

**FINES, PENALTIES AND
INFRINGEMENT NOTICES
ENFORCEMENT ACT 1994**

(No. 93 of 1994)

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WESTERN AUSTRALIA

**FINES, PENALTIES AND
INFRINGEMENT NOTICES
ENFORCEMENT ACT 1994**

No. 93 of 1994

AN ACT to provide for the enforcement of the payment of fines and other penalties and for the enforcement of infringement notices and for related purposes.

[Assented to 23 December 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

Commencement

2. (1) Subject to this section this Act comes into operation on such day as is fixed by proclamation.

(2) Section 29 (2) has no effect unless the *Young Offenders Act 1994* is enacted, and, if that Act receives the Royal Assent after the day on which this Act comes into operation, section 29 (2) comes into operation on the day on which that Act receives the Royal Assent.

Interpretation

3. (1) In this Act —

“**driver’s licence**” means a driver’s licence issued under the *Road Traffic Act 1974* and includes an extraordinary licence issued under that Act;

“**paid**” means paid in full;

“**Registrar**” means the Registrar appointed under section 7 (1);

“**Registry**” means the Fines Enforcement Registry established under section 6;

“**Traffic Board**” means the Traffic Board established under the *Road Traffic Act 1974*;

“**vehicle licence**” means a licence for a vehicle issued under Part III of the *Road Traffic Act 1974*.

(2) In this Act this abbreviation is used:

“**CEO**” for chief executive officer.

Application of this Act to other written laws

4. Where another written law permits or requires an order or other decision of a court or a person to be enforced under the *Justices Act 1902*, then, subject to this Act and to any contrary intention in the other written law, the order or decision may be enforced under this Act.

Service of documents

5. (1) If under this Act a document must be served on a person, then unless the contrary intention appears, service may be effected in accordance with section 76 of the *Interpretation Act 1984* (other than paragraph (b)) or by post in accordance with this section.

(2) A document issued under this Act may be served by post on a person by properly addressing and posting it by pre-paid post as a letter to the person at the person’s last known address.

(3) For the purposes of the service of documents under Part 4 or 7, a person’s last known address may be taken to be —

- (a) the address that under section 30 was supplied to the court that imposed the fine; or
- (b) the address on any summons or other document issued to the offender in connection with the charge giving rise to the fine,

unless the person has advised the Registry that he or she has another address.

(4) In the absence of an address for a person from other sources, a person's last known address may be taken to be the person's current address shown in the records of the Traffic Board.

(5) A document sent by post to a person under subsection (2) is to be taken as having been served on the person.

(6) Section 75 of the *Interpretation Act 1984* does not apply to a document issued under this Act.

PART 2 — FINES ENFORCEMENT REGISTRY

Registry established

6. As part of the Court of Petty Sessions at Perth, a registry called the Fines Enforcement Registry is established.

Registrar

7. (1) Under Part 3 of the *Public Sector Management Act 1994*, a person is to be appointed as the Registrar of the Registry.

(2) The Registrar is an officer of the Court of Petty Sessions at Perth and the functions of the Registrar are to be taken to be functions of that Court.

(3) Any notice, order or warrant issued by the Registrar is to be taken to be a notice, order or warrant issued by the Court of Petty Sessions at Perth.

(4) The Registrar, in writing, may delegate to any person any function of the Registrar under this Act, except this power of delegation, the power under section 45 to issue a warrant of execution and the power under section 53 (1) to issue a warrant of commitment.

Payments to the Registry

8. (1) Payment under this Act of any amount to the Registry is to be made in such manner and at such places as the Registrar determines from time to time.

(2) Documents issued under this Act by the Registrar are to contain information about the manner in which and the places at which payments to the Registry may be made.

Registrar exempt from fees

9. The Registrar is exempt from paying fees under the *Electoral Act 1907* and the *Road Traffic Act 1974* in connection with any matter arising out of or in connection with the performance of his or her functions under this Act.

Registrar to have access to Traffic Board records

10. To the extent that it is necessary for the performance of the Registrar's functions under this Act, the Registrar is entitled to have access to and to make use of the records kept by the Traffic Board under the *Road Traffic Act 1974* in relation to driver's licences and vehicle licences.

PART 3 — INFRINGEMENT NOTICES

Division 1 — Preliminary

Interpretation

11. In this Part —

“alleged offence” means the offence that an infringement notice alleges has been committed;

“alleged offender” means the person to whom an infringement notice is issued;

“election” means an election in writing to have a complaint for an alleged offence heard and determined by a court;

“enforcement fees” means prescribed fees imposed in connection with proceedings under this Part and includes the registration fee referred to in section 16;

“infringement notice” means a notice issued under a written law, other than this Act, to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court;

“modified penalty” means the amount of money prescribed in a written law and specified in an infringement notice as the amount that the offender is to pay if he or she wants the matter dealt with out of court;

“prescribed enactment” means a principal enactment that under section 12 (1) is prescribed as an enactment to which this Part applies;

“principal enactment”, in relation to an infringement notice, means the written law under which an infringement notice is issued;

“prosecuting authority”, in relation to an infringement notice, means the person who or which, under the principal enactment, administers the issuing of, and any subsequent proceedings in relation to, the notice;

“prosecuting officer” means a person designated as such in a notice given to the Registrar under section 13 (2);

“registered” means registered with the Registry for enforcement under section 16.

Application

12. (1) This Part does not apply to an infringement notice unless the principal enactment is prescribed as an enactment to which this Part applies.

(2) This Part does not apply to an infringement notice unless the prosecuting authority in relation to the notice has been approved under section 13 (1).

(3) This Part does not apply to an infringement notice issued to an alleged offender who, at the time of the alleged offence, was under 17 years old.

Approved prosecuting authorities and officers

13. (1) For the purposes of this Part, the Registrar may approve a prosecuting authority as a prosecuting authority to which this Part applies.

(2) The Registrar is not to approve a prosecuting authority unless the authority gives the Registrar written notice of those

officers of the authority that are designated as prosecuting officers for the purposes of and in accordance with sections 16 and 22.

(3) A prosecuting authority at any time may amend the written notice of designated prosecuting officers.

Division 2 — Enforcement of infringement notices

Final demand may be issued to alleged offender

14. (1) If under a prescribed enactment —
- (a) an infringement notice has been issued;
 - (b) the infringement notice has not been withdrawn under that enactment;
 - (c) the modified penalty has not been paid as required by the infringement notice; and
 - (d) the time for paying the modified penalty has elapsed,

the prosecuting authority may issue a final demand.

(2) A final demand must be served on the alleged offender.

(3) A final demand must identify the infringement notice concerned and the alleged offence.

(4) A final demand must contain a statement to the effect that unless within 28 days after the date of issue of the final demand —

- (a) the modified penalty, and enforcement fees, specified in the final demand are paid to the person to whom or which, under the principal enactment, the modified penalty is to be paid; or

- (b) an election is made by the alleged offender and given to the person to whom or which, under the principal enactment, the modified penalty is to be paid,

the infringement notice may be registered with the Registry after which a licence suspension order may be made and further enforcement fees may be imposed.

(5) A final demand must contain such information as may be prescribed.

Infringement notice may be registered

15. If —

- (a) 28 days have elapsed since the date of issue of a final demand to an alleged offender;
- (b) the modified penalty, and enforcement fees, specified in the final demand have not been paid in accordance with the final demand; and
- (c) an election has not been made by the alleged offender in accordance with the final demand,

the prosecuting authority may register the infringement notice.

Registration of infringement notice: enforcement certificate

16. (1) To register an infringement notice with the Registry for enforcement, a prosecuting authority must give the Registry —

- (a) an enforcement certificate signed by a prosecuting officer of the authority; and

- (b) such information as the Registrar requires in such manner as the Registrar specifies,

and must pay the prescribed registration fee, if applicable.

(2) An enforcement certificate must identify the alleged offender to whom, and the alleged offence to which, it relates and must state that —

- (a) on a date specified in the certificate an infringement notice was, in accordance with the principal enactment, issued to the alleged offender in respect of the alleged offence;
- (b) on a date specified in the certificate a final demand was, in accordance with section 14, served on the alleged offender;
- (c) the final demand was served after the time for payment of the modified penalty in accordance with the infringement notice had elapsed; and
- (d) as at the date of the lodging of the certificate —
- (i) 28 days have elapsed since the date of issue of the final demand;
- (ii) the modified penalty, and enforcement fees, specified in the final demand have not been paid in accordance with the final demand;
- (iii) an election has not been made by the alleged offender in accordance with the final demand;
- (iv) proceedings, other than under this Part, have not been commenced in respect of the alleged offence; and

- (v) proceedings under this Part in respect of the alleged offence have not been withdrawn under section 22.

(3) An enforcement certificate may relate to more than one infringement notice and, if it does, the prescribed registration fee, if applicable, must be paid in respect of each infringement notice registered.

(4) For the purposes of this section a prosecuting officer must be a person who, under the principal enactment, is empowered to make a complaint in respect of the alleged offence.

(5) If the law limits the time within which proceedings for an alleged offence may be commenced, an enforcement certificate in relation to an infringement notice issued for that alleged offence must not be lodged after that time limit has expired.

(6) After an infringement notice is registered with the Registry, payment of the whole or any part of the modified penalty and enforcement fees must not be accepted other than by or on behalf of the Registrar.

(7) The Registrar is to cause an enforcement certificate to be registered in a register kept at the Registry, in such form as the Registrar considers appropriate, for the purposes of this Part.

Order to pay or elect

17. (1) If under section 16 a matter is registered with the Registry, the Registrar must issue an order to pay or elect to the alleged offender.

(2) An order to pay or elect must be served on the alleged offender.

(3) An order to pay or elect is an order that within 28 days after the date of issue of the order either —

- (a) the modified penalty, and enforcement fees, specified in the order must be paid to the Registry; or
- (b) an election under section 21 must be made by the alleged offender.

