, as far as practicable, avoid—

- (a) conflicting with the relevant person's religious beliefs; and
- (b) interfering with any times during which the relevant person usually works or attends a school or other educational or training establishment; and
- (c) interfering with the relevant person's family responsibilities.

### **124 Extension of period of fine option order**

- (1) A relevant person or an authorised corrective services officer may apply to the registrar for an extension of the compliance period.
- (2) The application may only be made during the compliance period.
- (3) The registrar may—
  - (a) decide the application in the absence of the relevant person; and
  - (b) if satisfied it is reasonable in the circumstances to extend the compliance period, extend the compliance period by not more than 1 year.

**125 Community service to be performed cumulatively**

- (1) All community service required to be performed by a relevant person under a fine option order under this 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 person by a court under another Act.
- (2) If 2 or more fine option orders that require a relevant person to perform community service are in force at the same time, the community service must be performed in the sequence in which the orders were made.

**126 Performance of community service to be credited against fine etc.**

If a relevant person performs community service under a fine option order, the unpaid amount to which the fine option 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.

**127 Payments and application of payments**

- (1) This section applies if, because of this Act, an enforcement order is suspended on the making of a fine option order.
- (2) Subject to subsection (3), and despite the suspension of the enforcement order so far as it requires the payment of the unpaid amount stated in the order, the fine or unpaid amount, or a part of either of them, may be paid.
- (3) The fine or other amount must be paid to SPER.
- (4) 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 part 5, division 9.<sup>38</sup>
- (5) Also, if after a fine option order is made, a payment is applied to the unpaid amount to which the fine option order relates, the payment reduces the number of hours of community

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38 Part 5 (Civil enforcement), division 9 (Order of satisfaction of fines etc.)

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service remaining to be performed by the relevant person under the order by the number obtained by dividing the amount of the payment by the cut-out rate for a fine option order, expressed in hours.

*Example for subsection (5)—*

When a fine option order was made the unpaid amount of the relevant fine was \$1500. If the cut-out rate is \$15, the number of hours community service to be performed is 100 hours. If the person pays \$150, the number of hours of community service remaining to be performed is reduced by 10 hours.

- (6) If the payment is intended to discharge the fine option order, the payment must be accompanied by a certificate signed by an authorised corrective services officer stating the number of hours community service the relevant person has performed under the fine option order and the amount payable to discharge the order.

## **128 Failing to comply with fine option order**

- (1) If, while a fine option order is in force, an authorised corrective services officer (*supervisor*), or a person authorised for the purposes of this section by the chief executive (corrective services) (also a *supervisor*), reasonably believes the relevant person has contravened a requirement of the order, the supervisor may give the relevant person a notice under this section requiring the relevant person to—
  - (a) stop contravening the order; or
  - (b) give the supervisor a reasonable explanation for the contravention within a stated time, of at least 5 days but not more than 14 days.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state the particulars of the contravention; and
  - (c) state that failure to give a reasonable explanation for the contravention may result in the fine option order being revoked without notice to the person.
- (3) A notice under subsection (1) may relate to 2 or more fine option orders.

- (4) If the supervisor is not satisfied a reasonable explanation has been given within the stated time, the supervisor must give to SPER a fine option order breach notice.

## **129 Revocation of fine option order**

- (1) The registrar may revoke a fine option order for which the registrar is given a fine option order breach notice if satisfied the relevant person concerned has contravened the order without reasonable excuse.
- (2) However, the registrar must not revoke a fine option order under subsection (1) unless the registrar has first considered a report of the chief executive (corrective services) stating—
  - (a) how the relevant person has contravened the order; or
  - (b) that the chief executive (corrective services) is satisfied the relevant person can not perform work under the order or is otherwise not suitable to be engaged in work under a fine option order.
- (3) When revoking a fine option order, the registrar may also revoke any other fine option orders made against the relevant person.
- (4) The registrar must give notice of the revocation to the relevant person and may give the notice in the same way as for an enforcement order.
- (5) The notice of revocation must state that the relevant person may apply under section 130 within a stated reasonable time, of at least 14 days, for a review of the decision to revoke the fine option order.
- (6) The revocation of a fine option order does not take effect until the end of the period for applying for a review of the decision to revoke the order or, if the relevant person applies for a review under section 130, the end of the day the relevant court registrar decides under that section not to reinstate the fine option order.
- (7) On the revocation of the fine option order taking effect under subsection (6)—
  - (a) the suspension of the relevant enforcement order ends; and

- (b) the registrar may issue an enforcement warrant or an arrest and imprisonment warrant for the enforcement debtor for the unpaid amount stated in the fine option order breach notice.

### **130 Review of revocation of fine option order**

- (1) A person dissatisfied by a decision under section 129 to revoke a fine option order made for the person may, within the time stated in a notice of revocation of the fine option order, apply in writing to the registrar of the Magistrates Court (*relevant court registrar*) nearest to the person's residence for a review of the revocation.
- (2) The application must state the reasons why the fine option order should be reinstated.
- (3) If the relevant person applies for a review of the decision to revoke the fine option order, the operation of the revocation is suspended until the application is decided.
- (4) If the relevant court registrar is satisfied the fine option order should not have been revoked, the relevant court registrar may reinstate the fine option order.
- (5) The relevant court registrar may review a decision to revoke a fine option order in the absence of, and without notice to, the applicant for the review.
- (6) A decision of the relevant court registrar on the review is final.

## **Part 8 Reciprocal enforcement of fines**

### **131 Definitions for pt 8**

In this part—

*conviction* means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether before or after the commencement of this part, in a proceeding for an offence,

and includes an enforcement order or a similar order under a law of another State.

*fine* includes an amount stated in an enforcement order or a similar order under a law of another State.

*Queensland fine* means—

- (a) a fine payable under a conviction of a Queensland court; or
- (b) an amount payable under an enforcement order under this Act.

*reciprocating court* means a court declared under section 132 to be a reciprocating court for this Act.

*relevant officer* of a reciprocating court means the registrar, however called, of the reciprocating court.

### **132 Declaration of reciprocating court**

If another State has laws providing for the enforcement in that State 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.

### **133 Enforcement of Queensland fine by reciprocating court**

- (1) SPER may, on the registrar's initiative or on the request of the registrar of a Queensland court, give to the relevant officer of the reciprocating court a request for the enforcement of a particular Queensland fine in that State.
- (2) An amount 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 by the person by whom the fine was payable in satisfaction of all or part of the fine.
- (3) If, after a request is made under subsection (1), SPER receives an amount in satisfaction of all or part of the fine from someone other than the relevant officer of the reciprocating court to whom the request was made, SPER must, as soon as practicable, notify the relevant officer of the amount of the payment.

