

Western Australia

Fines Legislation Amendment Act 2008

As at 12 Mar 2008

No. 3 of 2008

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Fines Legislation Amendment Act 2008

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Western Australia

Fines Legislation Amendment Act 2008

No. 3 of 2008

An Act to amend the —

- *Fines, Penalties and Infringement Notices Enforcement Act 1994*;
 - *Sentencing Act 1995*; and
 - *Sentence Administration Act 2003*,
- and for related purposes.**

[Assented to 12 March 2008]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Fines Legislation Amendment Act 2008*.

2. Commencement

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) section 12(3) — on the tenth working day (being a day other than a Saturday, Sunday or public holiday throughout the State) after that day;
- (c) the rest of the Act — on a day fixed by proclamation.

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

3. The Act amended in this Part

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

[* Reprint 3 as at 9 December 2005.]

4. Section 3 amended and consequential amendments

- (1) Section 3(1) is amended by inserting in the appropriate alphabetical position —

“

“dishonoured payment” means a purported payment —

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

”.

- (2) Section 21(7) is amended by deleting “cheque.” and inserting instead —

“ payment. ”.

- (3) Section 26(3) is amended by deleting “cheque.” and inserting instead —

“ payment. ”.

- (4) Section 102 is amended by deleting “cheque,” in the 2 places it occurs and in each place inserting instead —

“ payment, ”.

s. 5

- (5) Section 108(3)(e) is amended by deleting “cheque” and inserting instead —
“ payment ”.
- (6) Section 108(4)(c) is amended by deleting “cheque” and inserting instead —
“ payment ”.

5. Section 5A inserted and consequential amendments

- (1) After section 5 the following section is inserted in Part 1 —

“

5A. Service by electronic means

- (1) If under this Act information or a document or notice must or may be given to or served on a person, it may, with the consent of that person be given or served —
 - (a) by sending it by fax to the person using a fax number given by the person; or
 - (b) by sending it by email to the person at an email address given by the person,to the person who is giving or serving it.
- (2) Subsection (1) does not apply to giving or serving —
 - (a) any document that under this Act must be served personally;
 - (b) a final demand under section 14(2);
 - (c) a certificate or information under section 16;
 - (d) a document under section 21(4)(b);
 - (e) a notice of withdrawal under section 22(2);
 - (f) any information or a document or notice under Part 7;
 - (g) subject to section 105, a warrant of execution or a warrant of commitment issued under this Act.

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

”.

(2) Section 3(1) is amended by inserting in the appropriate alphabetical positions —

“

“give” information or a document or notice, has a meaning affected by section 5A;

“serve” a document, has a meaning affected by sections 5 and 5A;

”.

(3) Section 5(1) is amended by deleting “this section.” and inserting instead —

“ this section or in accordance with section 5A. ”.

6. Section 10A inserted

After section 10 the following section is inserted in Part 2 —

“

10A. Registrar may disclose information to Commissioner of Police

The Registrar, on any terms the Registrar thinks fit, may disclose to the Commissioner of Police any information the Registrar thinks fit about any proceedings under this Act.

”.

7. Section 27A amended

(1) Section 27A(1) is amended as follows:

(a) by deleting the full stop at the end of the subsection and inserting instead a comma;

s. 8

(b) by inserting at the end of the subsection —

“

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

”.

(2) Section 27A(2) is amended as follows:

(a) by inserting after paragraph (a) —

“ or ”;

(b) by deleting “; or” after paragraph (b) and inserting instead a full stop;

(c) by deleting paragraph (c).

(3) After section 27A(4)(a) the following paragraph is inserted —

“

(aa) the alleged offender has a reasonable excuse for any contravention of a time to pay order made previously under this section in respect of the infringement notice; and

”.

8. Section 27D inserted

After section 27C the following section is inserted —

“

27D. Registrar’s decision on time to pay is final

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

”.

9. Section 32 amended

After section 32(2) the following subsection is inserted —

“

- (3) Despite subsections (1) and (2), a fine may be registered by the court officer at any time after it is imposed if at the time the fine is registered there is —
- (a) another fine imposed on the offender that has been registered under this Part and that has not been paid; or
 - (b) an infringement notice in respect of the offender that has been registered under Part 3 and that has not been paid.

”.

10. Section 39 amended

Section 39(1) is repealed and the following subsection is inserted instead —

“

- (1) A fine imposed on an offender may be registered by a court officer if the prosecuting authority has given the court officer a written notice requesting the court officer to register the fine and either —
- (a) 28 days have elapsed since the fine was imposed; or
 - (b) at the time the fine is registered there is —
 - (i) another fine imposed on the offender that has been registered and that has not been paid; or
 - (ii) an infringement notice in respect of the offender that has been registered under Part 3 and that has not been paid.

”.

s. 11

11. Section 41 amended

After section 41(2) the following subsections are inserted —

“

- (3) If, at any time after a fine is registered and before a warrant of execution or a warrant of commitment is issued in respect of it, there is good reason to do so, a court officer, in writing, may order the Registrar to cancel the registration.
- (4) A court officer may only make an order under subsection (3) in respect of a fine to which Division 2 Subdivision 2 applies with the consent of the prosecuting authority (as defined in section 39(2)).
- (5) When the registration of a fine is cancelled —
 - (a) any time to pay order made under section 55A(4) in respect of the fine is cancelled; and
 - (b) any licence suspension order made in respect of the offender in respect of the fine is cancelled; and
 - (c) any order to attend for work and development made under section 47, 47A or 55D is cancelled; and
 - (d) the Registrar must forthwith notify the offender of the cancellation of any order that occurs under this subsection.
- (6) The cancellation of the registration of a fine does not prevent a court officer from again registering the fine.