(4) An order to pay or elect must advise the alleged offender that if the order is not complied with, the Registrar may make a licence suspension order.

(5) The Registrar must notify the prosecuting authority of the making of an order to pay or elect and the date on which it was issued.

Notice of intention to suspend licences

18. (1) If —

- (a) 28 days have elapsed since the date of issue of an order to pay or elect;
- (b) the modified penalty, and enforcement fees, specified in that order have not been paid to the Registry; and
- (c) an election under section 21 has not been made by the alleged offender,

the Registrar may issue a notice of intention to suspend licences.

(2) A notice of intention to suspend licences must be served on the alleged offender.

(3) A notice of intention to suspend licences must contain a statement to the effect that unless before a date specified in the notice ("**the due date**") either —

- (a) the modified penalty, and enforcement fees, specified in the order are paid to the Registry; or
- (b) an election under section 21 is made by the alleged offender,

the Registrar may make a licence suspension order in respect of the alleged offender.

(4) The due date must not be earlier than 28 days after the date of issue of the notice of intention to suspend licences.

(5) A notice of intention to suspend licences must also —

- (a) state the date and time when the licence suspension order will have effect if it is made;
- (b) explain that if a licence suspension order is made it will not be cancelled until the modified penalty and enforcement fees are paid;
- (c) explain the terms of the licence suspension order that may be made; and
- (d) contain such other information as is prescribed.

Licence suspension order

19. (1) If —

- (a) 28 days have elapsed since the date of issue of a notice of intention to suspend licences;
- (b) the modified penalty, and enforcement fees, specified in that notice have not been paid to the Registry; and

- (c) the alleged offender has not made an election under section 21,

the Registrar may make a licence suspension order in respect of the alleged offender.

(2) A licence suspension order is an order as to such of the matters in subsections (3) and (4) as the Registrar thinks fit.

(3) If the alleged offender is an individual a licence suspension order may disqualify the alleged offender from one of the following:

- (a) from holding or obtaining a driver's licence;
- (b) from holding or obtaining a vehicle licence in respect of those vehicles specified in the order; or
- (c) from holding or obtaining a vehicle licence in respect of any vehicle.

(4) If the alleged offender is a body corporate a licence suspension order may disqualify the alleged offender from one of the following:

- (a) from holding or obtaining a vehicle licence in respect of those vehicles specified in the order; or
- (b) from holding or obtaining a vehicle licence in respect of any vehicle.

(5) A licence suspension order has effect on the date and at the time specified in the order, but the date and time must not be earlier than the date and time stated in the notice of intention to suspend licences and must not be earlier than when the order is made.

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(6) If the Registrar makes a licence suspension order, he or she must —

- (a) issue a notice confirming licence suspension; and
- (b) advise the Traffic Board of the terms of the order forthwith.

(7) A notice confirming licence suspension must be served on the alleged offender.

(8) A notice confirming licence suspension must advise the alleged offender that a licence suspension order has been made and of the date and time when it has effect and must explain the terms of the order.

(9) For the purposes of this Act and the *Road Traffic Act 1974*, a licence suspension order —

- (a) takes effect on the date and at the time specified in the order;
- (b) is in force from the time it takes effect to the time when it is cancelled; and
- (c) is concurrent with any other period for which the alleged offender is disqualified from holding or obtaining a driver's licence.

Cancelling licence suspension orders

20. (1) If after a licence suspension order is made —

- (a) the relevant modified penalty and the associated enforcement fees are paid to the Registry; or
- (b) the alleged offender makes an election under section 21,

the licence suspension order is to be taken as having been cancelled at the time of the making of the payment or of the election, as the case may be.

(2) Even if neither payment nor an election is made, the Registrar, at any time, may cancel a licence suspension order for good reason.

(3) If a licence suspension order is cancelled under subsection (2), the Registrar must issue a notice of cancellation.

(4) A notice of cancellation must be served on the alleged offender.

(5) If a licence suspension order is cancelled under subsection (1) or (2), the Registrar must advise the Traffic Board forthwith.

(6) For the purposes of the *Road Traffic Act 1974*, the cancellation of a licence suspension order takes effect when the order is cancelled.

Division 3 — Miscellaneous

Election by alleged offender or prosecuting authority

21. (1) Despite any other provision in this Part, at any time that is —

- (a) after an infringement notice is registered with the Registry; and
- (b) before the modified penalty and enforcement fees, or any part of them, is paid,

the alleged offender or the prosecuting authority that registered the notice may make an election.

(2) An election made by a prosecuting authority must be signed by a prosecuting officer of the prosecuting authority who is empowered to sign an enforcement certificate in respect of the alleged offence.

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(3) An election under subsection (1) must be given to the Registrar.

(4) If an election is made under subsection (1), the Registrar must —

- (a) refer the alleged offence to a court of petty sessions or to the Children's Court, as the case requires; and
- (b) notify the alleged offender, and the prosecuting authority that registered the infringement notice concerned, that the matter has been so referred.

(5) When the Registrar refers an alleged offence to a court under subsection (4), the Registrar must give the clerk of that court a document containing such of the information provided to the Registrar under section 16 (1) (b) as will sufficiently describe the alleged offender and the alleged offence.

(6) The document that under subsection (5) is given to a clerk of petty sessions or a clerk of the Children's Court is to be taken to be a complaint under the *Justices Act 1902* alleging that the alleged offender committed the alleged offence and made —

- (a) without oath before the clerk by the person who signed the enforcement certificate;
- (b) on the day when the enforcement certificate was lodged; and
- (c) to the court of petty sessions or the Children's Court, as the case may be.

(7) For the purposes of subsection (1) (b) a modified penalty and enforcement fees, or any part of them, are to be taken to have been paid even if payment was by means of a dishonoured cheque.

Prosecuting authority may withdraw proceedings

22. (1) At any time after a final demand has been sent by a prosecuting authority to an alleged offender in respect of an infringement notice, the prosecuting authority may, whether or not the modified penalty and enforcement fees, or any part of them, has been paid, withdraw proceedings under this Part in respect of the infringement notice.

(2) To withdraw proceedings a prosecuting authority must —

- (a) serve the alleged offender with a notice of withdrawal in the prescribed form; and
- (b) if the infringement notice was registered with the Registry, give the Registrar a copy of the notice of withdrawal.

(3) A notice of withdrawal must be signed by a person who is a prosecuting officer of the prosecuting authority.

(4) When proceedings are withdrawn under this section —

- (a) the enforcement certificate relating to the infringement notice ceases to have effect to the extent that it refers to that infringement notice;
- (b) if a licence suspension order has been made in respect of the alleged offender in respect of the alleged offence —
 - (i) the order is to be taken as having been cancelled at the time the Registrar is given the copy of the notice of withdrawal; and
 - (ii) the Registrar must notify the Traffic Board of the cancellation forthwith;

and

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- (c) if court proceedings have been commenced under section 21 (6) in respect of the alleged offence but not determined —
- (i) they are, by virtue of this section, discontinued; and
 - (ii) the Registrar must forthwith notify the relevant clerk of petty sessions or the relevant clerk of the Children's Court, as the case may be, of the discontinuance.

(5) If proceedings are withdrawn under this section, the alleged offender is to be refunded any amount paid under this Part by the alleged offender in respect of the alleged offence.

Effect of an order to pay or elect

23. The making of an order to pay or elect does not constitute a conviction of the alleged offender for the alleged offence, except as provided in sections 25 and 26.

Effect of payment of modified penalty etc.

24. (1) If —

- (a) a modified penalty and the associated enforcement fees are paid under this Part; and
- (b) proceedings under this Part have not been withdrawn,

no proceedings can be commenced and no penalty can be imposed that could not be commenced or imposed if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(2) Payment under this Part of a modified penalty, and the associated enforcement fees, in respect of an alleged offence is not to be regarded as an admission for the purposes of any

proceedings, whether civil or criminal, arising out of the occurrence by reason of which the infringement notice was issued, except where or to the extent that the principal enactment provides that payment of the modified penalty under the principal enactment would be regarded as an admission.

Continuing offences: effect of proceedings under this Part

25. If the alleged offence to which an infringement notice relates is constituted by failure to do an act or thing, section 71 (1) or (2) (as the case requires) of the *Interpretation Act 1984*, or any provision of another written law substantially to the like effect, operates as if —

- (a) payment under this Part of the whole or a part of the modified penalty and the associated enforcement fees before an order to pay or elect is made; or
- (b) the making of an order to pay or elect,

were, for the purposes of that provision, a conviction of the alleged offender for the alleged offence and the conviction were on the day on which the payment was made or the order to pay or elect was made, as the case may be.

Road Traffic Act 1974: effect of proceedings under this Part

26. (1) This section applies if section 102 of the *Road Traffic Act 1974* is a prescribed enactment.

(2) For the purposes of sections 48, 51 (1) (a) and 103 of the *Road Traffic Act 1974* —

- (a) the payment of the whole or a part of the modified penalty and associated enforcement fees in relation to a traffic infringement notice before an order to pay or elect is made in respect of the notice; or

- (b) the making of an order to pay or elect in respect of a traffic infringement notice,

constitutes a conviction of the alleged offender for the alleged offence.

(3) Subsection (2) (a) applies even if the payment is made by means of a dishonoured cheque.

(4) In this section “**traffic infringement notice**” means a traffic infringement notice issued under section 102 of the *Road Traffic Act 1974*.

How recovered amounts to be applied

27. (1) A modified penalty paid to the Registrar under this Part in respect of an infringement notice is to be credited by the Registrar to the Consolidated Fund or, if a written law other than this Act provides otherwise, in accordance with that written law.

(2) Subject to subsection (3), enforcement fees recovered from an alleged offender under this Part are to be credited to the Consolidated Fund.

