

WESTERN AUSTRALIA

**FINES, PENALTIES AND
INFRINGEMENT NOTICES
ENFORCEMENT AMENDMENT
ACT 1996**

No. 8 of 1996

**AN ACT to amend the *Fines, Penalties and Infringement
Notices Enforcement Act 1994* and as a consequence to
amend the *Justices Act 1902*.**

[Assented to 28 May 1996.]

The Parliament of Western Australia enacts as follows:

s. 1 No. 8] *Fines, Penalties and Infringement Notices
Enforcement Amendment Act 1996*

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 1996*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**PART 2 — FINES, PENALTIES AND INFRINGEMENT
NOTICES ENFORCEMENT ACT 1994**

Principal Act

3. In this Part the *Fines, Penalties and Infringement Notices Enforcement Act 1994** is referred to as the principal Act.

[* Act No. 93 of 1994.]

Section 33 amended

4. Section 33 (5) is repealed and the following subsection is substituted —

“

(5) A court officer must make a time to pay order if the offender does not have the means to pay the fine within 28 days after the day on which the fine was imposed.

”.

Section 35A inserted

5. After section 35 of the principal Act the following section is inserted —

“

Payments ordered must be within the means of the offender

35A. In making or amending a time to pay order, a court officer must ensure that any payment to be made under the order is within the offender’s means to pay it.

”.

Section 101 amended

6. (1) Section 101 of the principal Act is amended by inserting after subsection (1) the following subsection —

“

(1a) A person cannot apply if the person has previously applied in relation to the licence suspension order or in relation to any other licence suspension order made in respect of the infringement notice to which the licence suspension order relates, and the application was refused.

”.

(2) Section 101 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(2a) A licence suspension order that is in force at the time when an application is made does not cease to be in force by reason only of the making of the application.

”.

Sections 101A to 101D inserted

7. After section 101 of the principal Act the following sections are inserted —

“

Justices may set aside licence suspension order made under Part 4

101A. (1) A person in respect of whom a licence suspension order has been made under Part 4 (“**the applicant**”) may apply to justices for an order cancelling the licence suspension order.

(2) A person cannot apply if the person has previously applied in relation to the licence suspension order or in relation to any other licence suspension order made in respect of the fine to which the licence suspension order relates, and the application was refused.

(3) An application must be made in accordance with regulations made under the *Justices Act 1902*.

(4) A licence suspension order that is in force at the time when an application is made does not cease to be in force by reason only of the making of the application.

(5) If on an application the applicant satisfies the justices —

- (a) that the applicant did not receive a summons or a notice to attend court in respect of the charge that gave rise to the fine that gave rise to the licence suspension order;
- (b) that the applicant was not present in court when that fine was imposed; and
- (c) that the applicant received neither of the following:
 - (i) the notice of intention to suspend licences issued under section 42 in respect of that fine;
 - (ii) the notice confirming licence suspension issued under section 43 (6),

the justices may make an order cancelling the licence suspension order.

(6) A licence suspension order that is cancelled by an order made under subsection (5) is to be taken as having been cancelled as at the time the licence suspension order was made.

Enforcement suspended on appeal etc.

101B. (1) For the purposes of this section a person appeals against a fine, or a decision giving rise to a fine, imposed on the person when the person —

- (a) serves a notice under section 56A (5) or 136A of the *Justices Act 1902* and pays any fee required;
- (b) is granted leave to appeal under section 187 of the *Justices Act 1902* or Chapter LXIX of *The Criminal Code*; or
- (c) gives notice of appeal under section 695 of *The Criminal Code*,

in respect of the fine or the decision giving rise to the fine (as the case may be).

(2) When the Registrar is notified that a person is appealing against a fine or the decision giving rise to a fine no action is to be taken under this Act except as provided by this section or the regulations.

(3) If when a person appeals against a fine or the decision giving rise to a fine —

- (a) a time to pay order is in force, the order ceases to have effect;

- (b) a notice of intention to suspend licences issued under section 42 in respect of the fine is current, the notice is to be taken as being cancelled as from that time;
 - (c) a licence suspension order made under section 43 is in force in respect of the fine, the order is to be taken as being cancelled as from that time;
 - (d) a warrant of execution issued under section 45 is in force but no property has been seized under it, the warrant is to be taken as being cancelled as from that time;
 - (e) an order to attend for work and development has been issued under section 47 but not served, the order is to be taken as being cancelled as from that time.
- (4) If when a person appeals against a fine or the decision giving rise to a fine —
- (a) the 28 day period referred to in section 32 (1) has not elapsed, the operation of that section ceases;
 - (b) a warrant of execution issued under section 45 is in force and property has been seized under it, no further action is to be taken under the warrant;
 - (c) an order to attend for work and development issued under section 47 has been served, the order ceases to have effect;
 - (d) a work and development order made under section 48 is in force, the order ceases to have effect,
- until the appeal is disposed of and, if the fine is then still payable, subsection (5) operates.

