



Western Australia

# **Fines, Penalties and Infringement Notices Enforcement Act 1994**

---

As at 21 May 2012

Version 04-h0-01

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



# **Fines, Penalties and Infringement Notices Enforcement Act 1994**

---

## CONTENTS

---

### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Terms used in this Act	2
5.	Service of documents	3
5A.	Service by electronic means	4

### **Part 2 — Fines Enforcement Registry**

6.	Registry established	6
7.	Registrar	6
7A.	Registrar may delegate	6
8.	Payments to the Registry	7
9.	Registrar exempt from fees	7
10.	Registrar to have access to Director General records	7
10A.	Registrar may disclose information to Commissioner of Police	7

### **Part 3 — Infringement notices**

#### **Division 1 — Preliminary**

11.	Terms used in this Part	8
12.	Application	9
13.	Approved prosecuting authorities and officers	9

<b>Division 2 — Enforcement of infringement notices</b>		
14.	Final demand may be issued to alleged offender	9
15.	Infringement notice may be registered	10
16.	Registration of infringement notice: enforcement certificate	11
17.	Order to pay or elect	12
18.	Notice of intention to suspend licences	13
19.	Licence suspension order	14
20.	Cancelling licence suspension orders	16
<b>Division 3 — Miscellaneous</b>		
21.	Election by alleged offender or prosecuting authority	17
22.	Prosecuting authority may withdraw proceedings	18
23.	Effect of an order to pay or elect	19
24.	Effect of payment of modified penalty etc.	20
25.	Continuing offences: effect of proceedings under this Part	20
26.	<i>Road Traffic Act 1974</i> : effect of proceedings under this Part	21
27.	How recovered amounts to be applied	21
27A.	Registrar may suspend enforcement in certain cases of hardship	22
27B.	Amending a time to pay order	24
27C.	Contravening a time to pay order	24
27D.	Registrar's decision on time to pay is final	25
<b>Part 4 — Fines</b>		
<b>Division 1 — Preliminary</b>		
28.	Terms used in this Part	26
29.	Application of Part	27
30.	Court may request offender's address	28
<b>Division 2 — Payment of fines</b>		
<b>Subdivision 1 — Fines for which court officers may make time to pay orders</b>		
31.	Application	28
32.	Offender must pay fine or get time to pay order within 28 days	28
33.	Time to pay order	29

---

34.	Offender may apply to have time to pay order amended	30
35.	Court officer may amend time to pay order	30
35A.	Payments ordered must be within the means of the offender	31
36.	Time to pay order may be cancelled	31
37.	Court officer's decision is final	31
	<b>Subdivision 2 — Fines for which court officers cannot make time to pay orders</b>	
38.	Application	31
39.	No enforcement until after 28 days	31
	<b>Division 3 — Enforcement of fines</b>	
40.	Meaning of "amount owed"	32
41.	Registration of fine	32
42.	Notice of intention to suspend licences	33
43.	Licence suspension order	34
44.	Cancelling a licence suspension order	35
45.	Warrant of execution	36
46.	Sections 47 to 53 do not apply to a body corporate	37
47.	Order to attend for work and development	37
47A.	Order to attend for work and development may be issued ahead of other enforcement measures	37
47B.	Effect of order to attend for work and development	39
48.	Work and development order (WDO)	39
49.	WDO: nature of	40
50.	WDO: primary requirements	40
51.	WDO: completion	41
52.	WDO: cancellation	42
53.	Warrant of commitment	42
	<b>Division 4 — Miscellaneous</b>	
54.	Warrants of apprehension for people interstate	45
55.	How recovered amounts to be dealt with	45
55A.	Registrar may suspend enforcement in certain cases of hardship	46
55B.	Amending a time to pay order	48
55C.	Contravening a time to pay order	48
55D.	Registrar may use most effective enforcement means	48
55E.	Registrar's decision on time to pay etc. is final	49

**Part 5 — Amounts forfeited under undertakings**

56.	Amounts payable by defendants and offenders	50
57.	Amounts payable by sureties	50
58.	Amounts payable by witnesses and sureties for witnesses	51

**Part 6 — Reciprocal enforcement of fines imposed on bodies corporate in summary proceedings**

59.	Terms used in this Part	52
60.	Prescription of reciprocating States and courts	52
61.	Enforcement of interstate fine against body corporate	53
62.	Effect of enforcement by reciprocating court	54

**Part 7 — Warrants of execution**

**Division 1 — Preliminary**

63.	Terms used in this Part	55
65.	Warrant has indefinite life	56

**Division 2 — General functions of the Sheriff**

66.	Sheriff may delegate	56
67.	Police assistance may be requested	56
68.	Sheriff to note time of receipt of warrant	57
68A.	Execution may be stayed	57
69.	Examination in aid of seizure	58
70.	Determining an offender's interest in property	58
70A.	Personal property to be sold in preference to real property	60
70B.	Only sufficient property to be sold	60
70C.	Seized property, Sheriff to determine fair value of	60
70D.	Interests of others	61
70E.	Sale to be advertised	61

**Division 3 — Seizure and sale of personal property**

71.	Warrant of execution, effect of	62
74.	Seizing personal property, powers enabling	63

---

75.	Property that cannot be seized and sold	64
76.	Seizure of documents	65
77.	Seizure of cheques etc.	65
78.	Debts due to offender to be paid to Sheriff	65
80.	Notice of seizure	66
81.	Custody of seized property	66
85.	Manner and place of sale	67
86.	Sale price	67
87.	Sale passes good title: protection of Sheriff	68
	<b>Division 4 — Seizure and sale of land</b>	
88.	Warrant, effect of	69
89.	Seizure: how effected	70
90.	Cancelling memorials	71
91.	Power of entry	72
91A.	Offender may be permitted to sell or mortgage real property	72
91B.	Place and manner of sale	74
92.	Sale and transfer of land seized	75
	<b>Division 5 — Interpleader</b>	
93.	Making a claim to property seized	75
94.	Sheriff may admit or dispute claim	75
	<b>Division 6 — Miscellaneous</b>	
95.	Priority of warrant over writs etc.	76
96.	How amounts recovered to be applied	76
97.	Warrant may be satisfied at any time	77
98.	Sheriff exempt from some licensing requirements	78
99.	Sheriff exempt from fees	78
	<b>Part 8 — Miscellaneous</b>	
101.	Justices may set aside licence suspension order made under Part 3	79
101A.	Justices may set aside licence suspension order made under Part 4	80
101B.	Enforcement suspended on appeal etc.	81
101C.	Proving licence suspension orders and service of documents	83
101D.	Validity of licence suspension order not affected by non-receipt of documents	84
102.	Effect of payment by dishonoured cheque	84
103.	Exclusion of rules of natural justice	84

Contents

---

104.	Warrants of commitment	85
105.	Facsimile warrants	85
106.	Validity of acts not affected by want of form	85
107.	Protection from liability for wrongdoing	85
108A.	Credit for punishment served in error	86
108.	Regulations	87

**Notes**

Compilation table	90
Provisions that have not come into operation	92

**Defined Terms**



Western Australia

## **Fines, Penalties and Infringement Notices Enforcement Act 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.**

## Part 1 — Preliminary

### 1. Short title

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

### 2. Commencement

- (1) Subject to this section this Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.
- (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<sup>1</sup>.

### 3. Terms used in this Act

- (1) In this Act —

**CEO (corrections)** means the chief executive officer of the Public Sector agency principally assisting the Minister administering Part 8 of the *Sentence Administration Act 2003* in its administration;

**Director General** means the chief executive officer of the department of the Public Service principally assisting in the administration of the provisions of the *Road Traffic Act 1974* that section 5 of that Act defines as the “licensing provisions of this Act”;

**dishonoured payment** means a purported payment —

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

**driver's licence** means a driver's licence granted under the *Road Traffic Act 1974* and includes an extraordinary licence granted under that Act;

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

**paid** means paid in full;

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

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

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

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

[(2) *deleted*]

*[Section 3 amended by No. 76 of 1996 s. 29; No. 7 of 2002 s. 61; No. 65 of 2006 s. 62; No. 3 of 2008 s. 4(1) and 5(2); No. 47 of 2011 s. 27.]*

[4. *Deleted by No. 84 of 2004 s. 46.*]

## **5. Service of documents**

- (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 or in accordance with section 5A.
- (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

**s. 5A**

---

- (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 Director General.
- (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.

*[Section 5 amended by No. 76 of 1996 s. 30; No. 3 of 2008 s. 5(3).]*

**5A. Service by electronic means**

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

- (f) any information or a document or notice under Part 7;
  - (g) subject to section 105, a warrant of execution or a warrant of commitment issued under this Act.
- (3) Subsection (1) does not limit the operation of section 76 of the *Interpretation Act 1984*.

*[Section 5A inserted by No. 3 of 2008 s. 5(1).]*

## **Part 2 — Fines Enforcement Registry**

### **6. Registry established**

As part of the Magistrates Court, a registry called the Fines Enforcement Registry is established.

*[Section 6 amended by No. 59 of 2004 s. 107.]*

### **7. Registrar**

- (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 Magistrates Court 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 Magistrates Court.