(3) If under this Part the alleged offender pays —

- (a) the enforcement fee for issuing a final demand in respect of an infringement notice;
- (b) the enforcement fee for the preparation of the enforcement certificate; or
- (c) the registration fee referred to in section 16,

the amount concerned is to be credited according to how the modified penalty under the infringement notice is to be credited under subsection (1).

PART 4 — FINES

Division 1 — Preliminary

Interpretation

28. (1) In this Part —

“community corrections centre” has the same definition as in section 4 of the *Offenders Community Corrections Act 1963*;

“community corrections programme” means a programme of activities approved as a community corrections programme under section 5P of the *Offenders Community Corrections Act 1963*;

“community corrections officer” (“CCO”) has the same definition as in section 4 of the *Offenders Community Corrections Act 1963* and includes a person appointed under section 5C, 5F or 5G of that Act and who is performing the functions of a CCO;

“court” includes any person acting judicially;

“court officer”, in relation to a fine, means an officer of the court that imposed the fine who is approved as a court officer for the purposes of this Part by the CEO;

“enforcement fees” means prescribed fees imposed in connection with proceedings under this Part;

“fine” means a monetary penalty imposed on an offender by a court in criminal proceedings for an offence and includes —

- (a) any costs ordered to be paid by the offender in connection with the proceedings; and

- (b) any amount ordered to be paid in connection with or as a result of the offence, if the order is of a kind, and is made under an enactment, prescribed for the purposes of this definition,

but does not include any other amount of money ordered to be paid in connection with or as a result of the offence;

“registered” means registered with the Registry for enforcement under section 41 (1);

“time to pay order” means an order made by a court officer under section 33 (4) and includes an amended time to pay order;

“work and development order” (“WDO”) means an order made under section 48.

- (2) In this Part these abbreviations are used:

“CCO” for community corrections officer;

“WDO” for work and development order.

(3) For the purposes of paragraph (b) of the definition of “fine” in subsection (1), an order for the payment of compensation for injury, loss or damage suffered as a result of the commission of an offence is not to be prescribed.

Application of Part

29. (1) Subject to subsection (2), this Part applies to any fine imposed by any court on any person, except —

- (a) a fine in respect of which an order is made under section 19 (5) or 19 (5a) of *The Criminal Code*;

- (b) a pecuniary penalty imposed under section 20 (1) (a) (iii) of the *Crimes Act 1914* of the Commonwealth.

(2) The application of this Part to a young person (as defined in the *Young Offenders Act 1994*) is subject to sections 63 to 65C of that Act.

Court may request offender's address

30. (1) If a court fines a person, the judicial officer constituting the court, or a court officer, may ask the person for his or her current address.

(2) A person who refuses or neglects to comply with a request under subsection (1) commits an offence.

Penalty: \$1 000.

Division 2 — Payment of fines

Subdivision 1 — Fines for which court officers may make time to pay orders

Application

31. This Subdivision applies —

- (a) to a fine that under the *Fines and Penalties Appropriation Act 1909*, or any other written law, is to be credited to the Consolidated Fund; and
- (b) to a fine imposed under an enactment prescribed for the purposes of this section.

Offender must pay fine or get time to pay order within 28 days

32. (1) Within 28 days after the day on which a fine is imposed, an offender must either —

(a) pay the fine; or

(b) apply for a time to pay order in respect of the fine.

(2) If an offender contravenes subsection (1), the court officer, without notice to the offender, may register the fine.

Time to pay order

33. (1) An offender who has been fined may apply to a court officer for a time to pay order in respect of the fine.

(2) An application for a time to pay order cannot be made if the fine has been registered.

(3) On an application the court officer may require the offender to undergo a means test.

(4) On an application the court officer, if he or she thinks fit, may make a time to pay order.

(5) A court officer —

(a) must make a time to pay order where the offender does not have the financial capacity to pay the fine within 28 days;

(b) must not make a time to pay order that orders the payment of instalments that are greater than the offender's financial capacity to pay.

- (6) A time to pay order may require the offender —
- (a) to pay the fine before a set date which is later than 28 days after the day on which the fine was imposed; or
 - (b) to pay the fine by instalments on or before set dates.
- (7) A time to pay order must be served on the offender.
- (8) If a court officer refuses to make a time to pay order, notice of the refusal must be served on the offender.

Offender may apply to have time to pay order amended

34. (1) An offender who has obtained a time to pay order in respect of a fine may apply to the court officer to have the time to pay order amended.

(2) An application to have a time to pay order amended cannot be made if the fine has been registered.

(3) On an application the court officer may require the offender to undergo a means test.

(4) On an application the court officer, if he or she thinks fit, may amend a time to pay order.

(5) An amended time to pay order must be served on the offender.

(6) If a court officer refuses to amend a time to pay order, notice of the refusal must be served on the offender.

Court officer may amend time to pay order

35. (1) A court officer may at any time request an offender who has obtained a time to pay order in respect of a fine to undergo a means test.

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(2) A request cannot be made if the fine has been registered or paid.

(3) The request must be in writing and must be served on the offender.

(4) After means testing the offender, the court officer, if he or she thinks fit, may amend the time to pay order.

(5) An amended time to pay order must be served on the offender.

(6) A court officer must not require an offender to undergo a means test more than once in every period of 12 months, unless the court officer is advised that the financial circumstances of the offender have changed.

Time to pay order may be cancelled

36. If an offender —

(a) contravenes a time to pay order; or

(b) contravenes a request of an officer of the court made under section 35 (1),

the court officer, without notice to the offender, may cancel the time to pay order and register the fine.

Court officer's decision is final

37. The decision of a court officer under this Subdivision is final.

Subdivision 2 — Fines for which court officers cannot make time to pay orders

Application

38. This Subdivision applies to a fine to which Subdivision 1 does not apply.

No enforcement until after 28 days

39. (1) A fine imposed on an offender may be registered by a court officer but must not be registered unless —

- (a) 28 days have elapsed since the fine was imposed; and
- (b) the prosecuting authority has in writing requested the court officer to register the fine.

(2) In subsection (1) “**prosecuting authority**” means —

- (a) if the fine was imposed under an Act of the State, the person entitled to receive the fine under that Act or under the *Fines and Penalties Appropriation Act 1909*;
- (b) if the fine was imposed under an Act of the Commonwealth, a person who administers proceedings in relation to offences under that Act.

Division 3 — Enforcement of fines

Interpretation

40. In this Division “**amount owed**” means that amount of a fine and any enforcement fees that is unpaid.

Registration of fine

41. (1) To register a fine with the Registry for enforcement, a court officer must give the Registry such information as the Registrar requires in such manner as the Registrar specifies.

(2) If after a fine is registered, the fine or any part of it is paid, a court officer is to notify the Registry immediately.

Notice of intention to suspend licences

42. (1) When a fine is registered, the Registrar may issue a notice of intention to suspend licences.

(2) A notice of intention to suspend licences must be served on the offender.

(3) A notice of intention to suspend licences must contain a statement to the effect that unless before a date specified in the notice ("**the due date**") the amount owed is paid, the Registrar may make a licence suspension order in respect of the offender.

(4) The due date must not be earlier than 28 days after the date of issue of the notice of intention to suspend licences.

(5) A notice of intention to suspend licences must also —

- (a) state the date and time when the licence suspension order will have effect if it is made;
- (b) explain that if a licence suspension order is made it will not be cancelled until the amount owed is paid;
- (c) explain the terms of the licence suspension order that may be made; and
- (d) contain such other information as is prescribed.

Licence suspension order

43. (1) If —

- (a) 28 days have elapsed since the date of issue of a notice of intention to suspend licences; and
- (b) the amount owed has not been paid,

the Registrar may make a licence suspension order in respect of the alleged offender.

(2) A licence suspension order is an order as to such of the matters in subsections (3) and (4) as the Registrar thinks fit.

(3) If the offender is an individual a licence suspension order may disqualify the offender from one of the following:

- (a) from holding or obtaining a driver's licence;
- (b) from holding or obtaining a vehicle licence in respect of those vehicles specified in the order; or
- (c) from holding or obtaining a vehicle licence in respect of any vehicle.

(4) If the offender is a body corporate a licence suspension order may disqualify the offender from one of the following:

- (a) from holding or obtaining a vehicle licence in respect of those vehicles specified in the order; or
- (b) from holding or obtaining a vehicle licence in respect of any vehicle.

(5) A licence suspension order has effect on the date and at the time specified in the order, but the date and time must not be earlier than the date and time stated in the notice of intention to suspend licences and must not be earlier than when the order is made.

(3) If a licence suspension order is cancelled under subsection (2) or section 45 (2), the Registrar must issue a notice of cancellation.

(4) A notice of cancellation must be served on the alleged offender.

(5) If a licence suspension order is cancelled under subsection (1) or (2) or section 45 (2), the Registrar must advise the Traffic Board forthwith.

(6) For the purposes of the *Road Traffic Act 1974*, the cancellation of a licence suspension order takes effect when the order is cancelled.

Warrant of execution

45. (1) If —

- (a) 28 days have elapsed since the date of issue of a notice of intention to suspend licences;
- (b) a licence suspension order has not been made in respect of the offender; and
- (c) the amount owed has not been paid,

the Registrar may issue a warrant of execution in the prescribed form.

(2) If —

- (a) a licence suspension order has been made in respect of an offender; and
- (b) the amount owed has not been paid,

the Registrar may cancel the licence suspension order and issue a warrant of execution in the prescribed form.

(3) A warrant of execution is to be directed to the Sheriff of Western Australia and is to be executed under Part 7.

(4) A warrant of execution must specify the amount owed by the offender.

(5) The Registrar may at any time cancel a warrant of execution for good reason.

Sections 47 to 53 do not apply to a body corporate

46. Sections 47 to 53 apply only in a case where the offender is an individual.

Order to attend for work and development

47. (1) If under section 45 the Registrar issues a warrant of execution in respect of an offender who is an individual, the Registrar may also issue an order to attend for work and development.