**134 Enforcement of fine imposed by reciprocating court**

- (1) This section applies if—
  - (a) under a conviction of a reciprocating court, a fine is payable by a person having or appearing to have property in Queensland; and
  - (b) SPER receives a request from the relevant officer of the reciprocating court for the enforcement of the fine; and
  - (c) the request is accompanied by—
    - (i) a copy, certified by the relevant officer to be correct, of the conviction, and
    - (ii) a certificate by the relevant officer stating the amount of the fine that remains unpaid.
- (2) The registrar must register the certified copy of the conviction and write the date of registration on it.
- (3) On registration of the conviction—
  - (a) the conviction is, for this part, taken to be a conviction of a Queensland court; and
  - (b) the registrar must make an enforcement order under this Act for the purpose of recovering the amount stated as unpaid in the certificate relating to the conviction.
- (4) If, after SPER receives a request under this section in relation to a fine payable under a conviction of a reciprocating court, SPER receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction of all or part of the amount of the fine—
  - (a) the registrar must register particulars of the payment; and
  - (b) the payment is, for the purposes of enforcement action under this Act, taken to be a payment under an enforcement order made under this section.
- (5) The registrar must pay the amount of any fine recovered by the registrar 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.

- (6) A document that appears to have been signed by the relevant officer of a reciprocating court is taken to have been signed by the relevant officer, unless the contrary is proved.

## **Part 9                      Miscellaneous**

### **Division 1                      Content of particular notices, orders and warrants**

#### **135      Default certificate for infringement notice offence**

A default certificate for an infringement notice offence must be in the approved form and state the following—

- (a) the full name and address of the person liable to pay the fine for the offence;
- (b) the offence;
- (c) an infringement notice was, on a stated day, served on the alleged offender for the offence;
- (d) for an infringement notice offence involving a vehicle, the amount the administering authority paid to establish ownership of the vehicle;
- (e) before the certificate was given to SPER for registration, the alleged offender did not—
  - (i) pay to the administering authority the amount stated in the notice as the unpaid amount for the offence; or
  - (ii) apply to the administering authority to pay the fine by instalments; or
  - (iii) give to the administering authority a written election to have the matter of the offence decided in a Magistrates Court;
- (f) a proceeding has not been started against the alleged offender for the offence;



- (g) a proceeding against the alleged offender for the offence has not been withdrawn under section 28;<sup>39</sup>
- (h) anything else prescribed under a regulation.

### **136 Instalment payment notice**

A notice of registration of instalment payments (*instalment payment notice*) must be in the approved form and state the following—

- (a) the full name and address of the person liable to pay the instalments;
- (b) the offence;
- (c) the unpaid amount;
- (d) the amount to be paid for each instalment;
- (e) when each instalment must be paid and how it is to be paid;
- (f) if instalment payments are not made as required, the registrar may cancel the instalment payment notice without further notice;
- (g) if the instalment payment notice is cancelled and an enforcement order has not been made—
  - (i) an enforcement order may be made against the person for the unpaid amount; and
  - (ii) a registration fee prescribed under a regulation will be added to the unpaid amount;
- (h) if an instalment payment notice issued after the making of an enforcement order is cancelled—
  - (i) an enforcement warrant, a fine collection notice or an arrest and imprisonment warrant may be issued against the person for the unpaid amount; and
  - (ii) a registration fee or, if relevant, the civil enforcement fee, will be added to the unpaid amount; and

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39 Section 28 (Administering authority may withdraw infringement notice)

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- (iii) the person's driver licence, if the person holds one, may be suspended without further notice;
- (i) anything else prescribed under a regulation.

**137 Enforcement order**

- (1) An enforcement order must be in the approved form and state the following—
  - (a) the full name and address of the person against whom it is intended to enforce the order;
  - (b) if relevant, the offence;
  - (c) if the enforcement order relates to an infringement notice—the infringement notice number;
  - (d) the amount owing;
  - (e) that the person must, within 28 days after the date of the order—
    - (i) pay the amount stated in the order in full to SPER; or
    - (ii) apply to SPER for an extension of time to pay the amount stated in the order; or
    - (iii) apply to SPER in the approved form for approval to pay the amount by instalments of not less than the minimum instalment; or
    - (iv) 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 under a fine option order; or
    - (v) if the order relates to an infringement notice offence, give to the administering authority an election to have the matter of the offence decided in a Magistrates Court; or
  - (f) that if the person does not take action under paragraph (e), the registrar may—
    - (i) issue an enforcement warrant authorising an enforcement officer to seize and sell real and personal property in which the person has a legal

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- or beneficial interest, to satisfy the amount unpaid and the civil enforcement fee; or
- (ii) issue a fine collection notice for the redirection of all or part of a debt owed to the person or for the regular redirection of all or part of a regular debt, including regular redirection from a financial institution account, and the civil enforcement fee; or
  - (iii) issue a fine collection notice for the redirection of the person's earnings and the civil enforcement fee; or
  - (iv) issue an enforcement warrant imposing a charge on property, for example, annuities, debentures, stocks and other property and the civil enforcement fee; or
  - (v) issue an arrest and imprisonment warrant for the person for the period stated in the enforcement order;
- (g) that the person's driver licence, if the person holds one, may be suspended until the amount is paid or otherwise discharged or the person may be prevented from applying for or obtaining a driver licence;
  - (h) that if an enforcement officer returns an enforcement warrant to seize and sell property of an individual because the amount unpaid and the civil enforcement fee can not be satisfied under the warrant, the registrar may issue an arrest and imprisonment warrant for the person for the period stated in the enforcement order;
  - (i) that if the total amount owing is at least \$1000, the registrar may also 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 for the amount outstanding.
- (2) The enforcement order must also state that the enforcement debtor may, within 28 days after the date of the order, contact SPER for assistance to decide whether alternative

arrangements can be made for payment or discharge of the amount

### **138 Notice accompanying a fine option order**

For section 122(4),<sup>40</sup> a notice accompanying a fine option order must be in the approved form and state that failure to comply with the order, or revocation of the order, may result in the driver licence of the alleged offender being suspended or the imprisonment of the alleged offender or both.

### **139 Fine option order breach notice**

A notice (*fine option order breach notice*) for enforcing a fine converted to a fine option order must be in the approved form and state the following—

- (a) the full name and address of the person ordered to perform unpaid community service under the order;
- (b) the offence;
- (c) if relevant, the infringement notice number;
- (d) how many hours of unpaid community service the person performed under the order;
- (e) the total amount owing because the person did not comply with the fine option order.

### **140 Enforcement warrant to seize and sell property**

An enforcement warrant to seize and sell property must include the following—

- (a) the full name and address of the enforcement debtor;
- (b) if relevant, the offence;
- (c) if the enforcement warrant relates to an infringement notice, the infringement notice number;
- (d) the amount owing.

