



Western Australia

Fines, Penalties and Infringement Notices Enforcement Act 1994

Fines, Penalties and Infringement Notices Enforcement Act 1994

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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*.

2. Commencement

- (1) Subject to this section this Act comes into operation on such day as is fixed by proclamation.
- (2) Section 29(2) has no effect unless the *Young Offenders Act 1994* is enacted, and, if that Act receives the Royal Assent after the day on which this Act comes into operation, section 29(2) comes into operation on the day on which that Act receives the Royal Assent.

3. Terms used

- (1) In this Act —

approved form means a form approved in writing by the CEO (fines enforcement);

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;

CEO (fines enforcement) means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

child means a person who is under 18 years of age;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

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

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

electricity corporation means a corporation established under the *Electricity Corporations Act 2005* section 4(1);

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

hardship has a meaning affected by section 4A;

number plate has the meaning given in the *Road Traffic (Vehicles) Act 2012* section 3(1);

paid means paid in full;

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

Registrar's website means a website, or a part of a website, maintained by or on behalf of the Registrar;

Registry means the Fines Enforcement Registry established under section 6;

remote area means an area designated as a remote area under regulations made for the purposes of section 4B;

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

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

Sheriff means the Sheriff of Western Australia;

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

work and development order (WDO) means an order made under section 48, as amended from time to time.

[(2) *deleted*]

[Section 3 amended: 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; No. 8 of 2012 s. 107; No. 48 of 2012 s. 4; No. 25 of 2013 s. 43(2) and (3); No. 25 of 2020 s. 9.]

4. General principles relating to enforcement of fines

- (1) A person performing a function under this Act must have regard to the principles set out in subsection (2).
- (2) For the purposes of subsection (1), the principles are —
 - (a) that imprisonment for failure to pay a fine is an enforcement measure of last resort; and
 - (b) that an offender who is experiencing hardship affecting the offender's capacity to pay a fine or to perform the requirements of a work and development order should not be imprisoned by reason only of a failure to pay a fine.

[Section 4 inserted: No. 25 of 2020 s. 10.]

4A. Hardship

- (1) For the purposes of this Act, a person is experiencing hardship if the person —
 - (a) is experiencing financial hardship; or
 - (b) has been or might be subjected or exposed to family violence (as defined in the *Restraining Orders Act 1997* section 3(1)); or
 - (c) has a mental illness (as defined in the *Mental Health Act 2014* section 4); or
 - (d) has a disability (as defined in the *Disability Services Act 1993* section 3); or

- (e) is homeless; or
 - (f) is experiencing alcohol or other drug use problems.
- (2) Subsection (1) does not limit the circumstances in which a person may be experiencing hardship for the purposes of this Act.

[Section 4A inserted: No. 25 of 2020 s. 10.]

4B. Remote areas

- (1) The regulations may designate 1 or more areas of the State as remote areas for the purposes of this Act.
- (2) Regulations made for the purposes of subsection (1) must not designate as a remote area an area that includes the metropolitan region (as defined in the *Planning and Development Act 2005* section 4(1)) or any part of the metropolitan region.

[Section 4B inserted: No. 25 of 2020 s. 10.]

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 this Act, if a fine has been imposed on a person, the person's last known address may be taken to be —
- (a) the address that under section 30 was supplied to the court that imposed the fine; or
 - (b) the address on any summons or other document issued to the offender in connection with the charge giving rise to the fine,

s. 5A

unless the person has advised the Registry or the Sheriff that the person has another address.

- (4) For the purposes of this Act, a person's last known address may be taken to be the person's current address shown in the records of —
- (a) the Director General; or
 - (b) an electricity corporation; or
 - (c) a government department, or agency, of the Commonwealth.
- (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: No. 76 of 1996 s. 30; No. 3 of 2008 s. 5(3); No. 48 of 2012 s. 5; No. 25 of 2013 s. 43(4); No. 25 of 2020 s. 11.]

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 or in other circumstances specified in the regulations, be given or served by electronic means in accordance with the regulations.
- (2) Subsection (1) does not apply to giving or serving —
- (a) any document that under this Act must be served personally, other than any of the following —
 - (i) an order to attend for work and development under section 47;
 - (ii) a work and development order;
 - [(b), (c) deleted]*
 - (d) a document under section 21(4)(b);

- (e) a summons or arrest warrant issued under section 52Q;
 - (f) any information or a document or notice under Part 7, other than a garnishee order under section 95O or 95V;
 - (g) subject to section 105, an enforcement warrant 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: No. 3 of 2008 s. 5(1); amended: No. 48 of 2012 s. 43; No. 20 of 2013 s. 75; No. 25 of 2020 s. 12.]

5B. Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Part 2 applies

- (1) The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.
- (2) Subsection (1) is subject to section 5A(2).

[Section 5B inserted: No. 20 of 2013 s. 76.]

5C. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

[Section 5C inserted: No. 25 of 2020 s. 13.]

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: 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: 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 —
 - (aa) the power under section 21A to issue an enforcement warrant; and
 - (a) the power under section 45 to issue an enforcement warrant; and
 - (b) the power under section 52F to issue a fine expiation order.
- (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: No. 14 of 2003 s. 5; amended: No. 48 of 2012 s. 6 and 43; No. 25 of 2020 s. 14.]

8. Payments to 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 a road law in connection with any matter arising out of or in connection with the performance of his or her functions under this Act.

[Section 9 amended: No. 8 of 2012 s. 109.]

[10, 10A. Deleted: No. 25 of 2020 s. 15.]

10B. Registrar to keep record of outstanding fines and other amounts payable by young persons

- (1) In this section —

relevant amount means —

- (a) a fine to which the *Young Offenders Act 1994* section 65(1)(a) applies; or
- (b) a bail undertaking to which the *Young Offenders Act 1994* section 65(1)(b) applies; or
- (c) a recognisance to which the *Young Offenders Act 1994* section 65(1)(c) applies;

young person has the meaning given in the *Young Offenders Act 1994* section 3.

s. 10B

- (2) The Registrar must maintain a record of all relevant amounts to which this section applies, including details of —
- (a) the young person by whom the relevant amount is payable; and
 - (b) the time specified by the court within which the relevant amount is to be paid; and
 - (c) any order of the court that the relevant amount is to be paid in instalments; and
 - (d) the payment of the relevant amount or of any instalment of the relevant amount; and
 - (e) when the young person by whom the relevant amount is payable has defaulted in the payment of the relevant amount or of any instalment of the relevant amount.
- (3) As soon as practicable after the record maintained by the Registrar under subsection (2) indicates that, in relation to a relevant amount, a young person has defaulted in the payment of the relevant amount or of any instalment of the relevant amount, the Registrar must notify the default to —
- (a) in the case of a fine, the court that imposed the fine; or
 - (b) in the case of a bail undertaking or a recognisance, the court that ordered the bail undertaking or recognisance to be forfeited.

[Section 10B inserted: No. 20 of 2013 s. 77.]