(5) If when the appeal is disposed of the fine is still payable —

- (a) section 32 (1) then operates again, but as if the fine had been imposed on the day the appeal was disposed of;
- (b) further action may then be taken under the warrant of execution;
- (c) the order to attend for work and development then has effect again, but as if it had been served on the day the appeal was disposed of;
- (d) the work and development order then has effect again.

(6) In this section —

“disposed of” means determined, dismissed or discontinued.

Proving licence suspension orders and service of documents

101C. (1) Evidence —

- (a) that a licence suspension order was made under this Act;
- (b) of the details of a licence suspension order and of the matter to which it relates;
- (c) that a licence suspension order had not, at a particular time, been cancelled;

- (d) that a document issued under this Act has been served on a person in accordance with section 5;
- (e) of any matter relevant to the service of a document issued under this Act,

may be given by tendering a certificate to that effect in the prescribed form signed by the Registrar.

(2) Unless the contrary is proved, it is to be presumed that anything required to be done as a precondition to taking any action under this Act was done and was done in accordance with the law.

(3) Unless the contrary is proved, it is to be presumed that a certificate purporting to have been signed by the Registrar was signed by a person who at the time was the Registrar.

Validity of licence suspension order not affected by non-receipt of documents

101D. (1) The validity of a licence suspension order is not affected by the fact that the person to whom the order relates did not receive any document issued under this Act in respect of the matter to which the order relates.

(2) Subsection (1) does not affect the operation of section 101 or 101A.

(3) A court dealing with a matter in which the issue of whether at a particular time a licence suspension order was in force or not is relevant may, if it thinks fit, adjourn the matter so that a person can make an application under section 101 or 101A.

”.

Section 108 amended

8. Section 108 (2) of the principal Act is amended —

(a) by deleting paragraph (a) and substituting the following paragraph —

“

(a) as to the action that may be taken under this Act in relation to the enforcement of —

(i) an infringement notice that has been the subject of a successful application under section 101;

(ii) the payment of a fine that has been the subject of a successful application under section 101A;

(iii) the payment of a fine that is still payable after proceedings of a kind referred to in section 101B (1) in relation to it or the decision giving rise to it have been disposed of and where section 101B (3) has operated.

”;

and

(b) in paragraph (c) by deleting “declaration.” and substituting the following —

“ declaration or by other means. ”.

Minor amendments

9. The principal Act is amended as set out in the Table to this section.

TABLE

- s. 28 (1) After the definition of “fine”, insert —
- “ **“offender”** means a person found guilty of an offence, whether after a plea of guilty or otherwise; ”.
- s. 29 (1) Delete “person” and substitute —
- “ offender ”.
- s. 30 (1) Delete “a person” and substitute —
- “ an offender ”.
- Delete “the person” and substitute —
- “ the offender ”.
- s. 43 (1) Delete “alleged”.
- s. 43 (9) (c) Delete “alleged”.
- s. 44 (4) Delete “alleged”.
- s. 55 (2) Delete “alleged”.
- s. 60 (3) Delete “subsection (1)” and substitute —
- “ subsection (2) ”.
- s. 61 (2) (a) Delete “court of petty sessions” and substitute —
- “ Court of Petty Sessions ”.

s. 9 No. 8] *Fines, Penalties and Infringement Notices
Enforcement Amendment Act 1996*

s. 69 (1) Delete “If a warrant has been issued” and substitute —

“ In respect of a warrant, ”.

Schedule 1, Delete “Part” and substitute —
cl. 1

“ Schedule ”.

Schedule 1, Repeal the subclause and substitute the following
cl. 3 (1) subclause —

“ (1) Subject to Part 3 and this clause, an infringement notice issued before commencement may be enforced under Part 3. ”.

PART 3 — JUSTICES ACT 1902

Principal Act

10. In this Part the *Justices Act 1902** is referred to as the principal Act.

[* Reprinted as at 21 June 1995.]

Section 193 amended

11. After section 193 (3) of the principal Act the following subsection is inserted —

“

(3a) If leave to appeal is granted in respect of a decision involving or giving rise to the imposition of a fine (as defined in section 28 (1) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*), an order under this section is not to be made.

”

Section 194 amended

12. (1) Section 194 (2) of the principal Act is amended by deleting “or the *Fines, Penalties and Infringement Notices Enforcement Act 1994*”.

(2) Section 194 (5) of the principal Act is amended by deleting “Any” and substituting the following —

“

Subject to section 101B of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, any

”