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<sup>40</sup> Section 122 (Requirements of fine option order)

**141 Enforcement warrant imposing a charge on property**

An enforcement warrant imposing a charge on property must, in addition to the details required under section 140, include the following—

- (a) a description of the charged property;
- (b) the name of the person who issued or administers the charged property;
- (c) anything else prescribed under a regulation.

**142 Fine collection notice for regular redirection of earnings**

A fine collection notice for regular redirection of earnings must include the following—

- (a) the full name and address of the enforcement debtor;
- (b) the name of the enforcement debtor's employer who must deduct amounts from the enforcement debtor's earnings;
- (c) the total amount the enforcement debtor's employer must deduct from the enforcement debtor's earnings;
- (d) the amount the enforcement debtor's employer must deduct each pay day from the enforcement debtor's earnings;
- (e) a requirement that the enforcement debtor's employer must give the deducted amount to SPER;
- (f) the protected earnings amount;
- (g) anything else prescribed under a regulation.

**143 Fine collection notice for redirection of a debt**

A fine collection notice for redirection of a debt belonging to an enforcement debtor from a third person must include the following—

- (a) the full name and address of the enforcement debtor;
- (b) the full name and address of the third person;
- (c) details of the debt that is to be redirected;

- (d) the debt is redirected in the hands of the third person to SPER to the extent stated in the notice;
- (e) that the third person must give the redirected amount to SPER;
- (f) the effect of sections 95(3) and 96;<sup>41</sup>
- (g) anything else prescribed under a regulation.

#### **144 Fine collection notice for regular redirection from financial institution account**

A fine collection notice for regular redirection must, in addition to any other details required to be stated in the notice, include the following—

- (a) the full name and address of the enforcement debtor;
- (b) the name of the financial institution that must deduct amounts from a regular deposit;
- (c) details of the enforcement debtor's financial institution account from which the deduction is to be made;
- (d) the total amount the financial institution must deduct from the enforcement debtor's account;
- (e) the amount the financial institution must deduct each time a regular deposit is made to the account;
- (f) that the financial institution must give the deducted amount to SPER;
- (g) anything else prescribed under a regulation.

#### **145 Notice of intention to suspend driver licence**

A notice of intention to suspend a driver licence must be in the approved form and state—

- (a) that if the person does not pay the amount stated in the notice within 14 days after the date of issue of the notice and the person has a driver licence—

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<sup>41</sup> Sections 95 (Access to premises etc.) and 96 (Application of amounts paid or credited if 2 or more debts due)

- (i) the driver licence will be suspended until the amount owing is paid or otherwise discharged; and
  - (ii) some or all of the enforcement procedures mentioned in the enforcement order may be taken against the person; and
- (b) it is an offence against the *Transport Operations (Road Use Management) Act 1995* to drive a vehicle while the person's driver licence is suspended under this Act and the penalty for the offence.

## **146 Arrest and imprisonment warrant**

An arrest and imprisonment warrant must be in the approved form and state the following—

- (a) the full name and address of the enforcement debtor;
- (b) the amount owing;
- (c) for a fine—the offence for which the amount became payable;
- (d) for an amount owing because of an order of a court—the original order of the court to which the amount relates;
- (e) the period for which the enforcement debtor is to be imprisoned;
- (f) that if the enforcement debtor pays part of the amount owing after the person is imprisoned, the period for which the person may be imprisoned will be reduced.

## **Division 2 Other enforcement related provisions**

### **147 Effect of notices, orders and warrants**

For this Act, a fine collection notice, an enforcement order or a warrant issued by the registrar or staff of the registry mentioned in section 11<sup>42</sup> is taken to be a notice, order or

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42 Section 11 (Management of office)

warrant of a Magistrates Court in the central division of the Brisbane Magistrates Courts district.

#### **148 Electronic transmission of particular documents**

- (1) A notice, order or warrant, or any document under this Act containing information or a request for information, that is required or permitted by this Act to be given by someone to someone else may be transmitted electronically to the person or entity to whom it is to be given or directed.
- (2) For serving a notice or enforcing an enforcement warrant that is 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.

#### **149 Enforcement costs and their allocation**

- (1) A regulation may prescribe the enforcement costs payable for any step taken for enforcing payment of a fine, penalty or another amount under this Act.
- (2) If no enforcement costs are prescribed, no enforcement costs are payable.
- (3) The amount prescribed as enforcement costs may include costs payable to an entity other than SPER that takes the step.

#### **150 Dishonoured cheques etc.**

- (1) This section applies if full or part payment of a fine or another amount payable under this Act is made—
  - (a) by cheque, and the cheque is dishonoured on presentation; or
  - (b) by credit, card and the credit provider declines to authorise the payment; or
  - (c) by direct debit from an account held with a financial institution, and the financial institution can not comply with the transfer request because there is not enough money in the account; or



- (d) in another electronic way acceptable to SPER and the way of making the payment is not successful.
- (2) Payment is taken not to have been made—
  - (a) if the payment is made by cheque, until—
    - (i) the cheque is honoured on presentation; or
    - (ii) payment in cash or in another way acceptable to the administering authority or to SPER is made in place of the cheque; or
  - (b) in any other case—payment is made in cash or in another way acceptable to SPER.

### **151 Information from commissioner of police service**

- (1) The commissioner of the police service may, on the registrar's written request, give to the registrar information in the possession of the police service about a stated person for the purposes of the registrar taking action against the person to enforce payment of an amount under this Act.
- (2) The information that may be given is—
  - (a) the person's criminal history; and
  - (b) any address known to the commissioner; and
  - (c) any assets of the person known to the commissioner.
- (3) Information given to the registrar under this section must only be used for the purposes of this Act.
- (4) This section applies subject to the *Police Powers and Responsibilities Act 2000*, chapter 21, part 2.<sup>43</sup>

### **152 Information from entities other than police service**

- (1) For enforcing this Act, the registrar may ask a State entity, or a local government, prescribed under a regulation to give the registrar information about the current and any previous

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<sup>43</sup> *Police Powers and Responsibilities Act 2000*, chapter 21 (Administration), part 2 (Registers)

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address of a stated person as shown in any records kept by the entity or local government.

- (2) The entity or local government must give the information to the registrar as soon as practicable after receiving the request, unless the entity reasonably suspects disclosing the information is likely to endanger the person's safety.
- (3) Subsection (2) does not apply to the police service.
- (4) A person who gains knowledge of the information because of the person's involvement in the administration of this Act must not disclose the information to anyone else, other than—
  - (a) for the purposes of this Act; or
  - (b) under the express authority of another Act.