Part 3 — Infringement notices

Division 1 — Preliminary

11. Terms used

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 Act in relation to an infringement notice and includes the registration fee referred to in section 16;

enforcement warrant means a warrant issued under section 21A;

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;

licence suspension order means an order made under section 19;

modified penalty means the amount of money prescribed in a written law and specified in an infringement notice as the amount that the alleged offender is to pay if the alleged offender 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;

time to pay order means an order made under section 21C, as amended from time to time;

unpaid infringement amount, in relation to a registered infringement notice, means that amount of the modified penalty, and enforcement fees, specified in the order to pay or elect for the infringement notice that has not been paid or recovered under an enforcement warrant.

[Section 11 amended: No. 84 of 2004 s. 80; No. 48 of 2012 s. 9; No. 25 of 2020 s. 16.]

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; and
 - (b) the infringement notice has not been withdrawn under that enactment; and
 - (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; and
- (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) any information prescribed by the regulations,

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; and

-
- (b) on a date specified in the certificate a final demand was, in accordance with section 14, served on the alleged offender; and
- (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; and
 - (ii) the modified penalty, and enforcement fees, specified in the final demand have not been paid in accordance with the final demand; and
 - (iii) an election has not been made by the alleged offender in accordance with the final demand; and
 - (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: No. 84 of 2004 s. 80; No. 25 of 2020 s. 17.]*

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.
- (2A) An order to pay or elect must not relate to more than one registered infringement notice.
- (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 or issue an enforcement warrant.
- (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.

[Section 17 amended: No. 48 of 2012 s. 10; No. 25 of 2020 s. 18.]

18. Notice of intention to enforce

- (1) If —
- (a) 28 days have elapsed since the date of issue of an order to pay or elect; and
 - (b) the unpaid infringement amount in respect of the infringement notice to which the order relates has 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 enforce.
- (2) A notice of intention to enforce must be served on the alleged offender.
- (3) A notice of intention to enforce must contain a statement to the effect that unless before a date specified in the notice (the *due date*) either —
- (a) the unpaid infringement amount in respect of the infringement notice to which the order relates is paid to the Registry; or
 - (b) an election under section 21 is made by the alleged offender,
- the Registrar —
- (c) may make a licence suspension order in respect of the alleged offender; and
 - (d) may issue an enforcement warrant 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 enforce.
- (5) A notice of intention to enforce must also —
- (a) state the date and time when the licence suspension order will have effect if it is made; and

- (b) explain that if a licence suspension order is made it will generally not be cancelled until the modified penalty and enforcement fees are paid; and
 - (c) explain the terms of the licence suspension order that may be made; and
 - (ca) state that a licence suspension order cannot be made in respect of an alleged offender who is an individual if the alleged offender's last known address is in a remote area; and
 - (cb) explain the effect of section 19(2A)(b) and advise an alleged offender who is an individual to give the Registrar any information about the alleged offender's personal circumstances that is relevant to whether section 20A(3) would apply if a licence suspension order were made; and
 - (da) state that, if the Registrar issues an enforcement warrant —
 - (i) the alleged offender will cease to be entitled to make an election under section 21 in relation to the infringement notice to which the warrant relates; and
 - (ii) the alleged offender will be required to pay the modified penalty, and enforcement fees, specified in the warrant;
- and
- (db) state the effect that an enforcement warrant will have if it is issued; and
 - (d) contain such other information as is prescribed.

[Section 18 amended: No. 48 of 2012 s. 11; No. 25 of 2020 s. 19.]

19. Licence suspension order

- (1) If —
- (a) 28 days have elapsed since the date of issue of a notice of intention to enforce in relation to an infringement notice; and
 - (b) the unpaid infringement amount in respect of the infringement notice has not been paid to the Registry; and
 - (c) the alleged offender has not made an election under section 21,

then, whether or not an enforcement warrant issued under section 21A is in force, 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.
- (2A) The Registrar cannot make a licence suspension order in respect of an alleged offender who is an individual if —
- (a) the alleged offender's last known address is in a remote area; or
 - (b) the alleged offender has given the Registrar information about the alleged offender's personal circumstances that gives the Registrar reasonable grounds to believe that section 20A(3) would apply to the alleged offender if the licence suspension order were made.
- (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; or
 - (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 enforce and must not be earlier than when the order is made.
- (6) If the Registrar makes a licence suspension order, the Registrar 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 —
- (a) state that a licence suspension order has been made and explain the terms of the order; and
 - (b) state the date and time when the licence suspension order has effect; and
 - (c) explain that an alleged offender who is an individual can request that the order be cancelled under section 20A(1).
- (9) For the purposes of this Act and a road law, a licence suspension order —
- (a) takes effect on the date and at the time specified in the order; and
 - (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: No. 76 of 1996 s. 30; No. 8 of 2012 s. 109; No. 48 of 2012 s. 12; No. 25 of 2020 s. 20.]

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 recovered under an enforcement warrant; 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.
- (2A) The Registrar must cancel a licence suspension order if the alleged offender gives the Registrar a notice stating that the alleged offender's current address is in a remote area.
- (2B) A notice under subsection (2A) must be in the approved form and accompanied by any documentation or evidence required by the approved form.
- (3) If a licence suspension order is cancelled under subsection (2) or (2A) or section 20A(5)(b), 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 this section or section 20A(5)(b), the Registrar must advise the Director General forthwith.

- (6) For the purposes of a road law, the cancellation of a licence suspension order takes effect when the order is cancelled.

[Section 20 amended: No. 76 of 1996 s. 30; No. 8 of 2012 s. 109; No. 48 of 2012 s. 13; No. 25 of 2020 s. 21.]

20A. Alleged offender may request cancellation of licence suspension order

- (1) An alleged offender who is an individual may, in accordance with the regulations, request the Registrar to cancel a licence suspension order that has been made in respect of the alleged offender and an infringement notice.
- (2) A request under subsection (1) cannot be made if an election has been made under section 21.
- (3) A request under subsection (1) may be made by an alleged offender if —
- (a) the licence suspension order deprives the alleged offender of —
 - (i) 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 the alleged offender's family; or
 - (ii) the principal means of obtaining income with which to pay the unpaid infringement amount;
 - or
 - (b) the licence suspension order seriously hinders the alleged offender in performing family or personal responsibilities.
- (4) Without limiting subsection (3)(a)(ii), the Registrar may, for the purposes of that subsection, consider the effect that the licence suspension order has had or will have on the ability of the alleged offender to seek or obtain employment.

- (5) If the Registrar is satisfied that subsection (3) applies to the alleged offender, the Registrar —
- (a) must agree to the request; and
 - (b) must cancel the licence suspension order; and
 - (c) cannot make another licence suspension order under section 19 in respect of the alleged offender and the infringement notice unless —
 - (i) the Registrar is satisfied that subsection (3) no longer applies to the alleged offender; or
 - (ii) the Registrar makes a request under section 20B(2) and the alleged offender does not comply with the request.