*[Section 7 amended by No. 14 of 2003 s. 4; No. 59 of 2004 s. 107.]*

### **7A. Registrar may delegate**

- (1) The Registrar may delegate to a person any power or duty of the Registrar under another provision of this Act other than —
  - (a) the power under section 45 to issue a warrant of execution; and
  - (b) the power under section 53(1) to issue a warrant of commitment.
- (2) The delegation must be in writing signed by the Registrar.
- (3) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

- (4) Nothing in this section limits the ability of the Registrar to perform a function through an officer or agent.

*[Section 7A inserted by No. 14 of 2003 s. 5.]*

**8. Payments to the Registry**

- (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.

**9. Registrar exempt from fees**

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.

**10. Registrar to have access to Director General records**

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 Director General under the *Road Traffic Act 1974* in relation to drivers' licences and vehicle licences.

*[Section 10 amended by No. 76 of 1996 s. 30; No. 47 of 2011 s. 27.]*

**10A. Registrar may disclose information to Commissioner of Police**

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

*[Section 10A inserted by No. 3 of 2008 s. 6.]*

## **Part 3 — Infringement notices**

### **Division 1 — Preliminary**

#### **11. Terms used in this Part**

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 charge 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.

*[Section 11 amended by No. 84 of 2004 s. 80.]*

**12. Application**

- (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.

**13. Approved prosecuting authorities and officers**

- (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**

**14. Final demand may be issued to alleged offender**

- (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.

**15. Infringement notice may be registered**

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.

**16. Registration of infringement notice: enforcement certificate**

- (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 commence a prosecution for 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.

*[Section 16 amended by No. 84 of 2004 s. 80.]*

**17. Order to pay or elect**

- (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.

**18. Notice of intention to suspend licences**

- (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.

**19. Licence suspension order**

- (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.
- (6) If the Registrar makes a licence suspension order, he or she must —
  - (a) issue a notice confirming licence suspension; and
  - (b) advise the Director General 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.

*[Section 19 amended by No. 76 of 1996 s. 30.]*

**20. Cancelling licence suspension orders**

- (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 Director General 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.

*[Section 20 amended by No. 76 of 1996 s. 30.]*



**Division 3 — Miscellaneous**

**21. Election by alleged offender or prosecuting authority**

- (1) Despite any other provision in this Part, at any time that is —
  - (a) after an infringement notice is registered with the Registry;
  - (b) before the modified penalty and enforcement fees, or any part of them, is paid; and
  - (c) before a time to pay order is made under section 27A(4),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.
- (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) lodge with a court of summary jurisdiction that has jurisdiction to deal with the alleged offence and the alleged offender a prosecution notice in relation to the alleged offence that contains such of the information provided to the Registrar under section 16(1)(b) as will sufficiently describe the prosecuting authority, the alleged offender and the alleged offence;
  - (b) serve the alleged offender with a copy of the prosecution notice and a court hearing notice that complies with the *Criminal Procedure Act 2004*; and
  - (c) notify the prosecuting authority that the prosecution notice has been lodged and give the authority a copy of the notice and a copy of the court hearing notice referred to in paragraph (b).

- (5) When a prosecution notice is lodged with a court under subsection (4)(a) —
- (a) the notice is to be taken to have been made in accordance with the *Criminal Procedure Act 2004*, without being verified on oath, before the Registrar by the person who signed the enforcement certificate; and
  - (b) the prosecution is to be taken to have been commenced on the day when the enforcement certificate was lodged.

*[(6) deleted]*

- (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 payment.

*[Section 21 amended by No. 51 of 2000 s. 4; No. 59 of 2004 s. 97; No. 84 of 2004 s. 43; No. 3 of 2008 s. 4(2).]*

## **22. Prosecuting authority may withdraw proceedings**

- (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 Director General of the cancellation forthwith;
- and
- (c) if a prosecution has been commenced under section 21(4) in respect of the alleged offence but not determined —
    - (i) it is, by virtue of this section, discontinued; and
    - (ii) the Registrar must forthwith notify the Magistrates Court or the Children’s Court, as the case requires, 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.

*[Section 22 amended by No. 76 of 1996 s. 30; No. 59 of 2004 s. 107; No. 47 of 2011 s. 27.]*

**23. Effect of an order to pay or elect**

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.

**24. Effect of payment of modified penalty etc.**

(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.

**25. Continuing offences: effect of proceedings under this Part**

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.

**26. Road Traffic Act 1974: effect of proceedings under this Part**

- (1) This section applies if section 102 of the *Road Traffic Act 1974* is a prescribed enactment.
- (2) If the alleged offence is under 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 for the purposes of section 51(1)(a) of that Act and, for the purposes of Part VIA of that Act, the matter is to be treated as having been dealt with by infringement notice when the payment or order is made.

- (3) Subsection (2)(a) applies even if the payment is made by means of a dishonoured payment.
- (4) In this section ***traffic infringement notice*** means a traffic infringement notice issued under section 102 of the *Road Traffic Act 1974*.

*[Section 26 amended by No. 54 of 2006 s. 37; No. 3 of 2008 s. 4(3).]*

**27. How recovered amounts to be applied**

- (1) A modified penalty received by the Registrar is to be dealt with —
  - (a) in accordance with section 60 of the *Sentencing Act 1995* as if it were a fine; or
  - (b) if the principal enactment under which the infringement notice was issued provides otherwise, in accordance with the principal enactment.

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

*[Section 27 amended by No. 78 of 1995 s. 44; No. 77 of 2006 s. 4.]*

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

- (1) If an infringement notice has been registered, the alleged offender may request the Registrar —
- (a) not to make a licence suspension order; or
  - (b) to cancel a licence suspension order that has been made, in respect of the alleged offender on the grounds that the licence suspension order would or does deprive the alleged offender of —
  - (c) the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the alleged offender or a member of his or her family; or
  - (d) the principal means of obtaining income with which to pay the modified penalty and enforcement fees,
- or on the grounds that the licence suspension order would or does seriously hinder the alleged offender in performing family or personal responsibilities.

- (2) A request cannot be made —
- (a) if the alleged offender is a body corporate; or
  - (b) if an election has been made under section 21.
- (3) A request —
- (a) must be made in accordance with the regulations; and
  - (b) must include an offer to pay the modified penalty and enforcement fees before a specified date or by regular instalments.
- (4) If the Registrar is satisfied that —
- (a) there are grounds to accede to the request; and
  - (aa) the alleged offender has a reasonable excuse for any contravention of a time to pay order made previously under this section in respect of the infringement notice; and
  - (b) the alleged offender's offer to pay by regular instalments is reasonable,
- the Registrar must make a time to pay order and, as the case requires —
- (c) suspend the process in Division 2 for enforcing the infringement notice; or
  - (d) cancel a licence suspension order that has been made in respect of the alleged offender.
- (5) Without limiting paragraph (d) of subsection (1), the Registrar may, for the purposes of that paragraph, consider the effect that a licence suspension order would have or has had on the ability of the alleged offender to seek or obtain employment.
- (6) The time to pay order is to require the alleged offender to pay the modified penalty and enforcement fees either —
- (a) before a specified date; or
  - (b) by instalments on or before set dates.

- (7) The time to pay order must be served on the alleged offender together with notice of the action that has been taken under subsection (4)(c) or (d) and the consequences of not complying with the order.
- (8) If a licence suspension order is cancelled, the Registrar must advise the Director General forthwith.
- (9) For the purposes of the *Road Traffic Act 1974*, the cancellation of a licence suspension order takes effect when the order is cancelled.

*[Section 27A inserted by No. 51 of 2000 s. 5; amended by No. 3 of 2008 s. 7.]*

**27B. Amending a time to pay order**

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

*[Section 27B inserted by No. 51 of 2000 s. 5.]*

**27C. Contravening a time to pay order**

- (1) If an alleged offender contravenes a time to pay order made under section 27A, the Registrar may issue a notice that unless the amount overdue is paid before a date specified in the notice (the *due date*) the Registrar may —
  - (a) make or again make a licence suspension order in respect of the alleged offender; and
  - (b) cancel the time to pay order.
- (2) The notice must be served on the alleged offender.
- (3) If the amount overdue is not paid by the due date the Registrar may make or again make a licence suspension order in respect of the alleged offender and cancel the time to pay order.
- (4) For the purposes of subsection (3), section 19(2) to (9) (but not section 19(4)), with any necessary changes, apply and a licence



suspension order may be made even if sections 17 and 18 have not been complied with.

*[Section 27C inserted by No. 51 of 2000 s. 5.]*

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

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

*[Section 27D inserted by No. 3 of 2008 s. 8.]*

## **Part 4 — Fines**

### **Division 1 — Preliminary**

#### **28. Terms used in this Part**

(1) In this Part —

**community corrections activities** has the same definition as in the *Sentence Administration Act 2003*;

**community corrections centre** has the same definition as in the *Sentence Administration Act 2003*;

**community corrections officer (CCO)** has the same definition as in the *Sentence Administration Act 2003*;

**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 chief executive officer;

**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;

**offender** means a person found guilty of an offence, whether after a plea of guilty or otherwise;

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

**time to pay order**, except in sections 55A and 55B, 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.

*[Section 28 amended by No. 78 of 1995 s. 41; No. 8 of 1996 s. 9; No. 51 of 2000 s. 6; No. 50 of 2003 s. 29(3); No. 65 of 2006 s. 63.]*

## **29. Application of Part**

- (1) Subject to subsection (2), this Part applies to any fine imposed by any court on any offender, except —
- (a) a fine in respect of which an order is made under section 58 or 59 of the *Sentencing Act 1995*;
  - (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.