(2) An order to attend for work and development is to be served on an offender only if the whole of the amount owed (and specified in the warrant of execution) and any enforcement fees imposed under Part 7 are neither recovered by the Sheriff under the warrant of execution nor paid.

(3) If an order to attend for work and development is to be served on an offender, it must be served personally.

(4) When an order to attend for work and development is served on an offender in respect of an amount owed, a warrant of execution issued in respect of the amount owed ceases to be in force.

(5) An order to attend for work and development is an order requiring the offender, within 7 days after the service of the order —

- (a) to pay the amount owed; or
- (b) to report to a community corrections centre to be assessed for the purposes of deciding whether a WDO should be made in respect of the offender.

Work and development order (WDO)

48. (1) An offender who reports to a community corrections centre in accordance with an order to attend for work and development is to be assessed by a CCO who is to report to the CEO on the suitability of the offender to be given a WDO.

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

(3) A WDO must be served on the offender personally.

(4) A WDO must not be made if a WDO made after the commencement of this Act has been made previously in respect of a particular fine and has been cancelled.

(5) A WDO must not be made if under section 53 a warrant of commitment has been issued.

WDO: nature of

49. (1) A WDO is an order that the offender —

- (a) must perform a community corrections programme to the satisfaction of a CCO for a number of hours specified in the WDO (the “**required hours**”); and

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- (b) must comply with the primary requirements in section 50 until —
 - (i) he or she has completed the WDO under section 51; or
 - (ii) the WDO is sooner cancelled.

(2) The required hours in a WDO are to be calculated under the regulations by reference to the amount owed; but must be at least 6 hours.

(3) The required hours in a WDO are cumulative on —

- (a) the required hours in any other WDO; and
- (b) any hours of community work that the offender is required to perform under a community service order made under the *Offenders Community Corrections Act 1963*; and
- (c) any hours of a community corrections programme that the offender is required to perform under a home detention order or a work release order made under the *Offenders Community Corrections Act 1963*.

WDO: primary requirements

50. The primary requirements of a WDO are that the offender —

- (a) must comply with the conditions applicable to a community corrections centre order in section 5ZF of the *Offenders Community Corrections Act 1963*;
- (b) must not leave the State without the prior permission of the supervisor of a community corrections centre; and

- (c) must notify a CCO of any change of address or employment within 48 hours after the change.

WDO: completion

51. (1) A WDO is completed when the offender's liability to pay the fine and enforcement fees is discharged —

- (a) by the offender satisfactorily performing all the requirements of the WDO;
- (b) by payment of the amount owed; or
- (c) by a combination of the offender satisfactorily performing part of the requirements of the WDO and payment of part of the amount owed.

(2) If an offender is subject to a WDO, the required hours of a WDO are to be reduced in accordance with the regulations by reference to any payment of the amount owed that is made.

(3) If an offender is subject to a WDO, the amount owed is to be reduced in accordance with the regulations by reference to the number of the required hours of the WDO that the offender performs satisfactorily.

WDO: cancellation

52. (1) The CEO, in writing, may at any time cancel a WDO.

(2) Notice of the cancellation is to be given to the Registrar as soon as practicable and if practicable to the offender.

Warrant of commitment

53. (1) If an offender is served with an order to attend for work and development and —

- (a) the offender does not attend as required by the order;
- (b) under section 48 a WDO is not made or cannot be served on the offender; or
- (c) under section 48 a WDO is made but under section 52 (1) it is cancelled,

and if the amount owed is not paid, the Registrar may issue a warrant of commitment in the prescribed form.

(2) A warrant of commitment must not be issued unless at least 7 days have elapsed since an offender was served with an order to attend for work and development.

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

- (a) the period of imprisonment determined by dividing the amount owed by \$50 and rounding the result up 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.

(4) Regulations may amend subsection (3) (a) by substituting another amount for the amount of \$50.

(5) The period for which an offender is to be imprisoned under a warrant of commitment ends when the offender's liability to pay the amount in respect of which the warrant is issued has been discharged by —

- (a) the offender serving the whole of the period of imprisonment specified in the warrant;
- (b) payment of that amount; or
- (c) a combination of the offender serving part of that period and payment of part of that amount.

(6) If part of the amount in respect of which a warrant of commitment is issued is paid after the warrant is issued, the warrant has effect as if the period of imprisonment specified in it were reduced by a period (in days) determined as follows —

$$\text{Period of reduction} = \text{Specified period} \times \frac{\text{Part payment}}{\text{Warrant amount}}$$

(rounded up to the nearest whole number)

where **“warrant amount”** is the amount in respect of which the warrant was issued.

(7) If under a warrant of commitment an offender serves any of the period of imprisonment, the amount in respect of which the warrant was issued is to be reduced by an amount determined as follows —

$$\text{Reduction (\$)} = \text{Warrant amount} \times \frac{\text{Period served}}{\text{Specified period}}$$

(rounded down to the nearest whole number)

where —

“period served” is the period (in days) served under the warrant of commitment and includes any part day served;

“specified period” is the period (in days) originally specified in the warrant;

“warrant amount” is the amount in respect of which the warrant was issued.

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

(9) Nothing in this section affects the power of the Governor to exercise the Royal Prerogative of Mercy.

Division 4 — Miscellaneous

Warrants of apprehension for people interstate

54. (1) Despite any other provision of this Part, if at any time after a fine is registered the Registrar has reason to believe that the offender may be in another State or a Territory, the Registrar may refer the matter to the clerk of the court by which the fine was imposed, or to a justice, for the issue of a warrant of apprehension under section 112 of the *Service and Execution of Process Act 1992* of the Commonwealth.

(2) The period of imprisonment to be specified in a warrant of apprehension is the period calculated under section 53 (3) by reference to the amount owed.

How recovered amounts to be dealt with

55. (1) A fine paid to the Registrar under this Part is to be credited —

- (a) if the fine was imposed under an Act of the State, to the person entitled to receive it under that Act or the *Fines and Penalties Appropriation Act 1909*;
- (b) if the fine was imposed under an Act of the Commonwealth, to the Commonwealth; or
- (c) in any other case to the Consolidated Fund.

(2) Enforcement fees recovered from an alleged offender under this Part are to be credited to the Consolidated Fund.

**PART 5 — AMOUNTS FORFEITED UNDER
UNDERTAKINGS OR RECOGNIZANCES**

Amounts payable by accused persons and offenders

56. (1) Part 4 applies, with such modifications as are necessary, in respect of the payment of, and the enforcement of the payment of —

- (a) any amount of a bail undertaking that under section 57 of the *Bail Act 1982* is ordered to be forfeited to the Crown; and
- (b) the amount of any recognizance entered into (whether under section 19 of *The Criminal Code* or otherwise) by a person convicted of an offence and ordered to be forfeited to the Crown, or estreated, whether under section 746A of *The Criminal Code* or section 154A of the *Justices Act 1902* or otherwise,

as if that amount were a fine imposed on the person.

(2) Subsection (1) does not apply if a court has made an order under section 100 in respect of the amount forfeited or estreated.

Amounts payable by sureties

57. (1) Part 4 (other than sections 46 to 53) applies, with such modifications as are necessary, in respect of the payment of, and the enforcement of the payment of —

- (a) any amount of a surety undertaking that under section 49 of the *Bail Act 1982* is ordered to be forfeited to the Crown; and

- (b) the amount of any recognizance entered into by a person as a surety for a person charged with or convicted of an offence and ordered to be forfeited to the Crown or estreated,

as if that amount were a fine imposed on the surety.

(2) Subsection (1) does not apply if a court has made an order under section 100 in respect of the amount forfeited or estreated.

Amounts payable by witnesses

58. (1) Part 4 applies, with such modifications as are necessary, in respect of the payment of, and the enforcement of the payment of, the amount of any recognizance under the *Justices Act 1902* entered into by a person for the purpose of securing his or her attendance as a witness and ordered to be forfeited to the Crown or estreated, as if that amount were a fine imposed on the person.

(2) Subsection (1) does not apply if a court has made an order under section 100 in respect of the amount forfeited or estreated.

**PART 6 — RECIPROCAL ENFORCEMENT OF
FINES IMPOSED ON BODIES CORPORATE
IN SUMMARY PROCEEDINGS**

Interpretation

59. In this Part —

“fine” includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order of a court in the exercise of summary jurisdiction;

“reciprocating court” means a court of a reciprocating State or Territory prescribed under section 60 to be a reciprocating court;

“reciprocating State or Territory” means another State or a Territory prescribed under section 60 to be a reciprocating State or Territory.

Prescription of reciprocating States and courts

60. (1) Regulations may prescribe another State or a Territory, being a State or Territory having laws providing for enforcement in that State or Territory of a fine imposed on a body corporate by a court of summary jurisdiction in this State, to be a reciprocating State or Territory for the purposes of enforcement in this State of a fine imposed on a body corporate by a court having summary jurisdiction in the other State or in the Territory.

(2) Regulations may prescribe a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court for the purposes of the enforcement in this State of a fine payable under a conviction or order of that court against a body corporate.

(3) For the purposes of subsection (1) a court may be prescribed singly or in conjunction with another or others by such description or class or by means of such references as is appropriate.

Enforcement of interstate fine against body corporate

61. (1) If a reciprocating court, in the exercise of its summary jurisdiction, imposes a fine on a body corporate that has or appears to have property in this State, and the Registrar receives a request in writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the fine accompanied by —

- (a) a certified copy of the order imposing the fine; and
- (b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding (“**the amount outstanding**”),

the Registrar must —

- (c) register the certified copy of the order; and
- (d) note the date of the registration on the copy.

(2) On the registration of an order under subsection (1) —

- (a) the order, for the purposes of this Part, is deemed to be an order of the court of petty sessions at Perth imposing a fine on the body corporate of the amount outstanding; and
- (b) the Registrar must issue a warrant of execution for the purpose of recovering the amount outstanding.