Maximum penalty—40 penalty units or 18 months imprisonment.

- (5) A person to whom information is disclosed under subsection (4) must not disclose the information to anyone else, other than—
  - (a) for the purposes of this Act; or
  - (b) under the express authority of another Act.

Maximum penalty—40 penalty units or 18 months imprisonment.

- (6) The registrar may also ask a person the registrar considers keeps records under an Act relating to a matter the registrar reasonably requires for completing registration of information required to be registered under this Act or a notice, order or warrant under this Act to give to the registrar the relevant particulars.
- (7) The person must give the registrar the information as soon as reasonably practicable after receiving the request.
- (8) Subsections (2) and (7) have effect despite any other Act.
- (9) In this section—

*State entity* includes—

- (a) a department, service, agency, authority, commission, corporation, instrumentality, board, office or other entity established for a State government purpose; and
- (b) a part of an entity mentioned in paragraph (a).

### **153 Register**

- (1) The registrar must keep a State penalties enforcement register.
- (2) The register must include particulars of the following orders, notices and warrants, any payments made and any enforcement action taken after the issue by the registrar of any of the following—
  - (a) an instalment payment notice;
  - (b) an enforcement order;
  - (c) a fine option order;
  - (d) an enforcement warrant to seize and sell personal property;
  - (e) an enforcement warrant imposing a charge on property;
  - (f) a fine collection notice to deduct and redirect earnings of an enforcement debtor;
  - (g) a fine collection notice for regular redirection from a financial institution account;
  - (h) a fine collection notice to redirect all or part of a debt owed to an enforcement debtor;
  - (i) a notice suspending a driver licence;
  - (j) an arrest and imprisonment warrant.
- (3) The register must also include particulars of enforcement action taken under part 8.<sup>44</sup>

### **154 No fees payable for registration under other Acts**

No fee is payable by SPER for—

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44 Part 8 (Reciprocal enforcement of fines)

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- (a) lodging in a registry any order or instrument under this Act or any instrument lodged to transfer property to the State under this Act; or
- (b) doing anything else for which registry fees are fixed.

*Example of paragraph (b)—*

If fees are fixed for register searches or copies of anything in a register, SPER is not required to pay the fees.

### 155 Non-reviewable decision

- (1) This section applies to any of the following decisions (the *decision*)—
  - (a) a decision of the chief executive (corrective services) about—
    - (i) the suitability of a person to perform community service work under a fine option order under section 48;<sup>45</sup> or
    - (ii) the failure of a person to comply with a fine option order under this Act; or
  - (b) a decision of the registrar to refuse an application for instalment payments under section 42;<sup>46</sup> or
  - (c) a decision of the registrar to issue—
    - (i) an enforcement order under section 38;<sup>47</sup> or
    - (ii) an enforcement warrant under section 63;<sup>48</sup> or
    - (iii) a fine collection notice under section 75;<sup>49</sup> or
    - (iv) a notice of intention to suspend a driver licence under section 105;<sup>50</sup> or

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45 Section 48 (Assessment of suitability for fine option order)

46 Section 42 (Application for time to pay)

47 Section 38 (Issue of enforcement order)

48 Section 63 (Issue of enforcement warrant)

49 Section 75 (Issue of fine collection notice)

50 Section 105 (Suspension of driver licence)

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- (v) an arrest and imprisonment warrant under section 119;<sup>51</sup> or
  - (d) a decision of the registrar to register an interest in land or property under section 110;<sup>52</sup>
  - (e) a decision of the registrar to revoke a fine option order under section 129;<sup>53</sup> or
  - (f) a decision of a court registrar to refuse to cancel a revocation of a fine option order under section 130.<sup>54</sup>
- (2) The *Judicial Review Act 1991*, parts 3 and 4<sup>55</sup> does not apply to the following matters—
- (a) conduct engaged in for the purpose of making the decision;
  - (b) other conduct that relates to the making of the decision;
  - (c) the making of the decision;
  - (d) the decision.
- (3) Without limiting subsection (2), the Supreme Court does not have jurisdiction to hear and decide applications made to it under the *Judicial Review Act 1991*, part 3 or 4 about matters mentioned in that subsection.

## **156 Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) 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

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51 Section 119 (Enforcement by imprisonment)

52 Section 110 (Registration of interests)

53 Section 129 (Revocation of fine option order)

54 Section 130 (Review of revocation of fine option order)

55 *Judicial Review Act 1991*, parts 3 (Statutory orders of review) and 4 (Reasons for decision)

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- (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves—
  - (a) if the person was in a position to influence the conduct of the representative in relation to the act or omission—the person took reasonable steps to prevent the act or omission; or
  - (b) the person was not in a position to influence the conduct of the representative in relation to the act or omission.
- (4) In this section—

*representative* means—

  - (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.

**157 Evidentiary provisions**

- (1) This section applies to a proceeding under this or another Act.
- (2) A certificate purporting to be signed by or for an administering authority and stating any of the following matters is evidence of the matter—
  - (a) a stated infringement notice was served in a stated way on a stated person for a stated infringement notice offence;
  - (b) an alleged offender did not pay a fine as required under an infringement notice;
  - (c) an alleged offender elected to have a matter of an offence decided in a Magistrates Court;
  - (d) an alleged offender applied to the administering authority to pay the fine under an infringement notice by instalments;

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- (e) an infringement notice has not been withdrawn or was withdrawn on a stated date;
  - (f) an offence stated in an infringement notice involved a stated vehicle or animal;
  - (g) a stated person owned a stated vehicle or animal at a stated time;
  - (h) a stated person owned a stated animal at a stated time;
  - (i) a stated address is the latest address of the owner of a stated vehicle in the record of registration of vehicles under a registration Act;
  - (j) a stated person has or has not given the administering authority an illegal user declaration, known or unknown user declaration or sold vehicle declaration for an offence stated in an infringement notice;
  - (k) a fine has not been paid by, and a penalty has not been imposed on, a stated or any person for an offence stated in an infringement notice.
- (3) A certificate purporting to be signed by the registrar and stating any of the following matters is evidence of the matter—
- (a) stated information or particulars were registered under the Act on a stated day;
  - (b) a stated amount was paid to SPER on a stated day to satisfy all or a stated part of a stated amount owing under a stated notice, order or warrant;
  - (c) a stated person applied to SPER to pay the fine under an infringement notice by instalments;
  - (d) a stated person applied to SPER for conversion of an amount payable because of a fine to hours of unpaid community service under a fine option order;
  - (e) a stated fine option order relating to a stated person was revoked on a stated day;
  - (f) a warrant to arrest and imprison a stated person was issued under this Act on a stated day;
  - (g) a stated document was issued on a stated day;

- (h) a notice of intention to suspend the driver licence of a stated person was served on the person in a stated way on a stated day.