*[Section 29 amended by No. 78 of 1995 s. 44; No. 8 of 1996 s. 9.]*

**30. Court may request offender's address**

- (1) If a court fines an offender, the judicial officer constituting the court, or a court officer, may ask the offender 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.

*[Section 30 amended by No. 8 of 1996 s. 9.]*

**Division 2 — Payment of fines**

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

**31. Application**

This Subdivision applies —

- (a) to a fine that under section 60 of the *Sentencing Act 1995*, or any other written law, is to be credited to the Consolidated Account or that under section 56 of that Act is ordered to be paid to a person who has been assaulted; and
- (b) to a fine imposed under an enactment prescribed for the purposes of this section.

*[Section 31 amended by No. 78 of 1995 s. 44; No. 77 of 2006 s. 4.]*

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

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

*[Section 32 amended by No. 3 of 2008 s. 9.]*

**33. Time to pay order**

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

*[Section 33 amended by No. 8 of 1996 s. 4.]*

**34. Offender may apply to have time to pay order amended**

- (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.

**35. Court officer may amend time to pay order**

- (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.
- (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.

**35A. Payments ordered must be within the means of the offender**

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

*[Section 35A inserted by No. 8 of 1996 s. 5.]*

**36. Time to pay order may be cancelled**

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.

**37. Court officer's decision is final**

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

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

**38. Application**

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

**39. No enforcement until after 28 days**

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

- (ii) an infringement notice in respect of the offender that has been registered under Part 3 and that has not been paid.
- (2) In subsection (1) *prosecuting authority* means —
  - (a) if the fine was imposed under an Act of the State — the person that is to be paid the fine, or that administers the fund that is to be credited with the fine, under section 60(2) or (3) of the *Sentencing Act 1995*;
  - (b) if the fine was imposed under a law of the Commonwealth — a person that administers proceedings in relation to offences under that law.

[Section 39 amended by No. 78 of 1995 s. 44; No. 3 of 2008 s. 10.]

### **Division 3 — Enforcement of fines**

#### **40. Meaning of “amount owed”**

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

#### **41. Registration of fine**

- (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.
- (3) If, at any time after a fine is registered and before a warrant of execution or a warrant of commitment is issued in respect of it, there is good reason to do so, a court officer, in writing, may order the Registrar to cancel the registration.
- (4) A court officer may only make an order under subsection (3) in respect of a fine to which Division 2 Subdivision 2 applies with



the consent of the prosecuting authority (as defined in section 39(2)).

- (5) When the registration of a fine is cancelled —
- (a) any time to pay order made under section 55A(4) in respect of the fine is cancelled; and
  - (b) any licence suspension order made in respect of the offender in respect of the fine is cancelled; and
  - (c) any order to attend for work and development made under section 47, 47A or 55D is cancelled; and
  - (d) the Registrar must forthwith notify the offender of the cancellation of any order that occurs under this subsection.
- (6) The cancellation of the registration of a fine does not prevent a court officer from again registering the fine.

*[Section 41 amended by No. 3 of 2008 s. 11.]*

#### **42. Notice of intention to suspend licences**

- (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.

**43. Licence suspension order**

- (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 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.

- (6) If the Registrar makes a licence suspension order, he or she must —
- (a) issue a notice confirming licence suspension; and
  - (b) advise the Director General of the terms of the order forthwith.
- (7) A notice confirming licence suspension must be served on the offender.
- (8) A notice confirming licence suspension must advise the 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 offender is disqualified from holding or obtaining a driver's licence.

*[Section 43 amended by No. 8 of 1996 s. 9; No. 76 of 1996 s. 30.]*

#### **44. Cancelling a licence suspension order**

- (1) A licence suspension order is to be taken to be cancelled at the time when the amount owed is paid.
- (2) Even if the amount owed has not been paid, 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) or section 45(2), the Registrar must issue a notice of cancellation.
- (4) A notice of cancellation must be served on the offender.
- (5) If a licence suspension order is cancelled under subsection (1) or (2) or section 45(2), the Registrar must advise the Director General 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.

*[Section 44 amended by No. 8 of 1996 s. 9; No. 76 of 1996 s. 30.]*

**45. Warrant of execution**

- (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.

**46. Sections 47 to 53 do not apply to a body corporate**

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

**47. Order to attend for work and development**

- (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.

*[Section 47 amended by No. 9 of 2000 s. 4.]*

**47A. Order to attend for work and development may be issued ahead of other enforcement measures**

- (1) Despite sections 42 to 45 and 47, at any time after a fine is registered the Registrar may issue an order to attend for work and development in respect of the offender if the Registrar is satisfied —
- (a) that the offender —
- (i) does not have the means to pay the amount owed;
- (ii) is not the holder of a vehicle licence;

- (iii) does not have any personal property that could be seized under a warrant of execution to satisfy, wholly or partly, the amount owed; and
      - (iv) will be unlikely to have the means to pay, or personal property that could be so seized, within a reasonable time after the fine was registered;
    - (b) that the offender —
      - (i) is the holder of a driver's licence but is disqualified from holding or obtaining such a licence; or
      - (ii) is not the holder of a driver's licence;
  - and
  - (c) that the issue of a licence suspension order has not resulted, or would be unlikely to result, in the amount owed being paid within a reasonable time after the fine was registered.
- (2) An order issued under subsection (1) must be served on the offender personally.
- (3) On issuing an order under subsection (1), the Registrar must cancel —
- (a) any licence suspension order; or
  - (b) any warrant of execution,
- that is in force in respect of the offender in respect of the fine.
- (4) If a licence suspension order is cancelled under subsection (3), the Registrar must advise the Director General forthwith.
- (5) For the purposes of the *Road Traffic Act 1974*, the cancellation of a licence suspension order takes effect when the order is cancelled.

*[Section 47A inserted by No. 9 of 2000 s. 5; amended by No. 14 of 2003 s. 6.]*

**47B. Effect of order to attend for work and development**

An order to attend for work and development issued under section 47 or 47A 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.

*[Section 47B inserted by No. 9 of 2000 s. 5.]*

**48. Work and development order (WDO)**

- (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 (corrections) on the suitability of the offender to be given a WDO.
- (2) The CEO (corrections) must make a WDO in respect of an offender unless the CEO (corrections) is satisfied —
  - (a) that the offender is mentally or physically incapable of performing the requirements of the order; or
  - (b) that in the course of performing the requirements of a WDO the offender will or may pose a risk to the personal safety of people in the community or of any individual in the community.
- (2a) If an offender reports to a community corrections centre pursuant to an order made under section 57A(3) of the *Sentencing Act 1995*, the CEO (corrections) must make a WDO in respect of the offender and subsections (1) and (2) do not apply.
- (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.

*[Section 48 amended by No. 9 of 2000 s. 6; No. 51 of 2000 s. 7; No. 65 of 2006 s. 64.]*

**49. WDO: nature of**

A WDO is an order that the offender must comply with —

- (a) section 76 of the *Sentence Administration Act 2003*; and
- (b) the primary requirements in section 50.

*[Section 49 inserted by No. 78 of 1995 s. 42; amended by No. 50 of 2003 s. 29(3).]*

**50. WDO: primary requirements**

- (1) The primary requirements of a WDO are that the offender —
  - (a) must do community corrections activities for a number of hours specified in the WDO (the **required hours**);
  - (b) in each period of 7 days must do the prescribed number of the required hours;
  - (c) must not leave the State without the prior written permission of the supervisor of a community corrections centre; and
  - (d) must notify a CCO of any change of address or employment within 2 clear working days after the change.
- (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;



- (b) any hours of community work that the offender is required to do under a community service requirement in a community order imposed under the *Sentencing Act 1995*; and
- (c) any hours of community corrections activities that the offender is required to do under the *Sentence Administration Act 2003*.

*[Section 50 inserted by No. 78 of 1995 s. 42; amended by No. 50 of 2003 s. 29(3).]*

*[Section 50. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

**51. WDO: completion**

- (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.

**52. WDO: cancellation**

- (1) The CEO (corrections), 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.