[Section 20A inserted: No. 25 of 2020 s. 22.]

20B. Registrar may request further information

- (1) This section applies if the Registrar —
- (a) does not make a licence suspension order in respect of an alleged offender because of section 19(2A)(b); or
 - (b) agrees to an alleged offender's request under section 20A(1) to cancel a licence suspension order.
- (2) The Registrar may request the alleged offender to provide, by a specified date, information or evidence in relation to whether section 20A(3) would apply if a licence suspension order were made in relation to the alleged offender.
- (3) The request must be in writing and must be served on the alleged offender.
- (4) The Registrar must not make a request under subsection (2) more than once in every period of 12 months unless the Registrar is advised that the personal circumstances of the alleged offender have changed.
- (5) If the alleged offender does not comply with a request under subsection (2) the Registrar may, for the purposes of

section 19(2A)(b), presume that section 20A(3) would not apply to the alleged offender if a licence suspension order were made.

[Section 20B inserted: No. 25 of 2020 s. 22.]

21A. Enforcement warrant

- (1) If —
- (a) 28 days have elapsed since the day on which a notice of intention to enforce was issued in relation to an infringement notice; and
 - (b) the unpaid infringement amount in respect of the infringement notice has not been paid to the Registry; and
 - (c) the alleged offender has not made an election under section 21,

[(d) deleted]

then, whether or not a licence suspension order made under section 19 is in force, the Registrar may issue an enforcement warrant.

- (2) An enforcement warrant must be in the prescribed form and be directed to the Sheriff.
- (3) An enforcement warrant must specify the unpaid infringement amount in respect of the infringement notice.
- (4) An enforcement warrant must be executed under Part 7.
- (5) The Registrar may at any time cancel an enforcement warrant for good reason.

[Section 21A inserted: No. 48 of 2012 s. 14; amended: No. 25 of 2020 s. 23.]

Division 2A — Time to pay orders

[Heading inserted: No. 25 of 2020 s. 24.]

21B. Application for time to pay order

- (1) An alleged offender may apply to the Registrar for a time to pay order in respect of an infringement notice that has been registered.
- (2) An application under subsection (1) must be made in accordance with the regulations and must include an offer to pay the unpaid infringement amount in respect of the infringement notice before a specified date or by regular instalments.
- (3) An application under subsection (1) —
 - (a) can be made at any time after the infringement notice is registered, whether or not a licence suspension order is in force in respect of the alleged offender and the infringement notice; but
 - (b) cannot be made if —
 - (i) an enforcement warrant is in force in relation to the alleged offender and the infringement notice; or
 - (ii) the alleged offender has made an election under section 21.

[Section 21B inserted: No. 25 of 2020 s. 24.]

21C. Making time to pay order

- (1) On an application under section 21B, the Registrar may require the alleged offender to undergo a means test.
- (2) On an application under section 21B, the Registrar, if the Registrar thinks fit, may make a time to pay order.

- (3) The Registrar must make a time to pay order on an application under section 21B if the Registrar is satisfied that —
- (a) the alleged offender does not have the means to pay the unpaid infringement amount in respect of the infringement notice within 28 days after the application is made; and
 - (b) the alleged offender's offer to pay the unpaid infringement amount by a specified date or by regular instalments is reasonable; and
 - (c) either —
 - (i) the alleged offender has not previously contravened a time to pay order under this Act (including a time to pay order in relation to a different infringement notice or a time to pay order made under section 33); or
 - (ii) there is a reasonable excuse for any previous contravention by the alleged offender of a time to pay order under this Act.
- (4) A time to pay order may require the alleged offender —
- (a) to pay the unpaid infringement amount in respect of the infringement notice before a set date that is later than 28 days after the day on which the time to pay order is made; or
 - (b) to pay the unpaid infringement amount in respect of the infringement notice by instalments on or before set dates.
- (5) A time to pay order must be served on the alleged offender.
- (6) If the Registrar refuses to make a time to pay order on an application under section 21B, notice of the refusal must be served on the alleged offender.

[Section 21C inserted: No. 25 of 2020 s. 24.]

21D. Alleged offender may apply to have time to pay order amended

- (1) An alleged offender who has obtained a time to pay order in respect of an infringement notice may apply to the Registrar, in accordance with the regulations, to have the time to pay order amended.
- (2) On an application the Registrar may require the alleged offender to undergo a means test.
- (3) On an application the Registrar, if the Registrar thinks fit, may amend a time to pay order.
- (4) An amended time to pay order must be served on the alleged offender.
- (5) If the Registrar refuses to amend a time to pay order, notice of the refusal must be served on the alleged offender.

[Section 21D inserted: No. 25 of 2020 s. 24.]

21E. Registrar may amend time to pay order

- (1) The Registrar may at any time request an alleged offender who has obtained a time to pay order in respect of an infringement notice to undergo a means test.
- (2) The request must be in writing and must be served on the alleged offender.
- (3) After means testing the alleged offender, the Registrar, if the Registrar thinks fit, may amend the time to pay order.
- (4) An amended time to pay order must be served on the alleged offender.
- (5) The Registrar must not require an alleged offender to undergo a means test more than once in every period of 12 months, unless the Registrar is advised that the financial circumstances of the alleged offender have changed.

[Section 21E inserted: No. 25 of 2020 s. 24.]

21F. Payments ordered must be within means of alleged offender

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

[Section 21F inserted: No. 25 of 2020 s. 24.]

21G. Registrar may cancel time to pay order

- (1) The Registrar may cancel a time to pay order if the alleged offender —
 - (a) contravenes the order; or
 - (b) does not comply with a request made under section 21E(1).
- (2) Notice of the cancellation must be served on the alleged offender.

[Section 21G inserted: No. 25 of 2020 s. 24.]

21H. Enforcement action suspended while time to pay order is in force

- (1) If the Registrar makes a time to pay order in respect of an infringement notice, the Registrar must, as soon as practicable, cancel any licence suspension order in force in relation to the infringement notice.
- (2) If a time to pay order is in force in respect of an infringement notice, the Registrar must not, despite any other provision of this Part —
 - (a) issue a notice of intention to enforce under section 18 in relation to the infringement notice; or
 - (b) make a licence suspension order in relation to the infringement notice; or
 - (c) issue an enforcement warrant in relation to the infringement notice.

[Section 21H inserted: No. 25 of 2020 s. 24.]

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; and
 - (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 21C; and
 - (d) before an enforcement warrant is issued in respect of the modified penalty and enforcement fees,

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; and
 - (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: 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); No. 48 of 2012 s. 15; No. 25 of 2020 s. 25.]