### **158 Service of document**

- (1) A document may be served under this Act as provided for under the *Acts Interpretation Act 1954*, part 10.
- (2) For the *Acts Interpretation Act 1954*, part 10, an instalment payment notice, a fine collection notice or a fine option order may be posted to the person at the address stated in particulars registered under this Act.

### **159 Proceedings for offences**

A proceeding for an offence against this Act may be taken by way of summary proceedings under the *Justices Act 1886*—

- (a) within 1 year after the commission of the offence; or
- (b) 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**

### **160 Delegation by administering authority**

The chief executive officer of an administering authority may delegate the administering authority's powers under this Act to an appropriately qualified person.

### **161 Delegation by registrar**

- (1) The registrar may delegate the registrar's powers under this Act to an appropriately qualified person.
- (2) Without limiting subsection (1), the registrar may delegate the registrar's powers to engage a commercial agent as an enforcement officer to a bailiff.



**162 Approval of forms by administering authority**

An administering authority may approve forms for use as infringement notices under this Act.

**163 Approval of other forms**

- (1) The chief executive may approve forms for use under this Act.
- (2) The forms the chief executive may approve under subsection (1) do not include forms for use as infringement notices by an administering authority other than the department.

**164 Review of Act**

The Minister must ensure the operation of this Act is reviewed within 18 months after the end of the amnesty period mentioned in section 167.

**165 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may prescribe an offence to be an infringement notice offence.
- (3) A regulation may prescribe an infringement notice fine for an infringement notice offence.
- (4) A regulation may prescribe an infringement notice fine for a corporation up to 5 times the amount payable by an individual for the offence under an infringement notice.
- (5) Also, a regulation may make provision for enforcing enforcement orders, enforcement warrants and fine collection notices including, but not limited to—
  - (a) the conduct of hearings or interviews for enabling the registrar to obtain information to facilitate the enforcement of fines, penalties and other amounts under enforcement orders, enforcement warrants and fine collection notices; and

- (b) requiring enforcement debtors to prepare and give to the registrar statements of the enforcement debtor's financial position; and
  - (c) the property that may not be seized under an enforcement warrant; and
  - (d) the sale of property seized under an enforcement warrant, the order in which the property may be sold, and when and how the property may be sold; and
  - (e) accounting for the proceeds of a sale of property seized under an enforcement warrant; and
  - (f) the order of priority for enforcing enforcement warrants.
- (6) A regulation may be made about fees.

## **Part 10**                      **Transitional, validating and declaratory provisions**

### **Division 1**                      **Transitional provisions**

#### **167**      **Amnesty period**

- (1) During the amnesty period, a warrant of commitment issued under—
- (a) the *Justices Act 1886* for an infringement notice offence under the *Justices Act 1886*, part 4A; or
  - (b) the *Penalties and Sentences Act 1992* for non-payment of a fine imposed under that Act;
- but not enforced before the amnesty period started (*outstanding warrant*) must not be enforced.
- (2) Also, during the amnesty period a person may satisfy an outstanding warrant by paying the amount stated in the warrant free of any warrant issue fee mentioned in the warrant.

- (3) Subsection (1) does not apply to the enforcement of a warrant of commitment for a person who is a prisoner within the meaning of the *Corrective Services Act 1988*.
- (4) This section has effect despite anything to the contrary in the *Justices Act 1886* or any other Act.
- (5) In this section—  
*amnesty period* means a 2 month period commencing on the commencement of this section or, if a longer period is prescribed under a regulation, the longer period.

### **168 Saving of infringement notice**

An infringement notice issued under the *Justices Act 1886*, part 4A as in force before the commencement of section 167 is taken to be an infringement notice issued under this Act, and the penalty stated in the infringement notice is taken to be a fine under the notice.

### **169 Saving of enforcement orders**

- (1) This section 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 section.
- (2) Each enforcement order continues to have effect until the registrar issues an enforcement order under subsection (3) or an enforcement warrant or fine collection notice under subsection (5).
- (3) As soon as practicable after the commencement of this section, the registrar must issue an enforcement order under this Act for each infringement notice to which an enforcement order mentioned in subsection (1) relates.
- (4) Subsection (3) does not apply to an enforcement order that is amended under the *Justices Act 1886*, section 98R.
- (5) If a person contravenes an enforcement order mentioned in subsection (4), the registrar may issue an enforcement warrant or fine collection notice for the amount unpaid under the order.

**170 Issue of infringement notices by administering authority**

- (1) Despite the repeal of the *Justices Act 1886*, part 4A, an administering authority may continue to issue an infringement notice that complies with that Act for a period ending 6 months after the commencement of this section.
- (2) However, the administering authority must at the same time issue a notice in the approved form to the alleged offender stating—
  - (a) the infringement notice will be enforced as if it is was issued under this Act; and
  - (b) the rights and obligations of the alleged offender under section 22.<sup>56</sup>
- (3) The infringement notice may be enforced as if it were an infringement notice issued under this Act.

**171 Existing warrant of commitment**

- (1) If 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 this Act was not enforced before the commencement of this section, the registrar may, despite the relevant Act, recall the warrant and cancel it.
- (2) If, at the end of the amnesty period the amount has not been paid, the SPER registrar—
  - (a) may issue an enforcement order under this Act for the amount stated in the cancelled warrant; but
  - (b) 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.<sup>57</sup>
- (3) The registrar may take enforcement action under this Act for the amount at any time after the order is made.

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<sup>56</sup> Section 22 (Ways alleged offender may deal with infringement notice)

<sup>57</sup> Part 5 (Civil enforcement) or part 6 (Imprisonment)

**172 Existing fine option order**

- (1) 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 section is taken to be a fine option order made under this Act.
- (2) If the fine option order is revoked, the registrar—
  - (a) may issue an enforcement warrant or a fine collection notice under this Act for the amount concerned; but
  - (b) is not required to serve a copy of the warrant or notice on the person.
- (3) The registrar may take enforcement action under this Act at any time after the fine option order is revoked.

**Division 2 Validating and declaratory provisions****173 Infringement notice for Motor Accident Insurance Act 1994**

- (1) This section applies to an infringement notice for an offence against the *Motor Accident Insurance Act 1994*.
- (2) An infringement notice issued or served by a police officer before 20 December 2002 is taken to have been issued or served by an authorised person.
- (3) In this section—

*infringement notice* means an infringement notice under this Act or the *Justices Act 1886*, repealed part 4A.

**174 Infringement notice for a corporation**

To remove any doubt, it is declared that section 165(4), as in force immediately before the commencement of the *Justice and Other Legislation Amendment Act 2005*, section 149 was not and has never been, a contrary intention for the purposes of the application of the *Statutory Instruments Act 1992*, sections 24 and 25.