*[Section 52 amended by No. 65 of 2006 s. 64.]*

**53. Warrant of commitment**

- (1) If an offender is served with an order to attend for work and development or with an order made under section 57A(3) of the *Sentencing Act 1995* and —
  - (a) the offender does not report 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 (in days) specified in the warrant that is the shorter of —

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

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

- (4) If, when the *Fines Legislation Amendment Act 2008* section 12(1) (the **amending provision**) comes into operation, a warrant of commitment is in force but the offender has not commenced to serve the period of imprisonment specified in it, the warrant has effect as if —
  - (a) the amending provision; and
  - (b) the regulations made for the purposes of subsection (3)(a) as enacted by the amending provision,had come into operation before the warrant was issued.
- (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 concurrent with any other period or term of imprisonment that the offender is serving or has to serve.
- (8a) If, immediately before the *Fines Legislation Amendment Act 2008* section 12(3) (the **amending provision**) comes into operation, an offender who has served, is serving or has to serve a period of imprisonment under a warrant of commitment is in prison, the offender is entitled to be released from imprisonment on —
- (a) the day on which the offender would have been entitled to be released if the amending provision had come into operation before the warrant of commitment was issued;
  - or
  - (b) the day on which the amending provision comes into operation,

whichever is later.

- (8b) In the case of an offender who is serving or has to serve a parole term as defined in the *Sentencing Act 1995* section 85(1), a reference in subsection (8a) to the offender being entitled to be released is a reference to the offender being eligible to be released on parole.
- (8c) The Registrar may at any time cancel a warrant of commitment for good reason.
- (9) Nothing in this section affects the power of the Governor to exercise the Royal Prerogative of Mercy.

*[Section 53 amended in Gazette 12 Mar 1999 p. 1162; amended by No. 9 of 2000 s. 7; No. 3 of 2008 s. 12.]*

*[Section 53. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

#### **Division 4 — Miscellaneous**

##### **54. Warrants of apprehension for people interstate**

- (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 registrar or 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.

*[Section 54 amended by No. 59 of 2004 s. 107.]*

##### **55. How recovered amounts to be dealt with**

- (1) A fine received by the Registrar is to be dealt with in accordance with section 60 of the *Sentencing Act 1995*.

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

*[Section 55 amended by No. 78 of 1995 s. 44; No. 8 of 1996 s. 9; No. 77 of 2006 s. 4.]*

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

- (1) If a fine has been registered, the offender may request the Registrar —
- (a) not to make a licence suspension order; or
  - (b) to cancel a licence suspension order that has been made,
- in respect of the offender on the grounds that the licence suspension order would or does deprive the offender of —
- (c) the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the offender or a member of his or her family; or
  - (d) the principal means of obtaining income with which to pay the amount owed (as defined in section 40),
- or on the grounds that the licence suspension order would or does seriously hinder the offender in performing family or personal responsibilities.
- (2) A request cannot be made —
- (a) if the offender is a body corporate; or
  - (b) if a warrant of execution has been issued under section 45.
- (3) A request —
- (a) must be made in accordance with the regulations; and
  - (b) must include an offer to pay the amount owed before a specified date or by regular instalments.
- (4) If the Registrar is satisfied that —
- (a) there are grounds to accede to the request; and

- (aa) the offender has a reasonable excuse for any contravention of a time to pay order made previously under this section in respect of the fine; and
- (b) the offender's offer to pay by regular instalments is reasonable,

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

- (c) suspend the process in Division 3 for enforcing the fine; or
  - (d) cancel a licence suspension order that has been made in respect of the offender.
- (5) Without limiting paragraph (d) of subsection (1), the Registrar may, for the purposes of that paragraph, consider the effect that a licence suspension order would have or has had on the ability of the offender to seek or obtain employment.
- (6) The time to pay order is to require the offender to pay the amount owed either —
- (a) before a specified date; or
  - (b) by instalments on or before set dates.
- (7) The time to pay order must be served on the offender together with notice of the action that has been taken under subsection (4)(c) or (d) and the consequences of not complying with the order.
- (8) If a licence suspension order is cancelled, the Registrar must advise the Director General forthwith.
- (9) For the purposes of the *Road Traffic Act 1974*, the cancellation of a licence suspension order takes effect when the order is cancelled.

*[Section 55A inserted by No. 51 of 2000 s. 8; amended by No. 3 of 2008 s. 13.]*

**55B. Amending a time to pay order**

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

*[Section 55B inserted by No. 51 of 2000 s. 8.]*

**55C. Contravening a time to pay order**

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

*[Section 55C inserted by No. 51 of 2000 s. 8.]*

**55D. Registrar may use most effective enforcement means**

- (1) If the Registrar is satisfied that —
  - (a) a warrant of execution;
  - (b) an order to attend for work and development; or
  - (c) a warrant of commitment,

would be more likely than a licence suspension order or any of the other methods of enforcement referred to in paragraph (a),



(b) or (c) to result in the payment or recovery of the amount owed, the Registrar may —

- (d) despite section 45(1), issue a warrant of execution in the prescribed form;
  - (e) despite section 47(1) and (2), issue an order to attend for work and development; or
  - (f) despite section 53(1) and (2), issue a warrant of commitment.
- (2) If the Registrar takes any action under subsection (1) the Registrar must cancel any other authorisation, order or warrant that has been issued in respect of the amount owed.
- (3) If under subsection (1) the Registrar issues a warrant of execution, section 45(2) to (5) apply to the warrant.
- (4) If under subsection (1) the Registrar issues an order to attend for work and development, sections 47(3) to (5), 48, 49, 50, 51 and 52 apply in relation to the order.
- (5) If under subsection (1) the Registrar issues a warrant of commitment, section 53(3) to (9) apply in relation to the warrant.

*[Section 55D inserted by No. 14 of 2003 s. 7.]*

**55E. Registrar's decision on time to pay etc. is final**

A decision of the Registrar under section 55A, 55B, 55C or 55D is final.

*[Section 55E inserted by No. 3 of 2008 s. 14.]*

## **Part 5 — Amounts forfeited under undertakings**

*[Heading amended by No. 84 of 2004 s. 46.]*

### **56. Amounts payable by defendants and offenders**

In respect of the payment of, or the enforcement of the payment of —

- (a) any amount of a bail undertaking that is ordered to be forfeited to the Crown under section 57 of the *Bail Act 1982*; or

*[(b) deleted]*

- (c) an amount that is ordered to be paid to the Crown by an offender, under section 52(2) of the *Sentencing Act 1995*,

Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the person liable to pay the amount.

*[Section 56 inserted by No. 78 of 1995 s. 43; amended by No. 59 of 2004 s. 107; No. 84 of 2004 s. 46.]*

### **57. Amounts payable by sureties**

In respect of the payment of, or the enforcement of the payment of —

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

*[(b) deleted]*

- (c) an amount that is ordered to be paid to the Crown by a surety under section 52(2) of the *Sentencing Act 1995*,

Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the surety.

*[Section 57 inserted by No. 78 of 1995 s. 43; amended by No. 51 of 2000 s. 9; No. 84 of 2004 s. 46.]*

**58. Amounts payable by witnesses and sureties for witnesses**

In respect of the payment of, or the enforcement of the payment of —

- (a) any amount of a witness undertaking entered into by a person under Schedule 4 to the *Criminal Procedure Act 2004* that is ordered to be forfeited under section 57 of the *Bail Act 1982*; or
- (b) any amount of a surety undertaking entered into by a person under Schedule 4 to the *Criminal Procedure Act 2004* in respect of a witness that is ordered to be forfeited under section 49 of the *Bail Act 1982*,

Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the person.

*[Section 58 inserted by No. 84 of 2004 s. 44.]*

## **Part 6 — Reciprocal enforcement of fines imposed on bodies corporate in summary proceedings**

### **59. Terms used in this Part**

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.

### **60. Prescription of reciprocating States and courts**

- (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 (2) 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.

*[Section 60 amended by No. 8 of 1996 s. 9.]*

**61. Enforcement of interstate fine against body corporate**

- (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 Magistrates Court 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

**s. 62**

---

- (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.

*[Section 61 amended by No. 8 of 1996 s. 9; No. 59 of 2004 s. 107.]*

**62. Effect of enforcement by reciprocating court**

A sum of money paid to or received by a court of summary jurisdiction 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 court as if the sum had been paid to the court by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

*[Section 62 amended by No. 59 of 2004 s. 107.]*

## Part 7 — Warrants of execution

### Division 1 — Preliminary

#### 63. Terms used in this Part

In this Part —

*dwelling* means —

- (a) a building, structure or tent, or part of a building, structure or tent, that is ordinarily used for human habitation; or
- (b) a mobile home,

and it does not matter that it is uninhabited from time to time;

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

*mobile home* means a vehicle —

- (a) that is ordinarily used for human habitation; and
- (b) that is permanently or semi-permanently stationary in a single location;

*offender* means —

- (a) in the case of a warrant issued under Part 4, the offender in respect of whom it was issued;
- (b) in the case of a warrant issued under Part 6, the body corporate in respect of which it was issued;

*personal property* does not include any estate or interest in land;

*place* means any land, building, structure, tent or vehicle, or any part of any land, building, structure, tent or vehicle;

*saleable interest*, in real or personal property, has the meaning given by section 71(1) or 88(1), as the case requires;

*Sheriff* means the Sheriff of Western Australia;

*vehicle* means any thing capable of transporting people or things by road, rail or water, including a hovercraft, and it does not matter how the thing is moved or propelled;

**warrant** means a warrant of execution issued under Part 4 or Part 6.

*[Section 63 amended by No. 14 of 2003 s. 8; No. 59 of 2004 s. 98.]*

*[64. Deleted by No. 49 of 1997 s. 5.]*

**65. Warrant has indefinite life**

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**

**66. Sheriff may delegate**

- (1) The Sheriff may delegate to a person any power or duty of the Sheriff under another provision of this Act.
- (2) The delegation must be in writing signed by the Sheriff.
- (3) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the Sheriff to perform a function through an officer or agent.