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; and
 - (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
 - (ca) if an enforcement warrant has been issued in respect of the alleged offender and the infringement notice — the warrant is cancelled; 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 —
 - (a) the alleged offender is to be refunded any amount paid under this Part by the alleged offender in respect of the alleged offence; and

(b) if —

- (i) an enforcement warrant was issued in respect of the infringement notice; and
- (ii) property of the alleged offender was seized and sold under the enforcement warrant before it was cancelled under subsection (4)(ca),

the alleged offender is to be paid an amount equal to the market value of the sold property; and

(c) if —

- (i) an enforcement warrant was issued in respect of the infringement notice; and
- (ii) under the enforcement warrant, a vehicle licence cancellation and disqualification order was made under section 95J in respect of a vehicle of the alleged offender,

the alleged offender is to be paid an amount calculated in accordance with the regulations; and

(d) if any amount has been paid to the Sheriff under a garnishee order issued under an enforcement warrant that was issued in respect of the infringement notice, the alleged offender is to be refunded that amount; and

(e) if any administration fee of a kind referred to in section 95Z has been charged by the bank in relation to a garnishee order referred to in paragraph (d), the alleged offender is to be paid an amount equal to that fee by the Sheriff.

[Section 22 amended: No. 76 of 1996 s. 30; No. 59 of 2004 s. 107; No. 47 of 2011 s. 27; No. 48 of 2012 s. 16; No. 25 of 2020 s. 26.]

23. Effect of 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 laws: effect of proceedings under this Part

- (1) This section applies if the *Road Traffic (Administration) Act 2008* section 79 is a prescribed enactment.
- (2) If the alleged offence is under a road law —
 - (a) the payment of the whole or a part of the modified penalty and associated enforcement fees in relation to an 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 an infringement notice,

constitutes a conviction of the alleged offender for the alleged offence for the purposes of the *Road Traffic (Authorisation to Drive) Act 2008* section 16(1)(a), and for the purposes of Part 4 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 subsection (2)(a) and (b) —
infringement notice has the meaning given in the *Road Traffic (Administration) Act 2008* section 4.

[Section 26 amended: No. 54 of 2006 s. 37; No. 3 of 2008 s. 4(3); No. 8 of 2012 s. 108.]

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; or
 - (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: No. 78 of 1995 s. 44; No. 77 of 2006 s. 4.]

27A. Certain decisions of Registrar are final

A decision of the Registrar under section 20A or Division 2A is final.

[Section 27A inserted: No. 25 of 2020 s. 27.]

[27B-27D. Deleted: No. 25 of 2020 s. 27.]

Part 4 — Fines

Division 1 — Preliminary

28. Terms used

(1) In this Part —

amount owed, in relation to a fine, means the amount of the fine and any enforcement fees relating to the fine —

- (a) that has not been paid or recovered under an enforcement warrant; and
- (b) the liability to pay which has not been discharged under section 51, 52H, 52I, 52T(3) or 53;

audio link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

authorised police officer has the meaning given in the *Bail Act 1982* section 3(1);

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 custody centre has the meaning given in the *Court Security and Custodial Services Act 1999* section 3;

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

detainee means a person who is detained in a detention centre;

detention centre has the meaning given in the *Inspector of Custodial Services Act 2003* section 3;

enforceable registered fine, in relation to an offender, means a fine imposed on the offender if —

- (a) the fine is registered; and
- (b) the amount owed in respect of the fine has not been paid in full or recovered in full under an enforcement warrant; and
- (c) the liability of the offender to pay the amount owed in respect of the fine has not been wholly discharged under section 51, 52H, 52I, 52T(3) or 53;

enforcement fees means prescribed fees imposed in connection with proceedings under this Act in relation to a fine;

enforcement instrument means —

- (a) a licence suspension order; or
- (b) an enforcement warrant; or
- (c) an order to attend for work and development; or
- (d) a fine expiation order;

enforcement warrant means a warrant issued under section 45;

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;

fine enforcement (WDO) order means an order made under the *Sentencing Act 1995* section 57A(3);

fine expiation order means an order issued under section 52F;

licence suspension order means an order made under section 43;

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

ongoing fine expiation order has the meaning given in section 52I;

order to attend for work and development means an order issued under section 47(1);

person in court custody means a person in custody as defined in the *Court Security and Custodial Services Act 1999* section 3 for whom the CEO (as defined in that section) is responsible under that Act;

police facility means a police station or other premises managed or controlled by the Commissioner of Police at which a person may be detained in police custody;

prison has the meaning given in the *Inspector of Custodial Services Act 2003* section 3;

prisoner has the meaning given in the *Prisons Act 1981* section 3(1);

registered means registered with the Registry for enforcement under section 32(2)(a) or 32B;

responsible officer, in relation to an offender arrested under an arrest warrant issued under section 52Q(1)(b), has the meaning given in section 52ZC(2);

time to pay order means an order made under section 33, as amended from time to time;

video link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

warrant of commitment means a warrant of commitment issued under section 52S;

warrant of commitment inquiry has the meaning given in section 52M(1);

warrant of commitment inquiry process has the meaning given in section 52M(2).

[(2) *deleted*]

- (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: 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; No. 20 of 2013 s. 79; No. 25 of 2020 s. 28.]

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: 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: No. 8 of 1996 s. 9.]

Division 2 — Payment and registration of fines

[Heading amended: No. 25 of 2020 s. 29.]

Subdivision 1 — Fines taken to be registered when imposed

[Heading inserted: No. 25 of 2020 s. 30.]

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: No. 78 of 1995 s. 44; No. 77 of 2006 s. 4.]

32. Offender must pay fine or get time to pay order

- (1) When 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) When a fine is imposed —
 - (a) the fine is to be taken to be registered; but
 - (b) the Registrar must not take any action under this Part to enforce the fine unless —
 - (i) a period of 28 days after the day on which the fine was imposed has elapsed; and
 - (ii) the offender has not, within that period, either paid the fine or applied for a time to pay order in respect of the fine, or the offender's application

for a time to pay order in respect of the fine has been refused.

- (3) Subsection (2)(b) does not apply if, at the time the fine is first taken to be registered —
- (a) another fine imposed on the offender, or any other amount payable by the offender, is already registered under this Part, and the fine or amount has not been paid and no time to pay order has been obtained in respect of the fine or amount; or
 - (b) one of the methods of enforcement available under this Part is already being applied in respect of another enforceable registered fine of the offender.
- [(c) *deleted*]
- (4) This section is subject to the *Sentencing Act 1995* sections 57A, 58 and 59.
- (5) If a fine has been imposed before the date on which the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 81 comes into operation (the **commencement date**) —
- (a) this section applies to and in relation to the fine only if the fine has not been paid before the commencement date; and
 - (b) subsection (2) does not apply to or in relation to the fine if —
 - (i) the fine has been registered before the commencement date; and
 - (ii) that registration has not been cancelled before the commencement date;
- and
- (c) if a time to pay order is in force in respect of the fine immediately before the commencement date, that time to pay order continues in force under and subject to this Division.

[Section 32 inserted: No. 20 of 2013 s. 81; amended: No. 25 of 2020 s. 31.]

Subdivision 2 — Fines registered at request of prosecuting authority

[Heading inserted: No. 25 of 2020 s. 32.]

32A. Application

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

[Section 32A inserted: No. 25 of 2020 s. 32.]