## Schedule 2      Dictionary

### section 3

***account***, for a financial institution, includes a withdrawable share account.

***address***, of a person, means the full address of the place where the person lives or works.

***administering authority***, for an infringement notice or infringement notice offence, means the entity prescribed under a regulation as the administering authority for the notice or offence.

***administration charge***, for a regular redirection from a financial institution account, means an amount prescribed by regulation or, if no amount is prescribed, \$3.

***alleged offender***, for an infringement notice, means the person on whom the notice is served.

***appropriately qualified***, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

***approved form*** means a form approved under section 162 or 163.

***arrest and imprisonment warrant*** see section 119.

***authorised corrective services officer*** means an authorised corrective services officer under the *Penalties and Sentences Act 1992*.

***authorised person*** means—

- (a) for an infringement notice—a person who, under a regulation, may serve the infringement notice; or
- (b) for a withdrawal from acting under this Act—a person who, under a regulation, may effect the withdrawal.

***chief executive (corrective services)*** means the chief executive for the *Corrective Services Act 2000*.

## Schedule 2 (continued)

***civil enforcement fee*** means the fee prescribed under a regulation for part 5.

***commercial agent*** means a commercial agent or commercial subagent under the *Property Agents and Motor Dealers Act 2000*.

***community service*** has the meaning given by the *Corrective Services Act 1988*, section 10.

***community service order*** has the meaning given by the *Penalties and Sentences Act 1992*, section 4.

***compliance period***, for a fine option order, see section 122.

***conviction***, for part 8, see section 131.

***corrective services office*** means an office of the department within which the *Corrective Services Act 1988* is administered.

***court registrar*** means—

- (a) for the Supreme Court or District Court—the registrar of the relevant court; or
- (b) for a Magistrates Court—the clerk of the relevant court.

***criminal history*** of a person means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

***customer reference number*** means a unique number used by the department within which the *Transport Operations (Road Use Management) Act 1995* is administered to identify a person on whom an infringement notice for an infringement notice offence involving a vehicle has been served.

***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 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

## Schedule 2 (continued)

- (b) for a court order under which an offender is not required to serve a term of imprisonment for failing to pay a penalty under the *Penalties and Sentences Act 1992*—the amount prescribed under a regulation for this paragraph or, if no amount is prescribed, \$60; or
- (c) for a court order under which a surety is required to serve a term of 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—the amount for each hour prescribed under a regulation for this part or, if no amount is prescribed, \$15 for each hour; or
- (e) for an infringement notice offence—the amount prescribed under a regulation for this paragraph or, if no amount is prescribed, \$60.

***deducted amount*** see section 87.

***default certificate*** see section 33.

***driver licence*** has the meaning given by the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

***earnings***, of an enforcement debtor, means wages, salary, fees, bonuses, commission, overtime pay or other compensation for services or profit arising from office or employment, a pension, benefit or similar payment, an annuity or an amount payable instead of leave or retirement benefit owing or accruing to the enforcement debtor.

***employer***, of an enforcement debtor, means a person (including the State) who, as principal, rather than as a servant or agent, pays, or is likely to pay, earnings to the enforcement debtor.

***enforcement debtor*** see section 38.

***enforcement officer*** includes the sheriff, deputy sheriff, bailiff of a court, and a commercial agent engaged under section 10(3)(a).



## Schedule 2 (continued)

**enforcement order** see section 38.

**enforcement warrant** see section 63.

**executive officer**, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the management of the corporation.

**fine**—

- (a) generally, includes—
  - (i) an amount stated in an infringement notice as the fine for a stated infringement notice offence and, for a particular infringement notice, the fine stated in the infringement notice; and
  - (ii) for an offence for which a fine is imposed by a court—any amount payable under an ancillary order of the court; and
- (b) for part 8—see section 131.

*Examples of ancillary orders*—

- 1 Professional fees, witnesses expenses and interpreters' allowances.
- 2 Royalties or another similar amount, including conservation value payable under the *Nature Conservation Act 1992*.

**fine collection notice** see section 75.

**fine option order** means an order converting the unpaid amount of a fine under an enforcement order to hours of unpaid community service.

**fine option order breach notice** see section 139.

**government body** means—

- (a) the State, another State, the Commonwealth or a local government; or
- (b) a department, service, agency, authority, commission, corporation, instrumentality, board, office or other entity established for a State government purpose; or
- (c) a part of an entity mentioned in paragraph (b).

## Schedule 2 (continued)

***illegal user declaration***, for an offence involving a vehicle, means a statutory declaration stating facts establishing the vehicle was stolen or illegally taken at the relevant time.

***infringement notice*** means a notice under section 15.

***infringement notice fine***, for an infringement notice offence, means the amount prescribed under a regulation to be the fine payable for the offence under an infringement notice.

***infringement notice offence*** means an offence, other than an indictable offence or an offence against the person, prescribed under a regulation to be an offence to which this Act applies.

***instalment***, of a fine under an infringement notice, means the amount payable as an instalment of the fine.

***instalment payment notice*** see section 136.

***interest in a managed investment scheme*** has the meaning given by the Corporations Act, section 9.

***interfere with*** includes the following—

- (a) remove,
- (b) damage;
- (c) destroy;
- (d) deface.

***known user declaration***, for an offence involving a vehicle, means a statutory declaration stating—

- (a) if the owner is—
  - (i) an individual—the owner was not in charge of the vehicle at the relevant time; or
  - (ii) a corporation—the vehicle was not being used for the corporation at the relevant time; and
- (b) the name and address of the person who was in charge of the vehicle at the relevant time.

***late payment penalty***—

- (a) for a deducted amount—see section 87; or

## Schedule 2 (continued)

(b) for an undeducted amount—see section 88.

**minimum instalment** means the amount prescribed under a regulation as the minimum amount a person who may pay an amount by instalments must pay.

**motor vehicle** means a vehicle propelled by a motor that forms part of the vehicle, and includes a trailer attached to the vehicle.

**offence**, for a particular infringement notice, means the offence stated in the notice.

**offence involving a vehicle** means an offence in which an offender and a vehicle are involved, regardless of the extent to which the vehicle is actually involved in the offence.

**offender**, other than for part 3, includes alleged offender.

**officer**, of a corporation, includes a former officer of the corporation.

**owner**, of a vehicle, includes the person in whose name the vehicle is registered under a registration Act.

**partner** includes a former partner.

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

**prescribed particulars**, for part 4, means particulars prescribed under a regulation.

**protected earnings amount**, for a period for which earnings are paid, means the amount worked out by applying the protected earnings rate to the period for which the earnings are paid.