(3) A warrant of execution is to be directed to the Sheriff of Western Australia and is to be executed under Part 7.

(4) If the Registrar receives, subsequent to the request for enforcement, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount outstanding, the Registrar must —

- (a) make a record of the payment; and
- (b) if the warrant issued under subsection (2) is unexecuted —
 - (i) if the amount outstanding has been paid in full — in writing, cancel the warrant and advise the Sheriff accordingly; or
 - (ii) if part of the amount outstanding remains unpaid — advise the Sheriff accordingly in writing, and thereafter the warrant is to be enforced as to the amount remaining unpaid.

(5) A sum of money paid to or received by the Registrar in satisfaction in whole or in part of the amount outstanding must be remitted forthwith to the clerk or corresponding officer of the reciprocating court by which the fine was imposed.

Effect of enforcement by reciprocating court

62. A sum of money paid to or received by a clerk of petty sessions in this State from a reciprocating court in satisfaction in whole or in part of a fine imposed by a court of summary jurisdiction enforced by the reciprocating court must be paid to or received by and applied by the clerk of petty sessions as if the sum had been paid to him by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

PART 7 — WARRANTS OF EXECUTION

Division 1 — Preliminary

Interpretation

63. In this Part —

“**enforcement fees**” means prescribed fees imposed in connection with proceedings under this Part;

“**offender**”, in relation to a warrant, means the offender in respect of whom the warrant has been issued;

“**warrant**” means a warrant of execution issued under Part 4 or Part 6;

“**Sheriff**” means the Sheriff of Western Australia.

Warrant may be executed on Sunday

64. A warrant may be executed on a Sunday as on any other day of the week.

Warrant has indefinite life

65. Unless sooner cancelled, a warrant remains in force until it is executed or until the amount specified in the warrant and any enforcement fees are paid or, in the case of a warrant issued under Part 4, until an order to attend for work and development is served on the offender, whichever happens first.

Division 2 — General functions of the Sheriff

Sheriff may delegate

66. The Sheriff, in writing, may delegate to any person any function of the Sheriff under this Part, except this power to delegate.

Police assistance may be requested

67. (1) The Sheriff may request members of the Police Force of Western Australia to assist in the exercise of the Sheriff's powers under this Part and to make inquiries into the whereabouts of an offender or of property of an offender.

(2) Members of the Police Force of Western Australia must comply with any such request by the Sheriff as soon as is practicable.

Sheriff to note time of receipt of warrant

68. On receipt of a warrant the Sheriff must note on it the date and the time when it was received.

Examination in aid of seizure

69. (1) If a warrant has been issued the Sheriff may apply to a Local Court for an order —

- (a) that the offender; or
- (b) if the offender is a body corporate, that a person having the management of the body,

personally attend the court to be examined about the existence and whereabouts and value of any property that might be seized under the warrant including any debts due to the offender.

(2) An order under subsection (1) may include an order that the offender bring and produce to the court any document relevant to the matters about which the offender may be examined.

(3) Rules of court made under section 158 of the *Local Courts Act 1904* may deal with the practice and procedure relating to examinations under subsection (1).

Securing property against damage etc.

70. Under a warrant the Sheriff may take such action as the Sheriff considers necessary to secure or protect any property seized under the warrant against damage or unauthorized removal or entry.

Division 3 — Seizure and sale of personal property

Interpretation

71. In this Division “**personal property**” does not include any estate or interest in land.

Warrant of execution binds goods of offender

72. (1) A warrant binds the property in the goods of the offender as from the time the warrant is received by the Sheriff.

(2) A warrant does not prejudice the title to any goods of an offender acquired by another person in good faith and for valuable consideration, unless at the time that the person acquired title the person had notice that the warrant had been delivered to the Sheriff and was unexecuted.

(3) In this section “**goods**” includes all chattels personal other than things in action and money.

Power to seize

73. (1) Under a warrant the Sheriff may seize any personal property of the offender and may —

- (a) take any money and any cheque, bill of exchange, promissory note, bond, specialty or other security for money in payment of; and

(b) sell any of the property to recover,

the amount owed under the warrant and any enforcement fees.

(2) The Sheriff may take such reasonable action as the Sheriff considers necessary or convenient for the purposes of subsection (1).

Power of entry

74. (1) Under a warrant the Sheriff may enter any place or any part of any place where the Sheriff believes on reasonable grounds there is or may be personal property of the offender for the purposes of searching for or seizing it.

(2) Under a warrant the Sheriff may re-enter any place where there is seized personal property as often as is necessary for the purposes of exercising the Sheriff's functions under the warrant in relation to the property.

(3) The Sheriff may only exercise the powers in subsections (1) and (2) at reasonable times of the day or night.

(4) The Sheriff must not exercise the powers in subsections (1) and (2) without the consent of the owner or occupier of the place.

(5) Despite subsections (3) and (4), if —

(a) the consent referred to in subsection (4) is not given;
or

(b) the Sheriff, after reasonable attempts to do so, cannot contact the owner or occupier of the place,

the Sheriff may exercise the powers in subsections (1) and (2) without consent, using such force as is reasonable in the circumstances, at any time of the day or night.

(6) In this section, “**place**” includes any land, building, structure, tent, vehicle, train, aircraft or vessel.

Property that cannot be seized

75. (1) Under a warrant the following personal property of an offender is not to be seized:

- (a) family photographs and portraits;
- (b) items of clothing, and household items, necessary for the offender and any dependant of the offender;
- (c) ordinary tools of trade, professional instruments, and reference books, the aggregate value of which does not exceed the prescribed amount.

(2) Under a warrant property held by the offender in trust for another person and in which the offender has no beneficial interest is not to be seized.

Seizure of documents

76. (1) If the Sheriff seizes any document relating to any business or undertaking of the offender it must not be retained for longer than 7 days.

(2) The Sheriff may copy any document seized.

(3) Subsection (1) does not apply to any cheque, bill of exchange, promissory note, bond, specialty or other security for money that the Sheriff seizes.

Seizure of cheques etc.

77. (1) If the Sheriff seizes any cheque, bill of exchange, promissory note, bond, specialty or other security for money, the

Sheriff may receive any money payable under it from the person liable to pay and may, when payment of the money is due —

- (a) demand payment; and
- (b) in the name of the offender, sue the person liable to pay.

(2) For the purposes of receiving payment under any document referred to in subsection (1), the Sheriff is to be taken to be the agent of the offender.

(3) Payment to the Sheriff by the person liable under such a document discharges the person's liability to pay to the extent of the payment.

Debts due to offender to be paid to Sheriff

78. (1) Under a warrant the Sheriff may serve a person who appears to the Sheriff to owe money to the offender with a notice warning the person not to pay the money to any person other than the Sheriff.

(2) After a person is served with such a notice and until the Sheriff cancels the notice in writing, the person must not pay the money to any person other than the Sheriff.

(3) If a person makes a payment in contravention of subsection (2), the person is liable to the Sheriff for the amount so paid.

Custody of seized property

79. (1) Until it is sold, personal property seized is to be kept in such custody as the Sheriff directs.

(2) If the Sheriff leaves seized personal property in the custody of the offender or another person, the Sheriff is not to be taken as having abandoned the property.

Notice of seizure

80. (1) On seizing personal property of an offender the Sheriff must issue a notice of seizure.

(2) A notice of seizure must be served on the offender and, if the person who has custody of the property when it is seized is not the offender, on that person.

(3) A notice of seizure must —

- (a) name the offender;
- (b) state the amount owed under the warrant and any enforcement fees owed;
- (c) describe the personal property seized; and
- (d) explain that the property has been seized and that unless the amount owed under the warrant and any enforcement fees are paid, the property will be sold to recover them.

(4) If the personal property seized is left in the custody of the offender or another person, a notice of seizure must explain —

- (a) that the person who has the custody of the property is responsible for its safekeeping;
- (b) that the property must not be moved without the prior consent of the Sheriff; and

- (c) that custody of the property must not be given to another person without the prior consent of the Sheriff.

(5) If the Sheriff releases any personal property from seizure the Sheriff must serve any person on whom a notice of seizure was served with a notice of release.

Sheriff to determine fair value

81. (1) Before selling any personal property under a warrant, the Sheriff must take reasonable steps to determine a fair value of the property, except in the case of property of a perishable nature.

(2) For the purposes of determining a fair value of property the Sheriff may —

- (a) request the offender to provide the Sheriff with such information relevant to the value of the property as is known to the offender or is reasonably capable of being ascertained by the offender;
- (b) if the nature and apparent value of the property is such that it is reasonable to do so, engage a suitably qualified and experienced person to give the Sheriff an opinion about the value of the property.

Interests of others

82. If a person other than the offender has any proprietary interest in any seized personal property, that interest and that of the offender may be sold together if —

- (a) the Sheriff is of the opinion that such a course is desirable;
- (b) that person consents in writing; and

- (c) the Sheriff and that person agree in writing before the sale as to the division of the proceeds of the sale after payment of the expenses of and incidental to the sale and any attempted sale of the property.

Only sufficient property to be sold

83. (1) If the Sheriff is of the opinion that the value of the personal property seized under a warrant is more than sufficient to cover the amount owed under the warrant and the enforcement fees, the Sheriff is to sell only so much of the property as in the Sheriff's opinion will be sufficient.

(2) Subsection (1) does not prevent the Sheriff from selling more of the property if at any time the sale of property has not been sufficient to cover the amount owed under the warrant and the enforcement fees.

Sale to be advertised

84. (1) The Sheriff is to advertise, in such manner as the Sheriff thinks fit, any intended sale of personal property under a warrant.

(2) The Sheriff is to serve the offender with a notice of any such intended sale.

(3) Subsections (1) and (2) do not apply to the intended sale of personal property that is of a perishable nature.

