

Western Australia

**Acts Amendment (Fines Enforcement and
Licence Suspension) Act 2000**

As at 28 Nov 2000

No. 51 of 2000

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Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000

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Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000

No. 51 of 2000

An Act to amend the —

- *Fines, Penalties and Infringement Notices Enforcement Act 1994;*
and
- *Road Traffic Act 1974.*

[Assented to 28 November 2000]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

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

3. The Act amended by this Part

The amendments in this Part are to the *Fines, Penalties and Infringement Notices Enforcement Act 1994**.

[* Reprinted as at 12 March 1997.

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 91.]

4. Section 21 amended

Section 21(1) is amended as follows:

- (a) by deleting “and” after paragraph (a);
- (b) by deleting the comma after paragraph (b) and inserting instead —
“ ; and ”;
- (c) by inserting after paragraph (b) —
“
(c) before a time to pay order is made under section 27A(4),
”.

5. Sections 27A, 27B and 27C inserted

After section 27 the following sections are inserted in Part 3 —

“

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

- (1) If an infringement notice has been registered, the alleged offender may request the Registrar —
 - (a) not to make a licence suspension order; or
 - (b) to cancel a licence suspension order that has been made,

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

- (c) the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the alleged offender or a member of his or her family; or
 - (d) the principal means of obtaining income with which to pay the modified penalty and enforcement fees.
- (2) A request cannot be made —
- (a) if the alleged offender is a body corporate;
 - (b) if an election has been made under section 21; or
 - (c) if a time to pay order has been made previously under subsection (4) in respect of the infringement notice.
- (3) A request —
- (a) must be made in accordance with the regulations; and
 - (b) must include an offer to pay the modified penalty and enforcement fees before a specified date or by regular instalments.
- (4) If the Registrar is satisfied that —
- (a) there are grounds to accede to the request; and
 - (b) the alleged offender's offer to pay by regular instalments is reasonable,

the Registrar must make a time to pay order and, as the case requires —

- (c) suspend the process in Division 2 for enforcing the infringement notice; or

- (d) cancel a licence suspension order that has been made in respect of the alleged offender.
- (5) Without limiting paragraph (d) of subsection (1), the Registrar may, for the purposes of that paragraph, consider the effect that a licence suspension order would have or has had on the ability of the alleged offender to seek or obtain employment.
- (6) The time to pay order is to require the alleged offender to pay the modified penalty and enforcement fees either —
 - (a) before a specified date; or
 - (b) by instalments on or before set dates.
- (7) The time to pay order must be served on the alleged offender together with notice of the action that has been taken under subsection (4)(c) or (d) and the consequences of not complying with the order.
- (8) If a licence suspension order is cancelled, the Registrar must advise the Director General forthwith.
- (9) For the purposes of the *Road Traffic Act 1974*, the cancellation of a licence suspension order takes effect when the order is cancelled.

27B. Amending a time to pay order

The Registrar may amend a time to pay order made under section 27A and for that purpose, sections 34 and 35 (other than sections 34(2) and 35(2)), with any necessary changes, apply.

27C. Contravening a time to pay order

- (1) If an alleged offender contravenes a time to pay order made under section 27A, the Registrar may issue a notice that unless the amount overdue is paid before a

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date specified in the notice (the “**due date**”) the Registrar may —

- (a) make or again make a licence suspension order in respect of the alleged offender; and
 - (b) cancel the time to pay order.
- (2) The notice must be served on the alleged offender.
- (3) If the amount overdue is not paid by the due date the Registrar may make or again make a licence suspension order in respect of the alleged offender and cancel the time to pay order.
- (4) For the purposes of subsection (3), section 19(2) to (9) (but not section 19(4)), with any necessary changes, apply and a licence suspension order may be made even if sections 17 and 18 have not been complied with.

”.

6. Section 28 amended

Section 28(1) is amended in the definition of “time to pay order” by inserting before “means” —

“ , except in sections 55A and 55B, ”.

7. Section 48 amended

Section 48(2) is repealed and the following subsection is inserted instead —

“

- (2) The CEO must make a WDO in respect of an offender unless the CEO is satisfied —
 - (a) that the offender is mentally or physically incapable of performing the requirements of the order; or

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

”.

8. Sections 55A to 55E inserted

After section 55 the following sections are inserted in Part 4 —

“

55A. Registrar may suspend enforcement in certain cases of hardship

- (1) If a fine has been registered, the offender may request the Registrar —

- (a) not to make a licence suspension order; or
- (b) to cancel a licence suspension order that has been made,

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

- (c) the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the offender or a member of his or her family; or
- (d) the principal means of obtaining income with which to pay the amount owed (as defined in section 40).