*[Section 66 inserted by No. 14 of 2003 s. 9.]*

**67. Police assistance may be requested**

- (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.

**68. Sheriff to note time of receipt of warrant**

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

**68A. Execution may be stayed**

- (1) On receipt of a warrant, the Sheriff may stay the execution of the warrant if the offender enters into and complies with a written or oral arrangement with the Sheriff under which the offender agrees to pay the amount owed under the warrant and any enforcement fees either —
- (a) on or before an agreed date; or
  - (b) by instalments on or before agreed dates,
- in a manner, and at a place, determined by the Registrar under section 8.
- (2) As soon as practicable after an offender enters into an oral arrangement under subsection (1), the Sheriff must serve a written version of it on the offender.
- (3) A failure to comply with subsection (2) does not invalidate the arrangement or any payment made in accordance with it.
- (4) The Sheriff may at any time cancel an arrangement entered into under subsection (1) and proceed with executing the warrant or exercising the powers under section 55D.
- (5) As soon as practicable after cancelling an arrangement under subsection (4), the Sheriff must serve a notice of the fact on the offender.
- (6) A failure to comply with subsection (5) does not invalidate the cancellation, any action taken in connection with executing the warrant, any action taken under section 55D, or any payment made by the offender after the cancellation.

- (7) Despite the fact that the execution of a warrant is stayed under subsection (1), the Sheriff may make an application under section 69.

*[Section 68A inserted by No. 14 of 2003 s. 10.]*

**69. Examination in aid of seizure**

- (1) In respect of a warrant, the Sheriff may apply to the Magistrates 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 the *Magistrates Court (Civil Proceedings) Act 2004* may deal with the practice and procedure relating to examinations under subsection (1).

*[Section 69 amended by No. 8 of 1996 s. 9; No. 59 of 2004 s. 107.]*

**70. Determining an offender's interest in property**

- (1) In this section —

***interest***, in any property, means any security, charge or lien over, claim on, or right to, the property or any other legal or equitable interest in the property;

***public authority*** means a public sector body (within the meaning of section 3(1) of the *Public Sector Management Act 1994*), a local government or a regional local government.

- (2) The powers in this section may only be exercised by the Sheriff after receiving a warrant and for the purpose of determining whether and to what extent an offender has any saleable interest in any personal or real property that might be sold under the warrant.
- (3) The Sheriff, in writing, may request any person, other than the offender, who the Sheriff believes on reasonable grounds has or may have an interest in any such property to disclose to the Sheriff —
- (a) the nature of the interest;
  - (b) if the interest is a security over the property —
    - (i) the amount secured against the property;
    - (ii) the amount outstanding under the security;
    - (iii) the amount and rate of interest accruing; and
    - (iv) any change that occurs to the terms of the security;
  - (c) the amount of money that is owed to the person in relation to the property; and
  - (d) any other information the Sheriff considers is or may be relevant to determining the matters in subsection (2).
- (4) The Sheriff, in writing, may request a public authority to disclose to the Sheriff the amount of any rates, taxes, service charges, or other amounts, that are due and unpaid in respect of any such real property.
- (5) A person, other than a public authority, who contravenes a request made under subsection (3) is guilty of a contempt of the Magistrates Court.
- (6) The Sheriff may disclose any information about any property that has been obtained by the Sheriff to any potential purchaser of the offender's interest in the property.

*[Section 70 inserted by No. 59 of 2004 s. 99.]*

**70A. Personal property to be sold in preference to real property**

- (1) Under a warrant, an offender's saleable interest in any real property must not be sold unless the Sheriff is satisfied that the amount that is reasonably likely to be realised from selling the offender's saleable interest in any personal property under the warrant will not be sufficient to satisfy the amount owed under the warrant and any enforcement fees.
- (2) Subsection (1) does not prevent an offender's saleable interests in real property and in personal property being sold at the same time.

*[Section 70A inserted by No. 59 of 2004 s. 99.]*

**70B. Only sufficient property to be sold**

- (1) Under a warrant, the Sheriff must not sell more property than is sufficient, in the Sheriff's opinion, to wholly satisfy the amount owed under the warrant and the enforcement fees.
- (2) Subsection (1) does not prevent the Sheriff from making one or more additional sales of property if a sale of property has not been sufficient to satisfy the amount owed under the warrant and the enforcement fees.

*[Section 70B inserted by No. 59 of 2004 s. 99.]*

**70C. Seized property, Sheriff to determine fair value of**

- (1) Before selling an offender's saleable interest in any personal or real property under a warrant, the Sheriff must take reasonable steps to determine a fair value for the interest.
- (2) For the purposes of determining a fair value the Sheriff may —
  - (a) request the offender to provide the Sheriff with such information relevant to the value of the interest 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 interest is such that it is reasonable to do so, engage a suitably qualified

and experienced person to give the Sheriff a written valuation of the interest.

*[Section 70C inserted by No. 59 of 2004 s. 99.]*

**70D. Interests of others**

If a person other than the offender has any legal or equitable interest in any personal or real property in which the offender has a saleable interest, that interest and that of the offender may be sold together if —

- (a) the Sheriff is of the opinion that such a sale is desirable;
- (b) the other person consents in writing; and
- (c) the Sheriff and the other person agree in writing before the sale as to the division of —
  - (i) the expenses of and incidental to the sale or any attempted sale of the property; and
  - (ii) the proceeds of the sale after payment of those expenses.

*[Section 70D inserted by No. 59 of 2004 s. 99.]*

**70E. Sale to be advertised**

- (1) The Sheriff must advertise any intended sale under a warrant of an offender's saleable interest in personal or real property in a reasonable manner.
- (2) An offender's saleable interest in personal or real property must not be sold under a warrant unless at least 7 days have elapsed since the intended sale was first advertised under subsection (1).
- (3) Despite subsections (1) and (2), perishable personal property may be sold without having advertised its intended sale.

*[Section 70E inserted by No. 59 of 2004 s. 99.]*

### **Division 3 — Seizure and sale of personal property**

#### **71. Warrant of execution, effect of**

- (1) In this section —  
*saleable interest*, in personal property, means any legal or equitable interest in the property that can be disposed of according to law.
- (2) A warrant issued in respect of an offender —
  - (a) applies to any saleable interest that the offender has in any personal property at the time when the Sheriff receives the warrant; and
  - (b) entitles the Sheriff —
    - (i) to seize any such property in which the offender has a saleable interest and to sell that interest;
    - (ii) to seize any money of the offender;
    - (iii) to seize any cheque, bill of exchange, promissory note, bond, specialty, or other security for money, by virtue of which money is or may be payable to the offender, and to deal with it in accordance with section 77; and
    - (iv) to apply the proceeds of the sale, the money, and any money received or recovered under section 77, in accordance with section 96.
- (3) The Sheriff's entitlement applies even if the offender's saleable interest in any personal property is held jointly or in common with another or others.
- (4) The Sheriff may take any reasonable action that the Sheriff considers necessary or convenient for the purposes of subsection (2)(b).
- (5) If, after the Sheriff receives the warrant, a person acquires an interest in any goods to which the warrant applies, the person

does so subject to the Sheriff's entitlement in subsection (2) unless, at the time of acquiring the interest —

- (a) the person acquired it in good faith and for valuable consideration; and
- (b) the person had no notice of the fact that the Sheriff had received the warrant and that it was in effect.

*[Section 71 inserted by No. 59 of 2004 s. 100.]*

*[72, 73. Deleted by No. 59 of 2004 s. 100.]*

**74. Seizing personal property, powers enabling**

- (1) Under a warrant the Sheriff, using any force and assistance that is reasonably necessary in the circumstances, may do any or all of the following —
  - (a) enter any place where the Sheriff believes on reasonable grounds there is or may be personal property that may be seized under the warrant, or a record evidencing the title to such property, for the purpose of searching for and seizing it;
  - (b) from time to time re-enter any such place where any such property or record is for the purpose of performing the Sheriff's functions under the warrant and this Act in relation to the property;
  - (c) seize and remove any such property or record;
  - (d) make or print out, and keep, a copy of any such record and for that purpose —
    - (i) seize and remove, for no more than 7 days, any computer or other thing on which any such record is or may be stored;
    - (ii) operate the computer or other thing;
    - (iii) direct a person who has the custody or control of any such record, computer or thing to make or print out a copy of the record or to operate the computer or thing;

- (e) take reasonable measures to secure or protect any such property, record, computer or thing against damage or unauthorised removal or interference.
- (2) The powers in subsection (1)(a) and (b) —
  - (a) may be exercised at any time of the day or night in respect of a place that is not a dwelling; and
  - (b) must not be exercised in respect of a dwelling without the consent of the occupier of the dwelling or, if there is no occupier, the owner.
- (3) Despite subsection (2)(b), if —
  - (a) the consent referred to in subsection (2)(b) is unreasonably withheld; or
  - (b) the Sheriff, after reasonable attempts to do so, cannot contact the occupier or owner of the dwelling,the Sheriff may exercise the powers in subsection (1)(a) and (b) without that consent, at any time of the day or night.
- (4) A person who disobeys a direction given under subsection (1)(d)(iii) commits an offence.