Manner and place of sale

85. (1) Any sale of personal property under a warrant is to be by public auction or by private agreement, as the Sheriff thinks fit.

(2) Seized personal property may be sold at the place of seizure or at any other place, as the Sheriff thinks fit.

Sale price

86. (1) Personal property seized under a warrant is not to be sold at a price that is substantially below its fair value as determined by the Sheriff.

(2) If by reason of subsection (1), the Sheriff is unable to sell property, the Sheriff is to serve the offender with a written notice advising the offender —

- (a) that the property is unable to be sold for a price that is not substantially below its fair value as determined by the Sheriff; and
- (b) that unless the offender pays the Sheriff the amount owed under the warrant and the enforcement fees, the property may be sold at any price.

(3) If within a reasonable time after an offender is served with such a notice, the amount owed under the warrant and the enforcement fees are not paid the property may be sold at any price.

(4) Subsections (1) to (3) do not apply to personal property that is of a perishable nature.

Sale passes good title: protection of Sheriff

87. (1) If when any personal property is sold under a warrant the Sheriff has not received notice of a claim to the property or any interest in it from a person other than the offender —

- (a) the purchaser of the property acquires a good title to it; and

- (b) the Sheriff is not liable to any person in respect of the sale of the property unless it is proved that the Sheriff had notice or, by making reasonable inquiries, might have ascertained, that the offender did not own or have any interest in the property.

(2) Subsection (1) does not affect the entitlement of a claimant to any remedy against a person, other than the Sheriff or the purchaser of the property, if the claimant proves that at the time of the sale of the property the claimant had a title to the property.

Division 4 — Seizure and sale of land

Power to seize

88. (1) Under a warrant the Sheriff may seize any land of the offender and may sell it to recover the amount owed under the warrant and the enforcement fees.

(2) Under a warrant land is not to be seized or sold unless the Sheriff is satisfied that the value of personal property able to be seized and sold under the warrant will be insufficient to meet the amount owed under the warrant and the enforcement fees.

(3) The Sheriff may take such reasonable action as the Sheriff considers necessary or convenient for the purposes of subsection (1).

Seizure: how effected

89. (1) Actual seizure of land before it is sold is not necessary.

(2) Under a warrant, seizure of land is to be effected by the Sheriff lodging with the Registrar of Titles or the Registrar of Deeds and Transfers (as the case requires) —

(a) a memorial in the prescribed form describing the land and setting out the amount owed under the warrant and the enforcement fees owed; and

(b) a copy of the warrant.

(3) The signature of the Sheriff on the memorial does not have to be attested.

(4) In the case of land under the operation of the *Transfer of Land Act 1893*, the Registrar of Titles, under that Act, must register or enter the memorial in the Register Book in respect of the land described.

(5) In the case of land under the operation of the *Registration of Deeds Act 1856*, the Registrar of Deeds and Transfers, under that Act, must register the memorial.

(6) When a memorial is registered under subsection (4) or (5), the Registrar of Titles or the Registrar of Deeds and Transfers, as the case may be, must serve the offender with a copy of the memorial.

(7) On the registration of a memorial under subsection (4) and until it is cancelled, the Registrar of Titles is prohibited from registering and from accepting for registration any instrument affecting any estate or interest in the land without the consent of the Sheriff.

(8) On the registration of a memorial under subsection (5), any instrument affecting the land and lodged for registration after registration of the memorial and before cancellation of the memorial is of no effect.

(9) A memorial registered under this section has effect until it is cancelled under section 90.

Cancelling memorials

90. (1) The Sheriff —

- (a) may at any time cancel a memorial for good reason;
- (b) if the warrant ceases to be in force, must cancel a memorial forthwith,

by lodging a withdrawal of memorial in the prescribed form with the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires.

(2) The Registrar of Titles and the Registrar of Deeds and Transfers must give effect to a withdrawal of memorial when it is lodged.

Power of entry

91. (1) If land of an offender is seized under a warrant, the Sheriff may enter any land as often as is necessary for the purposes of exercising the Sheriff's functions under the warrant in relation to the land.

(2) In the exercise of the powers under subsection (1), the Sheriff may enter the land with any prospective purchasers of the land and may conduct the sale of the land on the land.

(3) Unless the Sheriff has vacant possession of the land, the Sheriff may only exercise the powers under subsection (1) at reasonable times of the day or night.

(4) Unless the Sheriff has vacant possession of the land, the Sheriff must not exercise the powers under subsection (1) without the consent of the owner or occupier of the land.

(5) Despite subsections (3) and (4), if —

- (a) the consent referred to in subsection (4) is not given;
or
- (b) the Sheriff, after reasonable attempts to do so, cannot contact the owner or occupier of the land,

the Sheriff may exercise the powers under subsection (1) without consent, using such force as is reasonable in the circumstances, at any time of the day or night.

Sale and transfer of land seized

92. (1) Subject to this Division, a warrant has effect in respect of land of the offender as if the warrant were a writ of *feri facias* and the offender were a judgment debtor.

(2) If land is sold under a warrant, a transfer or deed of conveyance of the land signed by the Sheriff shall, subject to the *Transfer of Land Act 1893*, give to the purchaser as good and sufficient an estate in or title to the land as the offender in respect of whom the warrant was issued has or can or may have in or to the land.

Division 5 — Interpleader

Making a claim to property seized

93. (1) A person (“**the claimant**”), other than the offender, who claims any property, or any interest in any property, seized under a warrant or any of the proceeds of the sale of the property, may give the Sheriff written notice of the claim.

(2) The notice must describe the property claimed and set out the basis of the claim and must give an address for service for the claimant.

Sheriff may admit or reject claim

94. (1) The Sheriff may admit or dispute a claimant's claim.
- (2) If the Sheriff disputes a claim the Sheriff may apply for relief by way of interpleader —
- (a) if the property concerned is personal property (as defined in section 71), in the Local Court nearest to where the property claimed is situated; or
 - (b) if the property concerned is land, in the Supreme Court.
- (3) On an application under subsection (2) (a) a magistrate has the same powers as a Supreme Court Judge has on an application by the Sheriff in the case of property taken in execution under process issued by the Supreme Court.
- (4) Rules of court made under section 167 of the *Supreme Court Act 1935* or section 158 of the *Local Courts Act 1904* may deal with the practice and procedure relating to claims and applications for relief by way of interpleader.

Division 6 — Miscellaneous

Priority of warrant over writs etc.

95. (1) Despite section 86A of the *District Court of Western Australia Act 1969* and section 137 of the *Local Courts Act 1904*, a warrant (as defined in section 63) has priority over any other writ or warrant of execution against the property of the offender.
- (2) If there are 2 or more warrants (as defined in section 63) issued in respect of an offender, they have priority according to the time of receipt by the Sheriff.

How amounts recovered to be applied

96. (1) The Sheriff is to apply the money from the sale of property under a warrant (“**the proceeds**”) in accordance with this section.

(2) Firstly, the proceeds are to be applied in the payment of the expenses of, and incidental to, the sale and any attempted sale of the property.

(3) Secondly, subject to —

- (a) any agreement made by the Sheriff with a person under section 82;
- (b) any claim admitted by the Sheriff under section 94; and
- (c) the rights or entitlements of a person, other than the offender, having an interest in the property sold, if that interest was registered under the *Bills of Sale Act 1899*, the *Chattel Securities Act 1987*, the *Transfer of Land Act 1893*, the *Registration of Deeds Act 1856*, or the Corporations Law, in respect of the property before it was seized by the Sheriff,

the proceeds are to be applied in the payment of the enforcement fees.

(4) Thirdly, the proceeds are to be applied in the payment to the Registrar of the amount owed under the warrant.

(5) Fourthly, the proceeds are to be applied in the payment of any surplus to the offender.

(6) Enforcement fees recovered under a warrant are to be credited to the Consolidated Fund.

(7) In subsection (3), “**registered**” includes protected by means of a caveat lodged under the *Transfer of Land Act 1893*.

Warrant may be satisfied at any time

97. (1) Despite any other provision in this Part, an offender may at any time before the sale of any property under a warrant, pay to the Sheriff the amount owed under the warrant and the enforcement fees owed.

(2) When the amount owed under a warrant and the enforcement fees are paid, or recovered from the sale of property, the warrant ceases to be in force.

Auctioneer's licence unnecessary

98. The Sheriff and any delegate of the Sheriff may sell property seized under a warrant without holding an auctioneer's licence under the *Auction Sales Act 1973*.

Sheriff exempt from fees

99. The Sheriff and any delegate of the Sheriff is exempt from paying fees under the *Bills of Sale Act 1899*, the *Chattel Securities Act 1987*, the *Transfer of Land Act 1893*, or the *Registration of Deeds Act 1856* in connection with any matter arising out of or in connection with the performance of his or her functions under a warrant.

PART 8 — MISCELLANEOUS

Imprisonment if fine or other amount is not paid

100. (1) If under —

- (a) section 19 (5a) or 746A of *The Criminal Code*; or
- (b) section 49, 52 or 57 of the *Bail Act 1982*,

the Supreme Court or the District Court may make an order under this section in respect of an amount of money payable by a person (“**the liable person**”) under an order of the court (“**the sum owed**”), the court may order that if the offender does not pay the sum owed within the time set by the court, the offender is to be imprisoned for a period determined under subsection (2) or a shorter period set by the court.

(2) If a court makes an order under subsection (1) and the liable person contravenes the order, the court may issue a warrant of commitment in the prescribed form in respect of the liable person specifying the period of imprisonment (in days) set by the court under subsection (1) or determined under subsection (3), as the case may be.

(3) Unless the court sets a shorter period of imprisonment under subsection (1), the period of imprisonment (in days) for the purposes of subsection (2) is the shorter of —

- (a) the period of imprisonment determined by dividing the unpaid amount of the sum owed by \$50 and rounding the result up 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.