- (2) A request cannot be made —

- (a) if the offender is a body corporate;
- (b) if a warrant of execution has been issued under section 45; or

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- (c) if a time to pay order has been made previously under subsection (4) in respect of the fine.
- (3) A request —
 - (a) must be made in accordance with the regulations; and
 - (b) must include an offer to pay the amount owed before a specified date or by regular instalments.
- (4) If the Registrar is satisfied that —
 - (a) there are grounds to accede to the request; and
 - (b) the offender's offer to pay by regular instalments is reasonable,

the Registrar must make a time to pay order and, as the case requires —

 - (c) suspend the process in Division 3 for enforcing the fine; or
 - (d) cancel a licence suspension order that has been made in respect of the offender.
- (5) Without limiting paragraph (d) of subsection (1), the Registrar may, for the purposes of that paragraph, consider the effect that a licence suspension order would have or has had on the ability of the offender to seek or obtain employment.
- (6) The time to pay order is to require the offender to pay the amount owed either —
 - (a) before a specified date; or
 - (b) by instalments on or before set dates.
- (7) The time to pay order must be served on the offender together with notice of the action that has been taken under subsection (4)(c) or (d) and the consequences of not complying with the order.

- (8) If a licence suspension order is cancelled, the Registrar must advise the Director General forthwith.
- (9) For the purposes of the *Road Traffic Act 1974*, the cancellation of a licence suspension order takes effect when the order is cancelled.

55B. Amending a time to pay order

The Registrar may amend a time to pay order made under section 55A and for that purpose, sections 34 and 35 (other than sections 34(2) and 35(2)), with any necessary changes, apply.

55C. Contravening a time to pay order

- (1) If an offender contravenes a time to pay order made under section 55A, the Registrar may issue a notice that unless the amount overdue is paid before a date specified in the notice (the “**due date**”) the Registrar may —
 - (a) make or again make a licence suspension order in respect of the offender; and
 - (b) cancel the time to pay order.
- (2) The notice must be served on the offender.
- (3) If the amount overdue is not paid by the due date the Registrar may make or again make a licence suspension order in respect of the offender and cancel the time to pay order.
- (4) For the purposes of subsection (3), section 43(2) to (9) (but not section 43(4)), with any necessary changes, apply and a licence suspension order may be made even if section 42 has not been complied with.

55D. Registrar may select most effective enforcement means

If the Registrar is satisfied that —

- (a) a warrant of execution;
- (b) an order to attend for work and development; or
- (c) a warrant of commitment,

is more likely than a licence suspension order or any of the other methods of enforcement referred to in paragraph (a), (b), or (c) to result in the payment or recovery of the amount owed, the Registrar may —

- (d) despite section 45(1), issue a warrant of execution in the prescribed form and section 45(2) to (5) applies to such a warrant;
- (e) despite section 47(1) and (2), issue an order to attend for work and development and sections 47(3) to (5), 48, 49, 50, 51, and 52 apply in relation to such an order to attend for work and development; or
- (f) despite section 53(1) and (2), issue a warrant of commitment and section 53(3) to (9) applies in relation to such a warrant.

55E. Exclusion of judicial review of decisions of the Registrar under section 55D

A decision of the Registrar under section 55D cannot be the subject of judicial review or otherwise called in question in any proceedings.

”.

9. Section 57 amended

Section 57 is amended by deleting “(other than sections 46 to 53)”.

10. Section 101 amended

- (1) Section 101(2) is amended after “*Justices Act 1902*” by inserting —
- “ and must be served on the Commissioner of Police ”.
- (2) After section 101(3) the following subsection is inserted —
- “
- (3a) An order cancelling the licence suspension order is not to be made unless the Commissioner of Police has been given an opportunity to be heard in relation to the application for the order.
- ”.

11. Section 108 amended

Section 108(2) is amended as follows:

- (a) in paragraph (b) by inserting before “offenders” —
- “ alleged offenders and ”;
- (b) in paragraph (c) by inserting before “offenders” —
- “ alleged offenders and ”.

Part 3 — Road Traffic Act 1974 amended

12. The Act amended by this Part

The amendments in this Part are to the *Road Traffic Act 1974**.

[* Reprinted as at 17 September 1999.

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 219.]

13. Section 45 amended

Section 45(2) is amended by inserting after “cancelled” —
“ or suspended ”.

14. Section 49 amended

(1) Section 49(1) is amended by deleting “subsections (2) and (3)” and inserting instead —

“ this section ”.