32B. Fine may be registered at request of prosecuting authority

(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.

(2) In subsection (1) —

prosecuting authority means —

- (a) if the *Sentencing Act 1995* section 60(2) or (3) applies to the fine — the person that is to be paid the fine, or who administers the fund or account that is to be credited with the fine, under that section; or
- (b) if the fine was imposed under a law of the Commonwealth — a person who administers proceedings in relation to offences under that law.

[Section 32B inserted: No. 25 of 2020 s. 32.]

Subdivision 3 — Time to pay orders

[Heading inserted: No. 25 of 2020 s. 32.]

32C. Application for time to pay order

(1) An offender may apply to the Registrar for a time to pay order in respect of a fine imposed on the offender that has been registered.

- (2) An application under subsection (1) must be made in accordance with the regulations and must include an offer to pay the amount owed in respect of the fine before a specified date or by regular instalments.
- (3) An application under subsection (1) —
- (a) can be made at any time after the fine is registered, whether or not —
 - (i) a licence suspension order, order to attend for work and development or WDO is in force in relation to the offender and the fine; or
 - (ii) a warrant of commitment inquiry process is occurring in relation to the offender and the fine;
 - but
 - (b) cannot be made if an enforcement warrant, ongoing fine expiation order or warrant of commitment is in force in relation to the offender and the fine.

[Section 32C inserted: No. 25 of 2020 s. 32.]

33. Making time to pay order

- (1) On an application under section 32C, the Registrar may require the offender to undergo a means test.
- (2) On an application under section 32C, the Registrar, if the Registrar thinks fit, may make a time to pay order.
- (3) The Registrar must make a time to pay order on an application under section 32C if —
- (a) the Registrar is satisfied that the offender does not have the means to pay the amount owed in respect of the fine within 28 days after the application is made; and
 - (b) the Registrar is satisfied that the offender's offer to pay the amount owed by a specified date or by regular instalments is reasonable; and

- (c) the Registrar is satisfied that either —
 - (i) the offender has not previously contravened a time to pay order under this Act (including a time to pay order in relation to a different fine or a time to pay order made under section 21C); or
 - (ii) there is a reasonable excuse for any previous contravention by the offender of a time to pay order under this Act;and
- (d) a warrant of commitment inquiry process is not occurring in relation to the offender and the fine.
- (4) A time to pay order may require the offender —
 - (a) to pay the amount owed in respect of the fine before a set date that is later than 28 days after the day on which the time to pay order is made; or
 - (b) to pay the amount owed in respect of the fine by instalments on or before set dates.
- (5) A time to pay order must be served on the offender.
- (6) If the Registrar refuses to make a time to pay order on an application under section 32C, notice of the refusal must be served on the offender.

[Section 33 inserted: No. 25 of 2020 s. 32.]

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 Registrar, in accordance with the regulations, to have the time to pay order amended.
- [(2) deleted]*
- (3) On an application the Registrar may require the offender to undergo a means test.

- (4) On an application the Registrar, if the Registrar thinks fit, may amend a time to pay order.
- (5) An amended time to pay order must be served on the offender.
- (6) If the Registrar refuses to amend a time to pay order, notice of the refusal must be served on the offender.

[Section 34 amended: No. 20 of 2013 s. 83; No. 25 of 2020 s. 33.]

35. Registrar may amend time to pay order

- (1) The Registrar 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 amount owed in respect of the fine has been paid.
- (3) The request must be in writing and must be served on the offender.
- (4) After means testing the offender, the Registrar, if the Registrar thinks fit, may amend the time to pay order.
- (5) An amended time to pay order must be served on the offender.
- (6) The Registrar must not require an offender to undergo a means test more than once in every period of 12 months, unless the Registrar is advised that the financial circumstances of the offender have changed.

[Section 35 amended: No. 20 of 2013 s. 84; No. 25 of 2020 s. 34.]

35A. Payments ordered must be within means of offender

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

[Section 35A inserted: No. 8 of 1996 s. 5; amended: No. 20 of 2013 s. 85.]

36. Registrar may cancel time to pay order

- (1) The Registrar may cancel a time to pay order if the offender —
 - (a) contravenes the order; or
 - (b) does not comply with a request made under section 35(1).
- (2) Notice of the cancellation must be served on the offender.

[Section 36 inserted: No. 25 of 2020 s. 35.]

37. Enforcement action suspended while time to pay order is in force

- (1) If the Registrar makes a time to pay order in respect of a fine, the Registrar must, as soon as practicable, cancel any licence suspension order or order to attend for work and development that is in force in relation to the fine.
- (2) If the Registrar makes a time to pay order in respect of a fine, the CEO (corrections) must, as soon as practicable, cancel any WDO that is in force in relation to the fine.
- (3) If a time to pay order is in force in respect of a fine, the Registrar must not, despite any other provision of this Part —
 - (a) issue a notice of intention to enforce under section 42 in relation to the fine; or
 - (b) make or issue an enforcement instrument in relation to the fine; or
 - (c) make an application under section 52N in relation to the fine.
- (4) If the Registrar makes a time to pay order in respect of a fine while a warrant of commitment inquiry process is occurring in relation to the offender and the fine, the Registrar must, as soon

as practicable, withdraw the application for the warrant of commitment inquiry under section 52ZI.

[Section 37 inserted: No. 25 of 2020 s. 35.]

[38A, 38, 39. Deleted: No. 25 of 2020 s. 35.]

[40. Deleted: No. 25 of 2020 s. 37.]

Subdivision 4 — Cancellation of registration

[Heading inserted: No. 25 of 2020 s. 38.]

41. Cancellation of registration

[(1), (2) deleted]

- (3) At any time after a fine is registered a court officer may, if there is good reason to do so, order the Registrar in writing to cancel the registration, unless —
 - (a) an enforcement warrant or warrant of commitment is in force in relation to the fine; or
 - (b) a warrant of commitment inquiry process is occurring in relation to the fine.
- (4) A court officer may only make an order under subsection (3) in respect of a fine to which Subdivision 2 applies with the consent of the prosecuting authority (as defined in section 32B(2)).
- (5) When the registration of a fine is cancelled —
 - (a) any time to pay order made under section 33 in respect of the fine is cancelled; and
 - (b) any enforcement instrument or WDO in force in respect of the fine is cancelled; and
 - [(c) deleted]*
 - (d) the Registrar must forthwith notify the offender of the cancellation of any time to pay order or licence suspension order that occurs under this subsection.

[Section 41 amended: No. 3 of 2008 s. 11; No. 48 of 2012 s. 43; No. 20 of 2013 s. 88; No. 25 of 2020 s. 39.]

Division 3 — Notice of intention to enforce

[Heading inserted: No. 25 of 2020 s. 40.]

42. Notice of intention to enforce

- (1) The Registrar may issue a notice of intention to enforce in relation to a registered fine.
- (2) A notice of intention to enforce must be served on the offender.
- (3) A notice of intention to enforce 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 —
 - (a) may make a licence suspension order in respect of the offender; and
 - (b) may issue an enforcement warrant in respect of the offender; and
 - (c) may issue an order to attend for work and development to the offender.