**protected earnings rate** has the meaning given by the *Child Support (Registration and Collection) Act 1988* (Cwlth), section 4.

**Queensland fine**, for part 8, see section 131.

**reciprocating court**, for part 8, see section 131.

**registrar** means the person employed under section 10 to be registrar.

## Schedule 2 (continued)

**registration Act** means—

- (a) the *Transport Operations (Road Use Management) Act 1995* or another Act prescribed under a regulation that deals with the registration of vehicles; or
- (b) a law of the Commonwealth or another State that deals generally with the same subject matter as an Act mentioned in paragraph (a).

**registration fee** means the fee prescribed under a regulation for registering an unpaid amount under this Act.

**relevant officer**, for part 8, see section 131.

**relevant person**, for part 7, see section 122.

**relevant time**, for an offence involving a vehicle, means the time and date specified in the infringement notice as the time and date of the offence.

**responsible operator**, of a vehicle, means a person nominated as a responsible operator for the vehicle under the *Transport Operations (Road Use Management) Act 1995*, section 170.

**search warrant** see section 71.

**securities** includes—

- (a) annuities; and
- (b) debentures; and
- (c) stocks; and
- (d) bonds; and
- (e) shares; and
- (f) marketable securities; and
- (g) units of—
  - (i) shares; or
  - (ii) marketable securities; or
  - (iii) interests prescribed under a regulation.

**sold vehicle declaration**, for an offence involving a vehicle, means a statutory declaration stating facts establishing the

## Schedule 2 (continued)

owner had sold or otherwise disposed of the vehicle before the relevant time and was not in charge of the vehicle at that time, including—

- (a) the name and address of the person to whom the vehicle was sold or disposed of; and
- (b) the date and, if relevant, time of the sale or disposal; and
- (c) if an agent made the sale or disposal for the owner, the name and address of the agent.

**SPER** means the registry established under part 2.

**suspend**, a driver licence, includes suspend a person's eligibility to apply for or obtain a driver licence.

**third person** means a person, including the State, from whom a debt—

- (a) is payable to an enforcement debtor; or
- (b) is likely to become payable to an enforcement debtor.

**threshold amount**, for an infringement notice fine, means the amount, prescribed under a regulation, at or above which a person may apply to an administering authority for approval to pay the fine by instalments.

**undeducted amount** see section 88.

**unknown user declaration**, for an offence involving a vehicle, means a statutory declaration stating—

- (a) if the owner is—
  - (i) an individual—the owner was not in charge of the vehicle at the relevant time; or
  - (ii) a corporation—the vehicle was not being used for the corporation at the relevant time; and
- (b) the person making the declaration has not been able to find out who was in charge of the vehicle at the relevant time; and

## Schedule 2 (continued)

- (c) the nature of the inquiries made to find out the name and address of the person in charge of the vehicle at the relevant time.

***vehicle*** includes a boat.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 July 2006. Future amendments of the State Penalties Enforcement Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	2000 Act No. 58	27 November 2000	1 December 2000
1A	2001 Act No. 45	15 July 2001	28 September 2001

Reprint No.	Amendments included	Effective	Notes
1B	2002 Act No. 34	16 August 2002	
1C	2002 Act No. 34	1 June 2003	
1D	2003 Act No. 77	8 December 2003	
1E	2005 Act No. 70	8 December 2005	
1F	2000 Act No. 5 (amd 2006 Act No. 26)	21 July 2006	

## 5 List of legislation

### **State Penalties Enforcement Act 1999 No. 70**

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 27 November 2000 (2000 SL No. 274)

amending legislation—

### **Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch**

date of assent 17 November 2000

commenced on date of assent

### **Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provisions commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

### **Justice and Other Legislation (Miscellaneous Provisions) Act 2002 No. 34 ss 1, 2(1), pt 15**

date of assent 16 August 2002

ss 1–2 commenced on date of assent

ss 56–57 commenced 1 June 2003 (2003 SL No. 80)

remaining provisions commenced on date of assent



**Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(3), pt 23**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 2003 (2003 SL No. 310)

**Justice and Other Legislation Amendment Act 2005 No. 70 s 1, pt 22**

date of assent 8 December 2005

commenced on date of assent

**Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A)  
(this Act is amended, see amending legislation below)**

amending legislation—

**Police Powers and Responsibilities and Other Acts Amendment Act 2006  
No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(2))

## 6 List of annotations

**Registrar and other staff of SPER****prov hdg** amd 2002 No. 34 s 53**s 10** amd 2000 No. 58 s 2 sch**Management of office****s 11** amd 2000 No. 58 s 2 sch**Infringement notices****s 15** amd 2000 No. 58 s 2 sch**Application to pay fine by instalments****s 23** amd 2000 No. 58 s 2 sch**Registration of instalment payments for infringement notices****s 24** amd 2000 No. 58 s 2 sch**Application to cancel infringement notice for mistake of fact****s 30** amd 2000 No. 58 s 2 sch**Proceedings after cancellation of infringement notice****s 32** amd 2000 No. 58 s 2 sch**Default by person served with infringement notice****s 33** amd 2000 No. 58 s 2 sch**Ways enforcement debtor may deal with enforcement order****s 41** amd 2000 No. 58 s 2 sch; 2002 No. 34 s 54

**Application for time to pay**

s 42            amd 2000 No. 58 s 2 sch

**Fine option order only for unpaid fine**

s 46            amd 2000 No. 58 s 2 sch

**Making and registration of fine option order**

s 50            amd 2002 No. 34 s 55

**Applications for cancellation of enforcement orders**

s 56            amd 2000 No. 58 s 2 sch

**Appeal against refusal to cancel enforcement order**

s 58            amd 2000 No. 58 s 2 sch

**Proceedings for offence if enforcement order cancelled**

s 59            amd 2000 No. 58 s 2 sch

**Enforcement warrant imposing a charge on property**

s 65            amd 2001 No. 45 s 29 sch 3

**Effect of warrant imposing charge on property**

s 66            amd 2001 No. 45 s 29 sch 3

**Criteria for suspending driver licence**

s 104           amd 2005 No. 70 s 148

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

s 114           amd 2000 No. 58 s 2 sch

**Good behaviour order when imprisonment not appropriate**

s 118           amd 2000 No. 58 s 2 sch; 2003 No. 77 s 111

**Enforcement by imprisonment**

s 119           amd 2002 No. 34 s 56

**Enforcement of Queensland fine by reciprocating court**

s 133           amd 2000 No. 58 s 2 sch

**Enforcement of fine imposed by reciprocating court**

s 134           amd 2000 No. 58 s 2 sch

**Enforcement order**

s 137           amd 2002 No. 34 s 57

**Enforcement warrant to seize and sell property**

s 140           amd 2000 No. 58 s 2 sch

**Fine collection notice for regular redirection from financial institution account**

s 144           amd 2003 No. 77 s 112

**Arrest and imprisonment warrant**

s 146           amd 2000 No. 58 s 2 sch

**Effect of notices, orders and warrants**

s 147           amd 2000 No. 58 s 2 sch

**Information from commissioner of police service**

s 151 amd 2002 No. 34 s 58; 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