”

12. Section 53 amended

- (1) Section 53(3) is repealed and the following subsection is inserted instead —

“

- (3) A warrant of commitment is to commit the offender to be imprisoned for a period (in days) specified in the warrant that is the shorter of —

- (a) the period of imprisonment determined by dividing the amount owed by the amount prescribed and rounding the result down to the nearest whole number of days; and
- (b) the maximum term of imprisonment (if any) to which the offender could have been sentenced for the offence concerned,

and that in any event is not less than one day.

”.

- (2) Section 53(4) is repealed and the following subsection is inserted instead —

“

- (4) If, when the *Fines Legislation Amendment Act 2008* section 12(1) (the “**amending provision**”) comes into operation, a warrant of commitment is in force but the offender has not commenced to serve the period of imprisonment specified in it, the warrant has effect as if —

- (a) the amending provision; and
- (b) the regulations made for the purposes of subsection (3)(a) as enacted by the amending provision,

had come into operation before the warrant was issued.

”.

s. 12

- (3) Section 53(8) is repealed and the following subsections are inserted instead —

“

- (8) The period of imprisonment specified in a warrant of commitment is concurrent with any other period or term of imprisonment that the offender is serving or has to serve.

- (8a) If, immediately before the *Fines Legislation Amendment Act 2008* section 12(3) (the “**amending provision**”) comes into operation, an offender who has served, is serving or has to serve a period of imprisonment under a warrant of commitment is in prison, the offender is entitled to be released from imprisonment on —

- (a) the day on which the offender would have been entitled to be released if the amending provision had come into operation before the warrant of commitment was issued; or
- (b) the day on which the amending provision comes into operation,

whichever is later.

- (8b) In the case of an offender who is serving or has to serve a parole term as defined in the *Sentencing Act 1995* section 85(1), a reference in subsection (8a) to the offender being entitled to be released is a reference to the offender being eligible to be released on parole.

”.

- (4) Before section 53(9) the following subsection is inserted —

“

- (8c) The Registrar may at any time cancel a warrant of commitment for good reason.

”.

13. Section 55A amended

- (1) Section 55A(1) is amended as follows:
- (a) by deleting the full stop at the end of the subsection and inserting instead a comma;
 - (b) by inserting at the end of the subsection —
“
or on the grounds that the licence suspension order would or does seriously hinder the offender in performing family or personal responsibilities.
”.
- (2) Section 55A(2) is amended as follows:
- (a) by inserting after paragraph (a) —
“ or ”;
 - (b) by deleting “; or” after paragraph (b) and inserting instead a full stop;
 - (c) by deleting paragraph (c).
- (3) After section 55A(4)(a) the following paragraph is inserted —
“
(aa) the offender has a reasonable excuse for any contravention of a time to pay order made previously under this section in respect of the fine; and
”.

14. Section 55E replaced

Section 55E is repealed and the following section is inserted instead —

- “
55E. Registrar’s decision on time to pay etc. is final
A decision of the Registrar under section 55A, 55B, 55C or 55D is final.
”.

Fines Legislation Amendment Act 2008

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

s. 15

15. Section 101B amended

- (1) Section 101B(3)(e) is amended by inserting after “section 47” —
“ , 47A or 55D ”.
- (2) Section 101B(4)(c) is amended by inserting after “section 47” —
“ , 47A or 55D ”.

16. Section 109 and Schedule 1 repealed

Section 109 and Schedule 1 are repealed.

Part 3 — Sentencing Act 1995 amended

17. The Act amended in this Part

The amendments in this Part are to the *Sentencing Act 1995**.

[* *Reprint 4 as at 12 August 2005.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2005 and Act Nos. 27 of
2004 and 25 of 2005.]*

18. Section 59 amended

- (1) Section 59(3) is repealed and the following subsection is inserted instead —

“

- (3) Unless the court sets a shorter period of imprisonment under subsection (1)(b), the period of imprisonment (in days) for the purposes of that subsection is the shorter of —

- (a) the period determined by dividing the amount of the fine by the amount prescribed and rounding the result down to the nearest whole number of days; and
- (b) the term of imprisonment (if any) provided by the statutory penalty for the offence concerned,

and in any event is not less than one day.

”.

- (2) Section 59(4) is repealed.

19. Section 67 amended

Section 67(3) is amended by deleting “40” and inserting instead —

“ 10 ”.

20. Section 87 amended

Section 87(a) is amended by inserting after “reason” —

“

(other than a warrant of commitment issued under the
*Fines, Penalties and Infringement Notices Enforcement
Act 1994*)

”.

Part 4 — *Sentence Administration Act 2003* amended

21. The Act amended in this Part

The amendments in this Part are to the *Sentence Administration Act 2003**.

[* *Act No. 49 of 2003.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2005 and Act No. 27
of 2004.]*

22. Section 7 amended

- (1) Section 7(1) is amended by deleting the definition of “fixed term” and inserting instead —

“

“fixed term” includes —

- (a) a period of imprisonment ordered under section 58, 59 or 119A of the *Sentencing Act 1995*; and
- (b) a period of imprisonment specified in a warrant of commitment issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;

”.

- (2) Section 7(2) is amended by deleting “sentenced” and inserting instead —

“ who has ”.