[(d) deleted]
- (4) The due date must not be earlier than 28 days after the date of issue of the notice of intention to enforce.
- (5) A notice of intention to enforce must also —
 - (a) state the date and time when the licence suspension order will have effect if it is made; and
 - (b) explain that if a licence suspension order is made it will generally not be cancelled until the amount owed is paid; and
 - (c) explain the effect of the licence suspension order that may be made; and

- (ca) state that a licence suspension order cannot be made in respect of an offender who is an individual if the offender's last known address is in a remote area; and
- (cb) explain the effect of section 43(2A)(b) and advise an offender who is an individual to give the Registrar any information about the offender's personal circumstances that is relevant to whether section 44A(2) would apply if a licence suspension order were made; and
- (d) state the effect that an enforcement warrant will have if it is issued; and
- (da) explain the circumstances in which a fine expiation order can be issued and how an application for a fine expiation order can be made; and
- (db) explain that, if other enforcement action is unsuccessful, the Registrar can apply to the Magistrates Court for a warrant of commitment inquiry to be held; and
- (dc) explain the principles in section 4; and
- (e) contain such other information as is prescribed.

[Section 42 inserted: No. 48 of 2012 s. 20; amended: No. 25 of 2020 s. 41.]

Division 3A — Licence suspension orders

[Heading inserted: No. 25 of 2020 s. 42.]

43. Licence suspension order

- (1) The Registrar may make a licence suspension order in respect of an offender and an enforceable registered fine if —
 - (a) a notice of intention to enforce has been issued under section 42 in relation to the fine; and
 - (b) the due date specified in that notice has passed.

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

- (2A) The Registrar cannot make a licence suspension order in respect of an offender who is an individual if —
- (a) the offender's last known address is in a remote area; or
 - (b) the offender has given the Registrar information about the offender's personal circumstances that gives the Registrar reasonable grounds to believe that section 44A(2) would apply to the offender if the licence suspension order were made.
- (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; or
 - (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 enforce and must not be earlier than when the order is made.
- (6) If the Registrar makes a licence suspension order, the Registrar 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 —
- (a) state that a licence suspension order has been made and explain the terms of the order; and
 - (b) state the date and time when the licence suspension order has effect; and
 - (c) explain that an offender who is an individual can request that the order be cancelled under section 44A(1).
- (9) For the purposes of this Act and a road law, a licence suspension order —
- (a) takes effect on the date and at the time specified in the order; and
 - (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: No. 8 of 1996 s. 9; No. 76 of 1996 s. 30; No. 8 of 2012 s. 109; No. 48 of 2012 s. 21; No. 25 of 2020 s. 43.]

44. Cancelling licence suspension order

- (1) A licence suspension order is to be taken to be cancelled at the time when the amount owed is paid or recovered under an enforcement warrant.
- (2) Even if the amount owed has not been paid, the Registrar, at any time, may cancel a licence suspension order for good reason.
- (2A) The Registrar must cancel a licence suspension order if the offender gives the Registrar a notice stating that the offender's current address is in a remote area.
- (2B) A notice under subsection (2A) must be in the approved form and accompanied by any documentation or evidence required by the approved form.

- (3) If a licence suspension order is cancelled under subsection (2) or (2A) or section 37(1), 44A(4)(b) or 53A(2)(b), 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 this section or section 37(1), 44A(4)(b) or 53A(2)(b), the Registrar must advise the Director General forthwith.
- (6) For the purposes of a road law, the cancellation of a licence suspension order takes effect when the order is cancelled.

[Section 44 amended: No. 8 of 1996 s. 9; No. 76 of 1996 s. 30; No. 8 of 2012 s. 109; No. 48 of 2012 s. 22; No. 25 of 2020 s. 44.]

44A. Offender may request cancellation of licence suspension order

- (1) An offender who is an individual may, in accordance with the regulations, request the Registrar to cancel a licence suspension order that has been made in respect of the offender and an enforceable registered fine.
- (2) A request under subsection (1) may be made by an offender if —
 - (a) the licence suspension order deprives the offender of —
 - (i) the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the offender or a member of the offender's family; or
 - (ii) the principal means of obtaining income with which to pay the amount owed in respect of the fine;
 - or
 - (b) the licence suspension order seriously hinders the offender in performing family or personal responsibilities.

- (3) Without limiting subsection (2)(a)(ii), the Registrar may, for the purposes of that subsection, consider the effect that the licence suspension order has had or will have on the ability of the offender to seek or obtain employment.
- (4) If the Registrar is satisfied that subsection (2) applies to the offender, the Registrar —
- (a) must agree to the request; and
 - (b) must cancel the licence suspension order; and
 - (c) cannot make another licence suspension order under section 43 in respect of the offender and the fine unless —
 - (i) the Registrar is satisfied that subsection (2) no longer applies to the offender; or
 - (ii) the Registrar makes a request under section 44B(2) and the offender does not comply with the request.

[Section 44A inserted: No. 25 of 2020 s. 45.]

44B. Registrar may request further information

- (1) This section applies if the Registrar —
- (a) does not make a licence suspension order in relation to an offender because of section 43(2A)(b); or
 - (b) agrees to an offender's request under section 44A(1) to cancel a licence suspension order.
- (2) The Registrar may request the offender to provide, by a specified date, information or evidence in relation to whether section 44A(2) would apply if a licence suspension order were made in relation to the offender.
- (3) The request must be in writing and must be served on the offender.
- (4) The Registrar must not make a request under subsection (2) more than once in every period of 12 months unless the

Registrar is advised that the personal circumstances of the offender have changed.

- (5) If the offender does not comply with a request under subsection (2) the Registrar may, for the purposes of section 43(2A)(b), presume that section 44A(2) would not apply to the offender if a licence suspension order were made.

[Section 44B inserted: No. 25 of 2020 s. 45.]

Division 3B — Enforcement warrants

[Heading inserted: No. 25 of 2020 s. 46.]

45. Enforcement warrant

- (1) The Registrar may issue an enforcement warrant in respect of an offender and an enforceable registered fine if —
- (a) a notice of intention to enforce has been issued under section 42 in relation to the fine; and
 - (b) the due date specified in that notice has passed.
- (2) An enforcement warrant must be in the prescribed form and be directed to the Sheriff.
- (3) An enforcement warrant must be executed under Part 7.
- (4) An enforcement warrant must specify the amount owed by the offender.
- (5) The Registrar may at any time cancel an enforcement warrant for good reason.

[Section 45 amended: No. 48 of 2012 s. 23 and 43; No. 25 of 2020 s. 47.]

Division 3C — Work and development

[Heading inserted: No. 25 of 2020 s. 48.]

46. Division does not apply to body corporate

This Division does not apply in relation to an offender that is a body corporate.

[Section 46 inserted: No. 25 of 2020 s. 49.]