(2) Section 49(2) is amended as follows:

(a) by deleting paragraphs (a)(ii) and (iii) and “or” after paragraph (a)(i) and inserting instead —

“

- (ii) having held a driver’s licence that is cancelled under section 48 or of which the operation is suspended under that section;
- (iii) having been disqualified from holding or obtaining a driver’s licence, other than under a licence suspension order referred to in subparagraph (iv); or
- (iv) having been disqualified from holding or obtaining a driver’s licence under a licence suspension order made under section 19 or 43 of the *Fines, Penalties*

*and Infringement Notices Enforcement
Act 1994,*

”;

- (b) by deleting “this subsection.” and inserting instead —
“ subsection (3). ”;
 - (c) by deleting the penalty provision.
- (3) Section 49(3) is repealed and the following subsections are inserted instead —
- “
- (3) A person convicted of an offence against this section committed in any of the circumstances mentioned in subsection (2) is liable —
 - (a) if the offence is committed in the circumstances mentioned in subsection (2)(a)(i), (ii) or (iii) or (2)(b) —
 - (i) for a first offence, to a fine of not less than 8 PU or more than 40 PU and imprisonment for not more than 12 months;
 - (ii) for a subsequent offence, to a fine of not less than 20 PU or more than 80 PU and imprisonment for not more than 18 months;
 - or
 - (b) if the offence is committed in the circumstances mentioned in subsection (2)(a)(iv), to a fine of not less than 4 PU or more than 30 PU and imprisonment for not more than 12 months.
 - (3a) A court convicting a person of an offence committed in the circumstances mentioned in subsection (2)(a)(i), (ii), (iii) or (2)(b) shall order that the person be disqualified from holding or obtaining a driver’s

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licence for a period of not less than 9 months and not more than 3 years.

- (3b) A court convicting a person of an offence committed in the circumstances mentioned in subsection (2)(a)(iv), but not in the circumstances mentioned in subsection (2)(a)(i), (ii) or (iii) or (2)(b), may order that the person be disqualified from holding or obtaining a driver's licence for a period of not more than 3 years.
- (3c) A period of disqualification ordered under subsection (3a) or (3b) is cumulative upon any other period of disqualification to which the person may then be subject or upon any period for which the operation of the person's driver's licence may currently be suspended.

”.

15. Section 49A inserted

After section 49 the following section is inserted —

“

49A. Cautioning drivers who drive when driver's licence is suspended for non-payment of fine, etc.

- (1) In this section —
“**suspended driver**” means a person who has been disqualified from holding or obtaining a driver's licence under a licence suspension order made under section 19 or 43 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (2) If a police officer could charge a person who is a suspended driver with an offence under section 49(1) committed in the circumstances referred to in section 49(2)(a)(iv) and suspects on reasonable grounds —
- (a) that the person does not know that he or she is a suspended driver; and

- (b) that the person has not been cautioned previously under this section since the making of the relevant licence suspension order,
the police officer —
 - (c) may decline to charge the person with an offence under section 49(1); and
 - (d) may instead issue a caution to the person.
- (3) The caution must be in a prescribed form.
- (4) If it is impracticable for the suspended driver to cease driving at the time the caution is issued, the caution must include a permit for the suspended driver to drive by the shortest practicable route from the place where the caution is issued to a place specified in the permit.
- (5) It is a defence to a charge under section 49(1) to prove that the defendant was driving in accordance with a permit included in a caution issued under this section.

”.

16. Section 51 amended

- (1) Section 51(1)(b) is amended by inserting after “other Act” —

“

(other than the *Fines, Penalties and Infringement Notices Enforcement Act 1994*)

”.

- (2) Section 51(3a) is repealed and the following subsection is inserted instead —

“

- (4) Where a person who is the holder of a driver’s licence issued on probation is disqualified from holding or obtaining a driver’s licence by a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, then that

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licence is, by operation of this subsection, suspended so long as the disqualification continues in force and during the period of suspension the licence is of no effect, but the provisions of this subsection do not operate so as to extend the period for which the licence may be valid or effective beyond the expiration of the period for which the licence was expressed to be issued or renewed.

”.

- (3) After section 51(5a) the following subsection is inserted —

“

- (5b) For the purposes of subsection (5), a person is not the holder of a driver’s licence for any period during which the licence is cancelled or suspended or during any period of its invalidity.

”.

17. Section 106 amended

- (1) Section 106(3) is amended by inserting before paragraph (a) the following paragraph —

“

- (aa) an offence against section 49(1);

”.

- (2) Section 106(4) is amended by deleting “the minimum” and inserting instead —

“ any minimum ”.

=====