Penalty: Imprisonment for 12 months.

*[Section 74 inserted by No. 59 of 2004 s. 101.]*

**75. Property that cannot be seized and sold**

The following personal property of an offender must not be seized or sold under a warrant —

- (a) property that the offender holds in trust for another person and in which the offender does not have a beneficial interest;
- (b) wearing apparel and personal items that are of a kind and value prescribed by the regulations;
- (c) household property that is of a kind and value prescribed by the regulations;



- (d) property that is used by the offender to earn income by personal exertion of a value that does not exceed the amount prescribed by the regulations.

*[Section 75 inserted by No. 59 of 2004 s. 102.]*

**76. Seizure of documents**

- (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.

**77. Seizure of cheques etc.**

- (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.

**78. Debts due to offender to be paid to Sheriff**

- (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.

*[79. Deleted by No. 59 of 2004 s. 107.]*

**80. Notice of seizure**

- (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) deleted]*

- (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.

*[Section 80 amended by No. 59 of 2004 s. 107.]*

**81. Custody of seized property**

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

- (2) Seized personal property may be left in the custody of the offender or another person if the offender or person, in writing, consents and agrees —
  - (a) to be responsible for its safekeeping;
  - (b) not to move it, or allow it to be moved, without the prior consent of the Sheriff; and
  - (c) not to give custody or possession of it to another person without the prior consent of the Sheriff.
- (3) 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.
- (4) If the Sheriff seizes any record relating to a business or undertaking of the offender or another person, it must not be retained for longer than 7 days.
- (5) Subsection (4) does not apply to any cheque, bill of exchange, promissory note, bond, specialty or other security for money.

*[Section 81 inserted by No. 59 of 2004 s. 103.]*

*[82-84. Deleted by No. 59 of 2004 s. 107.]*

**85. Manner and place of sale**

- (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.

**86. Sale price**

- (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.

**87. Sale passes good title: protection of Sheriff**

- (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**

**88. Warrant, effect of**

- (1) In this section —  
*saleable interest*, in real property, means any legal or equitable estate or interest in the property that can be disposed of according to law.
- (2) A warrant issued in respect of an offender —
- (a) applies to —
- (i) any saleable interest that is registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act and that the offender has at the time when the warrant is registered under section 133 of that Act in respect of the interest;
  - (ii) any saleable interest that is not registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act and that the offender has at the time when the Sheriff receives the warrant;
  - (iii) any saleable interest in any other real property in the State that the offender has at the time when the Sheriff receives the warrant;
- and
- (b) entitles the Sheriff —
- (i) to seize the land;
  - (ii) to sell the saleable interest; and
  - (iii) to apply the proceeds in accordance with section 96.
- (3) The Sheriff's entitlement applies even if the offender's saleable interest is held jointly or in common with another or others.
- (4) Under a warrant, the Sheriff must not sell any saleable interest that is registered under the *Transfer of Land Act 1893* in respect

of land under the operation of that Act unless, at the time of the sale, the warrant is registered under section 133 of that Act in respect of the interest.

- (5) If, after the Sheriff receives a warrant, a person acquires an interest in any real property to which the order applies, the person does so subject to the Sheriff's entitlement in subsection (2) unless, at the time of acquiring the interest —
- (a) the person acquired it in good faith and for valuable consideration;
  - (b) the person had no notice of the fact that the Sheriff had received the warrant and that it was in effect; and
  - (c) the warrant had not been registered under the *Registration of Deeds Act 1856*.
- (6) Subsection (5) does not apply to or in relation to an interest acquired in any saleable interest that is registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act.

*[Section 88 inserted by No. 59 of 2004 s. 104.]*

**89. Seizure: how effected**

- (1) Actual seizure of real property by physical occupation or other means before any saleable interest in it is sold under a warrant 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.

*[Section 89 amended by No. 59 of 2004 s. 107.]*

## **90. Cancelling memorials**

- (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.

**91. Power of entry**

- (1) Under a warrant the Sheriff, using any force and assistance that is reasonably necessary in the circumstances, may enter any real property in which the offender has a saleable interest for the purposes of performing the Sheriff's functions under the warrant and this Act in relation to the interest.
- (2) Without limiting subsection (1), the Sheriff may —
- (a) enter the real property with any prospective purchaser of the offender's saleable interest; and
  - (b) conduct any sale of the interest on the property.
- (3) The powers in subsections (1) and (2) —
- (a) may be exercised at any time of the day or night in respect of a place that is not a dwelling; and
  - (b) must not be exercised in respect of a dwelling without the consent of the occupier of the dwelling or, if there is no occupier, the owner.
- (4) Despite subsection (3)(b), if —
- (a) the consent referred to in subsection (3)(b) is unreasonably withheld; or
  - (b) the Sheriff, after reasonable attempts to do so, cannot contact the occupier or owner of the dwelling,

the Sheriff may exercise the powers in subsections (1) and (2) without that consent, at any time of the day or night.

*[Section 91 inserted by No. 59 of 2004 s. 105.]*

**91A. Offender may be permitted to sell or mortgage real property**

- (1) The Sheriff may permit the offender to sell or mortgage the offender's saleable interest in any real property to which a warrant applies.



- (2) The Sheriff's permit must —
- (a) be in writing;
  - (b) require the amount of any deposit paid in respect of any sale of the interest to be paid to the Sheriff to be held by the Sheriff as stakeholder;
  - (c) state the minimum amount (including any such deposit) that must be paid to the Sheriff out of the money realised from any sale or mortgage of the interest;
  - (d) state the date on which the permit expires; and
  - (e) contain any other information that is prescribed by the regulations.
- (3) The Sheriff's permit may include any conditions that the Sheriff considers necessary.
- (4) While the Sheriff's permit is in force, the Sheriff must not sell the saleable interest under the warrant.
- (5) If while the Sheriff's permit is in force —
- (a) the offender sells or mortgages the interest;
  - (b) in the case of a sale, the amount of any deposit paid is paid to the Sheriff in accordance with the permit; and
  - (c) in any case, either —
    - (i) an amount not less than the minimum amount stated in the permit is paid to the Sheriff; or
    - (ii) with the Sheriff's consent, an amount less than the minimum amount stated in the permit is paid to the Sheriff,
- then —
- (d) any liability of the purchaser or mortgagee to pay the offender the money paid to the Sheriff is extinguished;
  - (e) the Sheriff must consent to the registration under the *Transfer of Land Act 1893* or the *Registration of Deeds*

*Act 1856* of any documents that relate to the sale or mortgage; and

- (f) the Sheriff must apply the money received in accordance with section 96 as if they were the proceeds of a sale under the warrant.

*[Section 91A inserted by No. 59 of 2004 s. 105.]*

**91B. Place and manner of sale**

- (1) Subject to any order made by a court under this section, the sale under a warrant of an offender's saleable interest in real property —
- (a) may be conducted on the property or at any other place, as the Sheriff thinks fit;
  - (b) must be by public auction; and
  - (c) must not be for less than a fair value of the interest.
- (2) The Sheriff may apply to the Magistrates Court for an order as to any or all of the following in relation to a saleable interest to which warrant applies —
- (a) that the interest may be sold by public tender;
  - (b) that the interest may be sold by private agreement;
  - (c) that the interest may be sold for an amount that is less than a fair value of the interest.
- (3) The offender is entitled to be heard on an application made under subsection (2).
- (4) The court may make any or all of such orders.
- (5) When or after making an order under subsection (2)(c) a court may order that the interest not be sold for less than an amount set by the court.

*[Section 91B inserted by No. 59 of 2004 s. 105.]*

**92. Sale and transfer of land seized**

- (1) Subject to this Division, a warrant has effect in respect of land of the offender as if the warrant were a property (seizure and sale) order issued under the *Civil Judgments Enforcement Act 2004* and the offender were the judgment debtor named in the order.
- (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.  
*[Section 92 amended by No. 59 of 2004 s. 107.]*

**Division 5 — Interpleader**

**93. Making a claim to property seized**

- (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.

**94. Sheriff may admit or dispute claim**

- (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 Magistrates Court at the place 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 the *Magistrates Court (Civil Proceedings) Act 2004* may deal with the practice and procedure relating to claims and applications for relief by way of interpleader.

*[Section 94 amended by No. 59 of 2004 s. 107.]*

### **Division 6 — Miscellaneous**

#### **95. Priority of warrant over writs etc.**

- (1) A warrant (as defined in section 63) has priority over any property (seizure and sale) order issued under the *Civil Judgments Enforcement Act 2004*, despite that Act and section 133 of the *Transfer of Land Act 1893*.
- (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.

*[Section 95 amended by No. 59 of 2004 s. 107.]*

#### **96. How amounts recovered to be applied**

- (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 *Personal Properties Securities Act 2009* (Commonwealth), the *Transfer of Land Act 1893*, the *Registration of Deeds Act 1856* or the *Corporations Act 2001* (Commonwealth), 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 Account.
- (7) In subsection (3), **registered** includes protected by means of a caveat lodged under the *Transfer of Land Act 1893*.