47. Order to attend for work and development

- (1) The Registrar may issue an order to attend for work and development in respect of an offender and an enforceable registered fine if —
 - (a) a notice of intention to enforce has been issued under section 42 in relation to the fine; and
 - (b) the due date specified in that notice has passed.
- (2) An order to attend for work and development issued under subsection (1) must not be served on an offender unless the Registrar is satisfied that the offender —
 - (a) does not have the means to pay the amount owed in respect of the fine; and
 - (b) does not have any personal property that could be seized under an enforcement warrant to satisfy, wholly or partly, the amount owed in respect of the fine; and
 - (c) will be unlikely to have the means to pay, or personal property that could be so seized, within a reasonable time after the order is issued.
- (3) The Registrar may require the offender to undertake a means test for the purpose of determining whether subsection (2) is satisfied.
- (4) An order to attend for work and development must be served personally.

[Section 47 inserted: No. 25 of 2020 s. 49.]

[47A. Deleted: No. 25 of 2020 s. 49.]

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

An order to attend for work and development issued under section 47 is an order requiring the offender, within 7 days after the service of the order or a longer period specified in 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: No. 9 of 2000 s. 5; amended: No. 25 of 2020 s. 50.]

47C. Cancellation and duration of order to attend for work and development

- (1) The Registrar may cancel an order to attend for work and development issued under section 47 if it is not reasonably practicable to serve the order on the offender —
 - (a) personally; or
 - (b) by electronic means under section 5A(1).
- (2) An order to attend for work and development —
 - (a) comes into force when it is served on the offender; and
 - (b) is in force until whichever of the following occurs first —
 - (i) the order is cancelled;
 - (ii) the amount owed in respect of the fine is paid;
 - (iii) a WDO is made in respect of the offender and the fine;

- (iv) the time within which the offender must pay the amount owed or report to a community corrections centre expires.

[Section 47C inserted: No. 25 of 2020 s. 51.]

[48A. Deleted: No. 25 of 2020 s. 51.]

48. Making work and development order

- (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) If the CEO (corrections) decides not to make a WDO in respect of an offender under subsection (2), the CEO (corrections) must give the Registrar written notice stating —
- (a) the decision; and
 - (b) the reasons for the decision; and

- (c) if the decision is made because the CEO (corrections) is satisfied that the offender is mentally or physically incapable of performing the requirements of the WDO — whether, in the opinion of the CEO (corrections), the offender is likely to become mentally and physically capable of performing the requirements of a WDO within a reasonable time after the day on which the decision is made.

[(5) deleted]

[Section 48 amended: No. 9 of 2000 s. 6; No. 51 of 2000 s. 7; No. 65 of 2006 s. 64; No. 25 of 2020 s. 52.]

49. Effect of work and development order

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: No. 78 of 1995 s. 42; amended: No. 50 of 2003 s. 29(3).]

50. Primary requirements of work and development order

- (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**); and
 - (b) in each period of 7 days must do community corrections activities for the number of hours specified in the WDO; and
 - (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.
- (2A) A CCO may, by written notice served on the offender, amend the WDO to specify a lower number of hours than the number specified under subsection (1)(b).
- (3) The required hours in a WDO are cumulative on —
- (a) the required hours in any other WDO; and
 - (b) any hours of community work that the offender is required to 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: No. 78 of 1995 s. 42; amended: No. 50 of 2003 s. 29(3); No. 25 of 2020 s. 53.]

[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. Discharge of liability under work and development order

- (1) If a WDO has been issued in relation to an offender and a fine, the offender's liability to pay the amount owed in respect of the fine may be discharged —
- (a) by the offender satisfactorily performing all the requirements of the WDO; or
 - (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.
- (4) A WDO is completed when the offender's liability to pay the amount owed is wholly discharged under this section.

[Section 51 amended: No. 25 of 2020 s. 54.]

52. Cancellation and duration of work and development order

- (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.
- (3) A WDO —
 - (a) comes into force when it is issued; and
 - (b) is in force until whichever of the following occurs first —
 - (i) the WDO is completed under section 51(4);
 - (ii) the WDO is cancelled.

[Section 52 amended: No. 65 of 2006 s. 64; No. 25 of 2020 s. 55.]

Division 3D — Fine expiation orders

[Heading inserted: No. 25 of 2020 s. 56.]

52A. Division does not apply to body corporate

This Division does not apply in relation to an offender that is a body corporate.

[Section 52A inserted: No. 25 of 2020 s. 56.]

52B. Term used: daily expiation amount

In this Division —

daily expiation amount means the amount prescribed by the regulations for the purposes of this definition.

[Section 52A inserted: No. 25 of 2020 s. 56.]

52C. When a person is in custody for the purposes of fine expiation order

- (1) For the purposes of this Division, a person is in custody during any period when the person is —
 - (a) under arrest; or
 - (b) a prisoner in a prison; or
 - (c) a detainee in a detention centre; or
 - (d) a person in court custody in a court custody centre; or
 - (e) detained at a police facility; or
 - (f) detained under a custody order (as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996* section 3).
- (2) For the purposes of subsection (1)(a) to (e), a person is in custody whether the person is serving a sentence of imprisonment, on remand, in custody under an arrest warrant or warrant of commitment issued under Division 3E or in custody for any other reason.
- (3) For the purposes of this Division, a period of custody —
 - (a) is a period during which a person is continuously in custody (whether the same or different kinds of custody and whether the custody relates to 1 or more offences or charges); and

- (b) begins on the day on which the person is taken into custody and ends on the day on which the person ceases to be in custody.
- (4) For the purposes of this Division, a part-day during which a person is in custody is to be counted as a day.
[Section 52C inserted: No. 25 of 2020 s. 56.]

52D. Fine expiation order

- (1) A fine expiation order is an order enabling an offender who is in custody, or has been in custody, to discharge the offender's liability to pay the amount owed in respect of a fine.
- (2) A fine expiation order does not authorise the offender to be held in custody.
[Section 52D inserted: No. 25 of 2020 s. 56.]

52E. Application for fine expiation order

- (1) An offender may apply to the Registrar, in accordance with the regulations, for a fine expiation order in relation to an enforceable registered fine.
- (2) An application under subsection (1) may be made —
 - (a) by an offender who is in custody, in relation to that period of custody; or
 - (b) by an offender who has been in custody, in relation to a period of custody that has ended.
- (3) An application referred to in subsection (2)(a) may be made on behalf of the offender —
 - (a) by a person authorised in writing by the offender to make the application; or
 - (b) by a person or body authorised to make the application under subsection (4), with the consent of the offender.
- (4) The Registrar may, in writing, authorise a person or body to make applications under subsection (1) on behalf of offenders.

- (5) An authorisation under subsection (4) may relate to all offenders or offenders of a specified class.

[Section 52E inserted: No. 25 of 2020 s. 56.]