**Evidentiary provisions**

s 157 amd 2003 No. 77 s 113

**Regulation-making power**

s 165 amd 2000 No. 58 s 2 sch; 2005 No. 70 s 149

**Acts amended**

s 166 om R1 (see RA s 40)

**PART 10—TRANSITIONAL, VALIDATING AND DECLARATORY PROVISIONS**

pt hdg sub 2003 No. 77 s 114  
amd 2005 No. 70 s 150

**Division 1—Transitional provisions**

div hdg ins 2003 No. 77 s 114

**Issue of infringement notices by administering authority**

prov hdg amd 2000 No. 58 s 2 sch  
s 170 amd 2000 No. 58 s 2 sch

**Division 2—Validating and declaratory provisions**

div hdg ins 2003 No. 77 s 115  
amd 2005 No. 70 s 151

**Infringement notice for Motor Accident Insurance Act 1994**

s 173 ins 2003 No. 77 s 115

**Infringement notice for a corporation**

s 174 ins 2005 No. 70 s 152

**SCHEDULE 1—ACTS AMENDED**

om R1 (see RA s 40)

**SCHEDULE 2—DICTIONARY**

def “**arrest and imprisonment warrant**” amd 2002 No. 34 s 59(3)  
def “**chief executive (corrective services)**” sub 2002 No. 34 s 59(1)–(2)  
def “**commercial agent**” sub 2002 No. 34 s 59(1)–(2)  
def “**fine option order**” amd 2000 No. 58 s 2 sch  
def “**interest in a managed investment scheme**” ins 2001 No. 45 s 29 sch 3  
def “**motor vehicle**” ins 2000 No. 58 s 2 sch  
def “**prescribed interest**” om 2001 No. 45 s 29 sch 3  
def “**vehicle**” ins 2000 No. 58 s 2 sch

## **7 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

**Form 1001 Version 1—Application for a Fine Option Order**

pubd gaz 1 December 2000 pp 1284–5

**Form 1002 Version 1—Application for an Instalment Plan**

pubd gaz 1 December 2000 pp 1284–5

**Form 1003 Version 1—Enforcement Order**

pubd gaz 1 December 2000 pp 1284–5

**Form 1004 Version 1—Fine Option Order**

pubd gaz 1 December 2000 pp 1284–5

**Form 1005 Version 1—Fine Option Order Withdrawal Notice**

pubd gaz 1 December 2000 pp 1284–5

**Form 1006 Version 1—Fine Option Order Reinstatement Notice**

pubd gaz 1 December 2000 pp 1284–5

**Form 1007 Version 1—Fine Option Order Revocation Notice**

pubd gaz 1 December 2000 pp 1284–5

**Form 1008 Version 1—Correspondence Letter**

pubd gaz 1 December 2000 pp 1284–5

**Form 1009 Version 1—Instalment Payment Notice**

pubd gaz 1 December 2000 pp 1284–5

**Form 1010 Version 1—Voluntary Instalment Payment Notice**

pubd gaz 1 December 2000 pp 1284–5

**Form 1011 Version 1—Statement of Account**

pubd gaz 1 December 2000 pp 1284–5

**Form 1012 Version 1—Fine Option Referral Notice**

pubd gaz 1 December 2000 pp 1284–5

**Form 1013 Version 1—Official Receipt**

pubd gaz 1 December 2000 pp 1284–5

**Form 1014 Version 1—SPER—Direct Debit Request Form and Direct Debit Request Service Agreement**

pubd gaz 1 December 2000 pp 1284–5

**Form 1015 Version 1—Financial Assessment**

pubd gaz 1 December 2000 pp 1284–5

**Form 1016 Version 1—Election for Court Hearing**

pubd gaz 1 December 2000 pp 1284–5

- Form 1017 Version 1—SPER—Direct Debit Request Form (Referring Agency) and Direct Debit Request Service Agreement**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1018 Version 1—Reinstatement of Suspended Fine Option Order**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1019 Version 1—Fine Option Order Suspension Notice**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1020 Version 1—Notification of Debt Suspension**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1021 Version 1—Notification of Debt Reinstatement**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1022 Version 1—Application to Cancel Enforcement Order**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1023 Version 1—Request to Cancel Infringement Notice for Mistake of Fact**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1024 Version 1—Notice to Stop Contravening Order**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1025 Version 1—Warning Letter of defaulting Voluntary Instalment Plan**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1026 Version 1—Warning Letter of defaulting Instalment Plan**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1027 Version 1—Letter cancelling Instalment Plan**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1028 Version 1—Letter to Juvenile on defaulting Voluntary Instalment Plan**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1029 Version 1—Referral Notice—Copy to Enforcement Debtor**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1030 Version 1—Referral Notice—Copy for Court Lodgement**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1031 Version 1—Withdrawal of Infringement Notice**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1032 Version 1—Invoice**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1033 Version 1—Statutory Declaration—Vehicle Related Infringement**  
pubd gaz 1 December 2000 pp 1284–5
- Form 1034 Version 1—Default Certificate**  
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- Form 1035 Version 1—Application for Extension of Time to Pay**  
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- Form 1036 Version 1—Appeal against refusal to Cancel Enforcement Order**  
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- Form 1037 Version 1—Application for Review of Fine Option Order Revocation**  
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- Form 1038 Version 1—Account Summary**  
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- Form 1039 Version 1—Warrant of Arrest and Imprisonment**  
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- Form F3113/PT 56 December 2002—(P)—Infringement Notice—First and Final Notice**  
pubd gaz 22 August 2003 p 1368
- Form F1501 February 2003—Prosecution Unit Infringement Notice—First and Final Notice**  
pubd gaz 29 August 2003 pp 1433–4
- Form PT56D Version 10 September 2002—Infringement Notice—Photographic Detection Device Offence**  
pubd gaz 3 October 2003 p 379
- Form SPER200–1/2002 Version 1—Notice of Intention to Suspend Driver Licence**  
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- Form SPER3005-2/2003 Version 1—Notice of Cessation of Employment**  
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- Form SPER3010-2/2003 Version 1—Return of Non-Payments Schedule**  
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- Form SPER3011-2/2003 Version 1—Return of Payments Schedule**  
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- Form SPER3012-5/2003 Version 1—Enforcement Warrant Seizure and Sale of Property**  
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