*[Section 96 amended by No. 10 of 2001 s. 220; No. 77 of 2006 s. 4; No. 42 of 2011 s. 18.]*

**97. Warrant may be satisfied at any time**

- (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.

**98. Sheriff exempt from some licensing requirements**

- (1) The Sheriff and any delegate of the Sheriff may sell property seized under a warrant without holding any licence to do so that is required under a written law.
- (2) Subsection (1) does not prevent the Sheriff from engaging a person with an appropriate licence under a written law to sell property seized under a warrant.

*[Section 98 inserted by No. 59 of 2004 s. 106.]*

**99. Sheriff exempt from fees**

The Sheriff and any delegate of the Sheriff is exempt from paying fees under 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.

*[Section 99 amended by No. 42 of 2011 s. 19.]*

## Part 8 — Miscellaneous

[100. Deleted by No. 78 of 1995 s. 44.]

### 101. Justices may set aside licence suspension order made under Part 3

- (1) A person in respect of whom a licence suspension order has been made under Part 3 (*the applicant*) may apply to the Magistrates Court for an order cancelling the licence suspension order.
- (1a) A person cannot apply if the person has previously applied in relation to the licence suspension order or in relation to any other licence suspension order made in respect of the infringement notice to which the licence suspension order relates, and the application was refused.
- (2) The application must be made in accordance with the Magistrates Court's rules of court.
- (2a) A licence suspension order that is in force at the time when an application is made does not cease to be in force by reason only of the making of the application.
- (3) If on an application the applicant satisfies the Court 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;

**s. 101A**

---

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

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

- (3a) An order cancelling the licence suspension order is not to be made unless the Commissioner of Police has been given an opportunity to be heard in relation to the application for the order.
- (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.

*[Section 101 amended by No. 8 of 1996 s. 6; No. 51 of 2000 s. 10; No. 59 of 2004 s. 107.]*

**101A. Justices may set aside licence suspension order made under Part 4**

- (1) A person in respect of whom a licence suspension order has been made under Part 4 (*the applicant*) may apply to the Magistrates Court for an order cancelling the licence suspension order.
- (2) A person cannot apply if the person has previously applied in relation to the licence suspension order or in relation to any other licence suspension order made in respect of the fine to which the licence suspension order relates, and the application was refused.
- (3) The application must be made in accordance with the Magistrates Court's rules of court.
- (4) A licence suspension order that is in force at the time when an application is made does not cease to be in force by reason only of the making of the application.



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

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

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

*[Section 101A inserted by No. 8 of 1996 s. 7; amended by No. 59 of 2004 s. 107.]*

**101B. Enforcement suspended on appeal etc.**

- (1) For the purposes of this section a person appeals against a fine, or a decision giving rise to a fine, imposed on the person when the person —
- (a) applies under section 71 of the *Criminal Procedure Act 2004* and pays any fee required; or
  - (b) is granted leave to appeal under Part 2 or 3 of the *Criminal Appeals Act 2004*.
- (2) When the Registrar is notified that a person is appealing against a fine or the decision giving rise to a fine no action is to be taken under this Act except as provided by this section or the regulations.

**s. 101B**

---

- (3) If when a person appeals against a fine or the decision giving rise to a fine —
- (a) a time to pay order is in force, the order ceases to have effect;
  - (b) a notice of intention to suspend licences issued under section 42 in respect of the fine is current, the notice is to be taken as being cancelled as from that time;
  - (c) a licence suspension order made under section 43 is in force in respect of the fine, the order is to be taken as being cancelled as from that time;
  - (d) a warrant of execution issued under section 45 is in force but no property has been seized under it, the warrant is to be taken as being cancelled as from that time;
  - (e) an order to attend for work and development has been issued under section 47, 47A or 55D but not served, the order is to be taken as being cancelled as from that time.
- (4) If when a person appeals against a fine or the decision giving rise to a fine —
- (a) the 28 day period referred to in section 32(1) has not elapsed, the operation of that section ceases;
  - (b) a warrant of execution issued under section 45 is in force and property has been seized under it, no further action is to be taken under the warrant;
  - (c) an order to attend for work and development issued under section 47, 47A or 55D has been served, the order ceases to have effect;
  - (d) a work and development order made under section 48 is in force, the order ceases to have effect,
- until the appeal is disposed of and, if the fine is then still payable, subsection (5) operates.
- (5) If when the appeal is disposed of the fine is still payable —
- (a) section 32(1) then operates again, but as if the fine had been imposed on the day the appeal was disposed of;

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

(6) In this section —

*disposed of* means determined, dismissed or discontinued.

*[Section 101B inserted by No. 8 of 1996 s. 7; amended by No. 59 of 2004 s. 107; No. 84 of 2004 s. 45; No. 3 of 2008 s. 15.]*

### **101C. Proving licence suspension orders and service of documents**

(1) Evidence —

- (a) that a licence suspension order was made under this Act;
- (b) of the details of a licence suspension order and of the matter to which it relates;
- (c) that a licence suspension order had not, at a particular time, been cancelled;
- (d) that a document issued under this Act has been served on a person in accordance with section 5;
- (e) of any matter relevant to the service of a document issued under this Act,

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

- (2) Unless the contrary is proved, it is to be presumed that anything required to be done as a precondition to taking any action under this Act was done and was done in accordance with the law.
- (3) Unless the contrary is proved, it is to be presumed that a certificate purporting to have been signed by the Registrar was signed by a person who at the time was the Registrar.

*[Section 101C inserted by No. 8 of 1996 s. 7.]*

**s. 101D**

---

**101D.    Validity of licence suspension order not affected by non-receipt of documents**

- (1) The validity of a licence suspension order is not affected by the fact that the person to whom the order relates did not receive any document issued under this Act in respect of the matter to which the order relates.
- (2) Subsection (1) does not affect the operation of section 101 or 101A.
- (3) A court dealing with a matter in which the issue of whether at a particular time a licence suspension order was in force or not is relevant may, if it thinks fit, adjourn the matter so that a person can make an application under section 101 or 101A.

*[Section 101D inserted by No. 8 of 1996 s. 7.]*

**102.    Effect of payment by dishonoured cheque**

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 payment, 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 payment,

but not both.

*[Section 102 amended by No. 3 of 2008 s. 4(4).]*

**103.    Exclusion of rules of natural justice**

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 (corrections).

*[Section 103 amended by No. 65 of 2006 s. 64.]*

**104. Warrants of commitment**

- (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*.

**105. Facsimile warrants**

- (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.

**106. Validity of acts not affected by want of form**

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.

**107. Protection from liability for wrongdoing**

- (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.

**s. 108A**

---

- (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.

**108A. Credit for punishment served in error**

- (1) This section applies if, because of an error in administering this Act, a person (the *offender*) liable to punishment described in subsection (2) is punished for longer than is provided for by law.
- (2) The punishment referred to in subsection (1) is —
- (a) imprisonment under a warrant of commitment issued under section 53; or
  - (b) community corrections activities done under a work and development order made under section 48.
- (3) This section applies whether the error was made, or the person was punished, before or after the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment (Compensation) Act 2009* section 4 comes into operation.
- (4) The Registrar may credit the offender with an amount of money calculated at the rate that, when the amount is credited, applies for working out the time for which an offender is to be imprisoned or do community corrections activities.
- (5) The Registrar may —
- (a) pay the amount credited to the offender; or
  - (b) offset the whole or any part of it against any amount that the offender owes for, or because of, a fine registered under section 41(1); or
  - (c) in circumstances described in subsection (6), apply the whole or any part of it to payment of the whole or any part of the modified penalty and enforcement fees payable in respect of an infringement notice registered under section 16.

- (6) The Registrar may apply an amount in accordance with subsection (5)(c) if —
- (a) under section 18(1), the Registrar could, in respect of the infringement notice, issue a notice of intention to suspend licences; or
  - (b) the Registrar has issued a notice of that kind and the alleged offender has not made an election under section 21.
- (7) Whether or not the Registrar gives the offender a credit under this section, the State is not liable in respect of punishment inflicted as a result of the error.

*[Section 108A inserted by No. 4 of 2009 s. 4.]*

## **108. Regulations**

- (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 action that may be taken under this Act in relation to the enforcement of —
    - (i) an infringement notice that has been the subject of a successful application under section 101;
    - (ii) the payment of a fine that has been the subject of a successful application under section 101A;
    - (iii) the payment of a fine that is still payable after proceedings of a kind referred to in section 101B(1) in relation to it or the decision giving rise to it have been disposed of and where section 101B(3) has operated;
  - (b) for means testing alleged offenders and offenders applying for time to pay orders;

**s. 108**

---

- (c) requiring alleged offenders and offenders to verify information supplied for the purposes of a means test by a statutory declaration or by other means.
- (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 financial institution in connection with a dishonoured payment 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 financial institution in connection with a dishonoured payment 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.