(4) Regulations may amend subsection (3) (a) by substituting another amount for the amount of \$50.

(5) The period for which a liable person is to be imprisoned under such a warrant of commitment ends when the liable person's liability to pay the amount in respect of which the warrant is issued has been discharged by —

- (a) the liable person serving the whole of the period of imprisonment specified in the warrant;
- (b) payment of that amount; or
- (c) a combination of the liable person serving part of that period and payment of part of that amount.

(6) If part of the amount in respect of which a warrant of commitment is issued is paid after the warrant is issued, the warrant has effect as if the period of imprisonment specified in it were reduced by a period determined as follows —

$$\text{Period of reduction} = \text{Specified period} \times \frac{\text{Part payment}}{\text{Warrant amount}}$$

(rounded up to the nearest whole number)

where “**warrant amount**” is the amount in respect of which the warrant of commitment was issued.

(7) If under a warrant of commitment a liable person serves any of the period of imprisonment, the amount in respect of which the warrant was issued is to be reduced by an amount determined as follows —

$$\text{Reduction (\$)} = \text{Warrant amount} \times \frac{\text{Period served}}{\text{Specified period}}$$

(rounded down to the nearest whole number)

where —

“**period served**” is the period (in days) served under the warrant of commitment and includes any part day served;

“specified period” is the period (in days) originally specified in the warrant;

“warrant amount” is the amount in respect of which the warrant of commitment was issued.

(8) The period of imprisonment specified in a warrant of commitment is cumulative on any other term or period of imprisonment that the offender is serving or has to serve, unless the court orders otherwise.

(9) Nothing in this section affects the power of the Governor to exercise the Royal Prerogative of Mercy.

Justices may set aside licence suspension order made under Part 3

101. (1) A person in respect of whom a licence suspension order has been made under Part 3 (**“the applicant”**) may apply to justices for an order cancelling the licence suspension order.

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

(3) If on an application the applicant satisfies the justices that the applicant received none of the following:

- (a) the infringement notice that gave rise to the licence suspension order;
- (b) the final demand issued under section 14 in respect of the infringement notice;
- (c) the order to pay or elect issued under section 17 in respect of the infringement notice;
- (d) the notice of intention to suspend licences issued under section 18 in respect of the infringement notice;

- (e) the notice confirming licence suspension issued under section 19 (6),

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

(4) A licence suspension order that is cancelled by an order made under subsection (3) is to be taken as having been cancelled as at the time the licence suspension order was made.

Effect of payment by dishonoured cheque

102. If payment of the whole or a part of a modified penalty, a fine or any enforcement fees is made by means of a dishonoured cheque, then either —

- (a) proceedings under this Act in relation to the relevant infringement notice or fine or enforcement fees may be commenced or continued as if the payment had not been made; or
- (b) civil proceedings may be taken in relation to the dishonoured cheque,

but not both.

Exclusion of rules of natural justice

103. The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this Act by the Registrar or the CEO.

Warrants of commitment

104. (1) A warrant of commitment issued under this Act in the prescribed form has effect according to its wording.

(2) A warrant of commitment issued under this Act is to be directed to all members of the Police Force of Western Australia and to the chief executive officer as defined in the *Prisons Act 1981*.

Facsimile warrants

105. (1) A warrant of execution or a warrant of commitment issued under this Act may be faxed to a person for the purposes of having that person execute the warrant.

(2) The fax copy of such a warrant has the same force and effect as the original.

Validity of acts not affected by want of form

106. The validity of anything done in the performance or purported performance of a function under a warrant of execution or a warrant of commitment issued under this Act is not affected by any defect or want of form in the order in respect of which the warrant was issued or in the warrant.

Protection from liability for wrongdoing

107. (1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

(2) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(4) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

Regulations

108. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made —

- (a) as to the ways in which modified penalties, fines and enforcement fees may be paid, such as by cheque, electronic transfer of funds or by the automatic deduction of funds from an offender's bank or other account;
- (b) for means testing offenders applying for time to pay orders;
- (c) requiring offenders to verify information supplied for the purposes of a means test by a statutory declaration.

(3) Without limiting subsection (1), regulations may be made prescribing as enforcement fees in connection with proceedings under Part 3 —

- (a) a fee for issuing a final demand to be imposed on an alleged offender when the final demand is issued;
- (b) a fee for preparing an enforcement certificate to be imposed on an alleged offender when the infringement notice is registered;
- (c) a fee for registering an infringement notice to be paid by the prosecuting authority when registering the notice and to be imposed on the alleged offender when the notice is registered;
- (d) a fee for issuing a notice of intention to suspend licences to be imposed on an alleged offender when a licence suspension order is made;

- (e) any amount charged by a bank or similar body in connection with a dishonoured cheque received in purported payment.

(4) Without limiting subsection (1), regulations may be made prescribing as enforcement fees in connection with proceedings under Part 4 —

- (a) a fee for issuing a notice of intention to suspend licences to be imposed on an offender either when a licence suspension order is made or when a warrant of execution is issued, but not twice;
- (b) a fee for issuing a warrant of execution to be imposed on an offender when the warrant is issued;
- (c) any amount charged by a bank or similar body in connection with a dishonoured cheque received in purported payment.

(5) Without limiting subsection (1), regulations may be made prescribing as enforcement fees, fees to be charged by the Sheriff and payable by an offender in connection with executing a warrant of execution.

(6) If under subsection (5) it is inappropriate to prescribe a set fee in connection with the performance of a particular function, the regulations may provide for a fee to be calculated according to the cost of performing that function.

(7) Regulations made under subsection (3) may exempt a specified prosecuting authority from payment of the fee for registering an infringement notice.

Transitional provisions (Schedule 1)

109. Schedule 1 has effect.

SCHEDULE 1

[Section 109]

TRANSITIONAL PROVISIONS

Interpretation

1. In this Part "**commencement**" means the day on which this Act comes into operation.

Matters prescribed under *Justices Act 1902*, Part VIBA

2. (1) If immediately before commencement an enactment is prescribed for the purposes of section 171BD of the *Justices Act 1902*, then on and after commencement that enactment is to be taken as being a prescribed enactment for the purposes of Part 3 until regulations are made under this Act prescribing enactments for the purposes of Part 3.

(2) If immediately before commencement persons employed by an authority are prescribed for the purposes of section 171BE and 171BL (1) of the *Justices Act 1902*, then on and after commencement the authority is to be taken to be a prosecuting authority for the purposes of Part 3.

(3) If immediately before commencement a person is prescribed for the purposes of section 171BE of the *Justices Act 1902* as a person who may lodge and sign an enforcement certificate in relation to a prescribed enactment, then on and after commencement the person is to be taken to be a person designated as a prosecuting officer by the authority for the purposes of section 16 in relation to that prescribed enactment.

(4) If immediately before commencement a person is prescribed for the purposes of section 171BL (1) of the *Justices Act 1902* as a person who may withdraw proceedings under Part VIBA of that Act in respect of an offence alleged in an infringement notice issued under a prescribed enactment, then on and after commencement the person is to be taken to be a person designated as a prosecuting officer by the authority for the purposes of section 22 in relation to that prescribed enactment.

Infringement notices issued before commencement date

3. (1) Subject to Part 3 an infringement notice issued before commencement may be enforced under Part 3 unless before commencement, under section 171BD of the *Justices Act 1902*, a courtesy letter has been served on the alleged offender.

(2) If immediately before commencement a courtesy letter has been served on an alleged offender under section 171BD of the *Justices Act 1902* in respect of an infringement notice but the time within which payment is to be made or notice is to be given under that section has not elapsed, then on and after commencement Part 3 applies to the infringement notice as if the courtesy letter were a final demand issued under section 14 on the date when the courtesy letter was served on the alleged offender.

(3) If immediately before commencement a certificate in relation to an infringement notice could be but has not been lodged under section 171BE of the *Justices Act 1902*, then on or after commencement, subject to section 16, the infringement notice may be registered under section 16 and Part 3 applies accordingly.

(4) If immediately before commencement an enforcement order under section 171BF of the *Justices Act 1902* is in force, whether or not it has been varied under section 171BH of that Act, then on and after commencement that order continues to have effect despite the repeal of Part VIBA of that Act.

(5) If —

- (a) under subclause (4) an enforcement order continues to have effect on and after commencement; and
- (b) when the time specified in that order elapses (“the due date”) neither payment as specified in the order (within the time required by the order or thereafter) nor an election under section 171BK of the *Justices Act 1902* has been made,

then —

- (c) if at the due date the alleged offender has reached the age of 17 years, the Registrar, under section 18, may issue a notice of intention to suspend licences to the alleged offender and Part 3 has effect accordingly, but such a notice is not to be issued until 2 months after commencement;
- (d) if at the due date the alleged offender has not reached the age of 17 years, the Registrar is to refer the failure to make either payment or an election to the Children’s Court.

(6) On a reference to the Children’s Court under subclause (5) (d), the Court may deal with the alleged offender under the *Young Offenders Act 1994* or the *Child Welfare Act 1947* (as the case may be) as if the amount outstanding under Part VIBA of the *Justices Act 1902* were a fine imposed on the alleged offender on the day the enforcement order was made, but before making any order under the *Young Offenders Act 1994* or the *Child Welfare Act 1947* in respect of the failure to pay, the Court must afford the alleged offender the

opportunity to elect to have a complaint for the alleged offence dealt with by the Court.

(7) If immediately before commencement a warrant of commitment under section 171BI of the *Justices Act 1902* could be but has not been issued, then on or after commencement, under section 18, the Registrar may issue a notice of intention to suspend licences to the alleged offender and Part 3 applies accordingly, but such a notice is not to be issued until 2 months after commencement.

(8) If by virtue of this clause proceedings in respect of an infringement notice issued before commencement are taken under Part 3, then any costs or fees that an offender owes under Part VIBA of the *Justices Act 1902* are to be taken to be enforcement fees for the purposes of Part 3.