*[Section 108 amended by No. 8 of 1996 s. 8; No. 24 of 2000 s. 51; No. 51 of 2000 s. 11; No. 3 of 2008 s. 4(5) and (6).]*

**[109.]** *Deleted by No. 3 of 2008 s. 16.]*

*[Schedule 1 deleted by No. 3 of 2008 s. 16.]*

## Notes

<sup>1</sup> This is a compilation of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* and includes the amendments made by the other written laws referred to in the following table<sup>1M, 1a, 2</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>	93 of 1994	23 Dec 1994	s. 1 and 2: 23 Dec 1994; Act other than s. 1, 2 and 29(2): 1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211); s. 29(2): 11 Jan 1995 (see s. 2(2))
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 31	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 1996</i> Pt. 2	8 of 1996	28 May 1996	6 Jul 1996 (see s. 2 and <i>Gazette</i> 5 Jul 1996 p. 3215)
<i>Road Traffic Amendment Act 1996</i> Pt. 3 Div. 3	76 of 1996	14 Nov 1996	1 Feb 1997 (see s. 2 and <i>Gazette</i> 31 Jan 1997 p. 613)
<b>Reprint of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> as at 12 Mar 1997</b> (includes amendments listed above)			
<i>Sunday Observance Laws Amendment and Repeal Act 1997</i> s. 5	49 of 1997	10 Dec 1997	10 Dec 1997 (see s. 2)
<i>Fines, Penalties and Infringement Notices Enforcement Act Amendment Regulations 1999</i> published in <i>Gazette</i> 12 Mar 1999 p. 1162			12 Mar 1999
<i>Acts Amendment (Fines Enforcement) Act 2000</i> Pt. 2	9 of 2000	19 May 2000	25 Aug 2000 (see s. 2 and <i>Gazette</i> 25 Aug 2000 p. 4903)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 51	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000</i> Pt. 2	51 of 2000	28 Nov 2000	5 Feb 2001 (see s. 2 and <i>Gazette</i> 30 Jan 2001 p. 615)

**Fines, Penalties and Infringement Notices Enforcement Act 1994**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint of the Fines, Penalties and Infringement Notices Enforcement Act 1994 as at 2 Nov 2001</b> (includes amendments listed above)			
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002</i> s. 61	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2003</i> <sup>3</sup>	14 of 2003	17 Apr 2003	17 Apr 2003 (see s. 2)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 29(3)	50 of 2003	9 Jul 2003	31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833)
<i>Courts Legislation Amendment and Repeal Act 2004</i> Pt. 13	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> Pt. 9 and s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 3: The Fines, Penalties and Infringement Notices Enforcement Act 1994 as at 9 Dec 2005</b> (includes amendments listed above)			
<i>Road Traffic Amendment Act 2006</i> Pt. 4 Div. 1	54 of 2006	26 Oct 2006	30 Jun 2008 (see s. 2 and <i>Gazette</i> 10 Jun 2008 p. 2471)
<i>Prisons and Sentencing Legislation Amendment Act 2006</i> Pt. 8	65 of 2006	8 Dec 2006	4 Apr 2007 (see s. 2 and <i>Gazette</i> 3 Apr 2007 p. 1491)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Fines Legislation Amendment Act 2008</i> Pt. 2	3 of 2008	12 Mar 2008	s. 12(3): 28 Mar 2008 (see s. 2(b)); Pt. 2 other than s. 12(3): 28 Mar 2008 (see s. 2(c) and <i>Gazette</i> 27 Mar 2008 p. 899)

## **Fines, Penalties and Infringement Notices Enforcement Act 1994**

---

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<b>Reprint 4: The Fines, Penalties and Infringement Notices Enforcement Act 1994 as at 8 Aug 2008</b> (includes amendments listed above)			
<i>Fines, Penalties and Infringement Notices Enforcement Amendment (Compensation) Act 2009</i>	4 of 2009	14 May 2009	s. 1 and 2: 14 May 2009 (see s. 2(a)); Act other than s. 1 and 2: 23 Jun 2009 (see s. 2(b) and <i>Gazette</i> 23 Jun 2009 p. 2423)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 3 Div. 2</i>	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
<i>Statutes (Repeals and Minor Amendments) Act 2011 s. 27</i>	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))

<sup>1M</sup> Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 12 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### **Provisions that have not come into operation**

---

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 23</i> <sup>4</sup>	8 of 2012	21 May 2012	Operative on commencement of the <i>Road Traffic (Administration) Act 2008</i> (see s. 2(d))

---

<sup>2</sup> The *Sentencing Legislation Amendment and Repeal Act 1999* s. 26 did not come into operation and was repealed by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 31.

<sup>3</sup> The *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2003* s. 12 reads as follows:

“

**12. Validation**

(1) In this section —

**agreement** means an agreement or arrangement for the payment of an amount owed or an amount outstanding (within the meaning of sections 40 and 61 respectively of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*);

**commencement** means the day on which this Act comes into operation;

**offender** means —

(a) an offender within the meaning of section 28; or

(b) a body corporate referred to in section 61,

of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(2) An agreement entered into, or purportedly entered into, by or on behalf of the Sheriff of Western Australia with an offender before the commencement has, and is deemed always to have had, force and effect.

(3) An agreement entered into, or purportedly entered into, by a delegate of the Sheriff of Western Australia with an offender before the commencement has, and is deemed always to have had, force and effect.

”

<sup>4</sup> On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 23 had not come into operation. It reads as follows:

**Division 23 — *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended**

**106. Act amended**

This Division amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

**107. Section 3 amended**

(1) In section 3(1) delete the definition of ***Director General***.

- (2) In section 3(1) insert in alphabetical order:

**Director General** means the CEO as defined in the *Road Traffic (Administration) Act 2008* section 4;

**road law** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4;

- (3) In section 3(1) in the definition of **driver's licence** delete “granted under the *Road Traffic Act 1974* and includes an extraordinary licence granted under that Act;” and insert:

as defined in the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1) and includes an extraordinary licence as defined in that section;

- (4) In section 3(1) in the definition of **vehicle licence** delete “for a vehicle issued under Part III of the *Road Traffic Act 1974*.” and insert:

granted in respect of a vehicle under the *Road Traffic (Vehicles) Act 2012*.

**108. Section 26 amended**

- (1) In section 26(1) delete “section 102 of the *Road Traffic Act 1974*” and insert:

the *Road Traffic (Administration) Act 2008* section 79

- (2) In section 26(2):

- (a) delete “the *Road Traffic Act 1974* —” and insert:

a road law —

- (b) delete “a traffic” (each occurrence) and insert:

an

- (c) delete “section 51(1)(a) of that Act and, for the purposes of Part VIA of that Act,” and insert:

the *Road Traffic (Authorisation to Drive) Act 2008*  
section 16(1)(a), and for the purposes of Part 4 of that Act,

- (3) Delete section 26(4) and insert:
- (4) In subsection (2)(a) and (b) —  
***infringement notice*** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4.

Note: The heading to amended section 26 is to read:  
**Road laws: effect of proceedings under this Part**

**109. Various references to “the *Road Traffic Act 1974*” amended**

In the provisions listed in the Table delete “the *Road Traffic Act 1974*” and insert:

a road law

**Table**

s. 9	s. 10
s. 19(9)	s. 20(6)
s. 27A(9)	s. 43(9)
s. 44(6)	s. 47A(5)
s. 55A(9)	

**Defined Terms**

---

**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
agreement.....	108(7)
alleged offence.....	11
alleged offender.....	11
amending provision.....	53(4), 53(8a)
amount owed.....	40
CEO (corrections).....	3(1)
commencement.....	108(7)
community corrections activities.....	28(1)
community corrections centre.....	28(1)
community corrections officer.....	28(1)
court.....	28(1)
court officer.....	28(1)
Director General.....	3(1)
dishonoured payment.....	3(1)
disposed of.....	101B(6)
driver's licence.....	3(1)
due date.....	27C(1), 55C(1)
dwelling.....	63
election.....	11
enforcement fees.....	11, 28(1), 63
fine.....	28(1), 59
give.....	3(1)
infringement notice.....	11
interest.....	70(1)
mobile home.....	63
modified penalty.....	11
offender.....	28(1), 63, 108A
paid.....	3(1)
period served.....	53(7)
personal property.....	63
place.....	63
prescribed enactment.....	11
principal enactment.....	11
prosecuting authority.....	11, 39(2)
prosecuting officer.....	11
public authority.....	70(1)
reciprocating court.....	59
reciprocating State or Territory.....	59
registered.....	11, 28(1), 96(7)



**Defined Terms**

---

Registrar .....	3(1)
Registry .....	3(1)
required hours .....	50(1)(a)
saleable interest .....	63, 71(1), 88(1)
serve .....	3(1)
Sheriff .....	63
specified period .....	53(7)
the amount outstanding .....	61(1)(b)
the applicant .....	101(1), 101A(1)
the claimant .....	93(1)
the due date .....	18(3), 42(3)
the proceeds .....	96(1)
time to pay order .....	28(1)
traffic infringement notice .....	26(4)
vehicle .....	63
vehicle licence .....	3(1)
warrant .....	63
warrant amount .....	53(6) and (7)
work and development order .....	28(1)