Certain fines and orders imposed by Supreme or District Court before commencement

4. (1) If before commencement the Supreme Court or the District Court imposed a fine (as defined in Part 4) on an offender and ordered that in default of payment the offender be imprisoned, then on and after commencement the order continues to have effect and the provisions of the *Justices Act 1902* relevant to that order continue in operation in respect of that order.

(2) If before commencement the Supreme Court or the District Court made an order as to any of the matters referred to in section 56 (a) or (b), section 57 (a) or (b) or section 58 under which a person is required to pay money to the Crown and ordered that in default of payment the person liable to pay the money be imprisoned, then on and after commencement the orders continue to have effect and the provisions of the *Justices Act 1902* relevant to those orders continue in operation in respect of those orders.

Other fines imposed before commencement

5. (1) In this clause —

“**default order**” means an order that accompanies an old fine and that takes effect if payment is not made as required;

“**old fine**” means a fine (as defined in Part 4) imposed before commencement and to which Part 4 would apply if the fine had been imposed on or after commencement, but does not include a fine to which clause 4 (1) applies.

(2) If before commencement an order was made in respect of an old fine allowing the offender time to pay or allowing the offender to pay by instalments and, immediately before commencement, the

offender is not in breach of the order, then on and after commencement the order continues to have effect.

(3) If under subclause (2) an order in respect of an old fine continues to have effect on and after commencement and the offender subsequently defaults in payment —

- (a) any default order is of no force or effect; and
- (b) the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.

(4) If immediately before commencement a warrant of execution or a warrant of commitment could be but has not been issued under section 155, 157 or 158 of the *Justices Act 1902* in respect of an old fine, then on or after commencement the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.

(5) If immediately before commencement a warrant of execution issued under section 155 or 171BI of the *Justices Act 1902* in respect of an old fine is unexecuted, then on and after commencement the warrant ceases to have effect and the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.

(6) If immediately before commencement a warrant of commitment issued under section 155, 157, 158 or 171BI of the *Justices Act 1902* in respect of an old fine is unexecuted, then on and after commencement the warrant has no force or effect and the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.

(7) If under this clause an old fine is registered under Part 4, the Registrar must not issue a notice of intention to suspend licences under that Part until 2 months after commencement.

Fines etc. imposed by Children's Court before commencement

6. To the extent necessary, provisions of the *Justices Act 1902* repealed by the *Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994* continue in operation for the purposes of any proceedings under the *Young Offenders Act 1994* or the *Child Welfare Act 1947* in relation to the non-payment of a fine or other amount.

Recognizances etc. forfeited before commencement

7. (1) In this clause —

“default order” means an order that accompanies an old forfeiture order and that takes effect if payment is not made as required;

“old forfeiture order” means an order made before commencement as to any of the matters referred to in section 56 (a) or (b), section 57 (a) or (b) or section 58 under which a person (**“the liable person”**) is required to pay money to the Crown, but does not include an order to which clause 4(2) applies.

(2) If before commencement an order was made in respect of the money payable under an old forfeiture order allowing the liable person time to pay or allowing the liable person to pay by instalments and, immediately before commencement, the liable person is not in breach of the order, then on and after commencement the order continues to have effect.

(3) If under subclause (2) an order in respect of an old forfeiture order continues to have effect on and after commencement and the liable person subsequently defaults in payment —

(a) any default order is of no force or effect; and

(b) the court officer (as defined in Part 4) of the court that made the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.

(4) If immediately before commencement a warrant of execution or a warrant of commitment could be but has not been issued under section 155, 157 or 158 of the *Justices Act 1902* in respect of an old forfeiture order, then on or after commencement the court officer (as defined in Part 4) of the court that imposed the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.

(5) If immediately before commencement a warrant of execution issued under section 155 of the *Justices Act 1902* in respect of an old forfeiture order is unexecuted, then on and after commencement the warrant ceases to have effect and a court officer (as defined in Part 4) of the court that imposed the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.

(6) If immediately before commencement a warrant of commitment issued under section 155, 157 or 158 of the *Justices Act 1902* in respect of an old forfeiture order is unexecuted, then on and after commencement the warrant has no force or effect and the court officer (as defined in Part 4) of the court that imposed the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.

(7) If under this clause an amount payable is registered under Part 4 as if it were a fine, the Registrar must not issue a notice of intention to suspend licences under that Part until 2 months after commencement.

Other amounts ordered to be paid before commencement

8. (1) In this clause —

“**default order**” means an order that accompanies an old order and that takes effect if payment is not made as required;

“**old order**” means an order made before commencement by a court in connection with a criminal cause or matter, or by justices under the *Justices Act 1902*, requiring a person (“**the offender**”) to pay money, other than a fine (as defined in Part 4) (“**the sum owed**”).

(2) If before commencement an order (“**a time to pay order**”) was made in respect of the sum owed under an old order allowing the offender time to pay or allowing the offender to pay by instalments and, immediately before commencement, the offender is not in breach of the time to pay order, then on and after commencement the time to pay order continues to have effect.

(3) If under subclause (2) a time to pay order continues to have effect on and after commencement and the offender subsequently breaches the order —

(a) any default order is of no force or effect; and

(b) any amount owed under the old order may be recovered as a judgment debt in a court of competent jurisdiction.

(4) If immediately before commencement a warrant of commitment or a warrant of execution could be but has not been issued in respect of an amount owed under an old order, then on or after commencement that amount may be recovered as a judgment debt in a court of competent jurisdiction.

(5) If immediately before commencement a warrant of commitment or a warrant of execution issued in respect of an amount owed under an old order is unexecuted, then on and after commencement the warrant ceases to have effect and that amount may be recovered as a judgment debt in a court of competent jurisdiction.

(6) For the purposes of recovering an amount owed under an old order, the court that made the old order, on request by or on behalf a person entitled to recover the money, is to provide that person with a certified copy of the old order and that copy may be registered as a judgment in the court of competent jurisdiction.

WDOs issued before commencement

9. (1) In this clause —

“amount outstanding”, in respect of a WDO issued in respect of a person in default as to the payment of a sum of money, means the amount of that sum that the person is liable to pay after taking into account the performance (if any) of the person’s obligations under the WDO;

“WDO” means a work and development order issued under Part VIAA of the *Justices Act 1902*.

(2) If immediately before commencement a warrant of commitment could be but has not been issued under section 171AG of the *Justices Act 1902* in respect of a WDO that has been cancelled, then on or after commencement the chief executive officer referred to in that section may refer the matter in accordance with subclause (6).

(3) If immediately before commencement a warrant of commitment issued under section 171AG of the *Justices Act 1902* in respect of a WDO that has been cancelled is unexecuted, then on and after commencement the warrant ceases to have effect and the chief executive officer referred to in that section may refer the matter in accordance with subclause (6).

(4) If immediately before commencement a WDO issued in respect of a person is in force, then on and after commencement the WDO continues to have effect and the provisions of the *Justices Act 1902* relevant to the WDO continue in operation in respect of that WDO, but subject to this clause.

(5) If under subclause (4) a WDO continues to have effect on and after commencement and the WDO is subsequently cancelled under section 171AG of the *Justices Act 1902*, the chief executive officer referred to in that section may refer the matter in accordance with subclause (6).

(6) To refer a matter in accordance with this subclause, the chief executive officer must —

- (a) if the WDO was issued in respect of a person for the non-payment of a sum of money ordered to be paid by a court, refer the matter to the court that made the order; or
- (b) if the WDO was issued in respect of an alleged offender for the non-payment of an amount under Part VIBA of the *Justices Act 1902* in respect of an infringement notice, refer the matter to the Registrar.

(7) If a matter is referred under subclause (6) (a) to a court, the amount outstanding may be recovered in the same manner as if it had been ordered to be paid by the court after commencement.

(8) If a matter is referred under subclause (6) (b) to the Registrar, the infringement notice is to be taken as having been registered under Part 3 and —

- (a) that Part applies as if the amount outstanding were the modified penalty required to be paid under the infringement notice; and
- (b) the Registrar may under section 18 issue a notice of intention to suspend licences.

(9) If by virtue of this clause an amount outstanding is registered under Part 4 or an infringement notice is taken to be registered under Part 3, the Registrar must not issue a notice of intention to suspend licences under those Parts until 2 months after commencement.

Warrants of execution partly executed at commencement

10. If immediately before commencement a warrant of execution issued under the *Justices Act 1902* is partly executed, then on and after commencement the warrant continues to have effect and the provisions of the *Justices Act 1902* relevant to the warrant and its execution continue in operation in respect of that warrant.

Warrants of execution issued under *Justices Act 1902*, Part VIA

11. If immediately before commencement a warrant of execution issued under Part VIA of the *Justices Act 1902* is unexecuted, then on and after commencement the warrant continues to have effect and the provisions of the *Justices Act 1902* relevant to the warrant and its execution continue in operation in respect of that warrant.

Warrants of commitment executed before commencement

12. If immediately before commencement a person is in custody under a warrant of commitment issued before commencement under the *Justices Act 1902* in respect of an amount of money payable, then on and after commencement the warrant continues to have effect and the provisions of the *Justices Act 1902* relevant to the warrant and its execution continue in operation in respect of that warrant.

Reciprocating States etc.

13. (1) A State or a Territory that under Part VIA of the *Justices Act 1902* is a reciprocating State or Territory immediately before commencement is to be taken as having been prescribed to be a reciprocating State or Territory for the purposes of Part 6 of this Act until regulations are made for the purposes of that Part.

(2) A court of a reciprocating State or Territory that under Part VIA of the *Justices Act 1902* is a reciprocating court immediately before commencement is to be taken as having been prescribed to be a reciprocating court for the purposes of Part 6 of this Act until regulations are made for the purposes of that Part.