52F. Issue of fine expiation order

- (1) On an application under section 52E, the Registrar may issue a fine expiation order in relation to the offender and the fine if the Registrar is satisfied that the offender —
- (a) does not have the means to pay the amount owed in respect of the fine; and
 - (b) does not have any personal property that could be seized under an enforcement warrant to satisfy, wholly or partly, the amount owed in respect of the fine; and
 - (c) will be unlikely to have the means to pay, or personal property that could be so seized —
 - (i) for an application referred to in section 52E(2)(a) — within a reasonable time after the period of custody referred to in that section will end; or
 - (ii) for an application referred to in section 52E(2)(b) — within a reasonable time after the application is made.
- (2) The Registrar may require the offender to undertake a means test for the purpose of determining whether subsection (1) is satisfied.
- (3) A fine expiation order must be served on the offender.
- (4) If the Registrar refuses to issue a fine expiation order, the Registrar must serve notice of the refusal on the offender.
- (5) Two or more fine expiation orders in relation to different fines can be issued in relation to the same period of custody.

[Section 52F inserted: No. 25 of 2020 s. 56.]

52G. Form of fine expiation order

- (1) A fine expiation order must —
 - (a) be in the approved form; and
 - (b) state the amount owed in respect of the fine; and
 - (c) state an expiation commencement day, which may be earlier than the day on which the order is issued but must not be earlier than any of the following —
 - (i) the first day of the period of custody to which the order relates;
 - (ii) the day on which the fine was registered;
 - (iii) the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* section 56 came into operation.
- (2) A fine expiation order issued on an application referred to in section 52E(2)(b) must also state the last day of the period of custody to which it relates.

[Section 52G inserted: No. 25 of 2020 s. 56.]

52H. Discharge of liability when fine expiation order is issued

- (1) This section applies if —
 - (a) a fine expiation order is issued in relation to an offender and a fine; and
 - (b) the expiation commencement day stated in the order under section 52G(1)(c) is earlier than the day on which the order is issued (the *issue day*).
- (2) When the fine expiation order is issued, the offender's liability to pay the amount owed in respect of the fine is reduced by the amount determined by multiplying the daily expiation amount by the number of days in the period —
 - (a) beginning on the expiation commencement day; and

- (b) ending —
 - (i) if the period of custody to which the order relates has ended on the issue day — on the last day of the period of custody; or
 - (ii) otherwise — on the day before the issue day.
- (3) If the amount owed in respect of the fine is equal to or less than the amount determined under subsection (2), the offender's liability to pay the amount owed is wholly discharged when the fine expiation order is issued.

[Section 52H inserted: No. 25 of 2020 s. 56.]

52I. Discharge of liability under ongoing fine expiation order

- (1) This section applies to a fine expiation order (an *ongoing fine expiation order*) if —
 - (a) when the order is issued, the period of custody to which the order relates has not ended; and
 - (b) either —
 - (i) section 52H does not apply to the order; or
 - (ii) section 52H applies to the order but the liability to pay the amount owed is not wholly discharged under that section.
- (2) At the end of each day during which the ongoing fine expiation order is in force, the offender's liability to pay the amount owed in respect of the fine is reduced by the daily expiation amount.
- (3) If, on a day on which the ongoing fine expiation order is in force, the amount owed in respect of the fine is equal to or less than the daily expiation amount, the offender's liability to pay the amount owed is wholly discharged at the end of that day.

[Section 52I inserted: No. 25 of 2020 s. 56.]

52J. Cancellation and duration of fine expiation order

- (1) A fine expiation order, other than an ongoing fine expiation order, has effect when it is issued.
- (2) An ongoing fine expiation order —
 - (a) comes into force on the day on which it is issued; and
 - (b) is in force until whichever of the following occurs first —
 - (i) the offender's liability to pay the amount owed in respect of the fine is wholly discharged under section 52I(3);
 - (ii) the period of custody to which the order relates ends;
 - (iii) the order is cancelled;and
 - (c) may be in force concurrently with 1 or more other ongoing fine expiation orders issued in relation to other fines.
- (3) The Registrar may at any time cancel an ongoing fine expiation order for good reason.
- (4) The Registrar must serve notice on the offender of a cancellation of an ongoing fine expiation order under subsection (3).

[Section 52J inserted: No. 25 of 2020 s. 56.]

Division 3E — Warrants of commitment and other court-ordered enforcement action

[Heading inserted: No. 25 of 2020 s. 56.]

Subdivision 1 — Preliminary

[Heading inserted: No. 25 of 2020 s. 56.]

52K. Division does not apply to body corporate

This Division does not apply in relation to an offender that is a body corporate.

[Section 52K inserted: No. 25 of 2020 s. 56.]

52L. Magistrates Court to be constituted by Magistrate

- (1) For the purposes of proceedings under this Division, the Magistrates Court is to be constituted by 1 magistrate.
- (2) Despite the *Magistrates Court Act 2004* section 28, the Magistrates Court's jurisdiction and powers in relation to proceedings under this Division cannot be delegated to a registrar of the Court.
- (3) A reference in this Division to the Magistrates Court does not include the Registry.

[Section 52L inserted: No. 25 of 2020 s. 56.]

Subdivision 2 — Application for and conduct of warrant of commitment inquiry

[Heading inserted: No. 25 of 2020 s. 56.]

52M. Warrant of commitment inquiry

- (1) A *warrant of commitment inquiry* is an inquiry conducted before the Magistrates Court in order to determine the following in relation to an offender and 1 or more enforceable registered fines —

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- (a) whether the offender has the means to pay, or to pay by instalments, the amount owed in respect of the fines, having regard to the offender's income, assets, liabilities and personal circumstances;
 - (b) the offender's suitability for a WDO and the likelihood of the offender complying with a WDO;
 - (c) whether the offender has contravened an order made under section 52S(1) in a previous warrant of commitment inquiry;
 - (d) the appropriate action to be taken under this Act to enforce the fines.
- (2) A **warrant of commitment inquiry process** is occurring in relation to a fine if —
- (a) the Registrar has applied under section 52N for a warrant of commitment inquiry to be held in relation to the offender and the fine; and
 - (b) the application has not been withdrawn under section 52ZI; and
 - (c) either —
 - (i) the Magistrates Court has not made a decision under section 52P on the application; or
 - (ii) the Magistrates Court has decided under section 52P to hold the warrant of commitment inquiry but the inquiry has not been held.

[Section 52M inserted: No. 25 of 2020 s. 56.]

52N. Application for warrant of commitment inquiry

- (1) The Registrar may, in the circumstances referred to in subsection (2) or (3), apply to the Magistrates Court for a warrant of commitment inquiry to be held in relation to 1 or more enforceable registered fines (the **relevant fines**) imposed on an offender.

- (2) The Registrar may make an application under subsection (1) if —
- (a) the offender has been served with an order to attend for work and development, or a fine enforcement (WDO) order, in relation to 1 or more of the relevant fines; and
 - (b) any of the following occurred in relation to any order to attend for work and development or fine enforcement (WDO) order referred to in paragraph (a) —
 - (i) the offender did not report as required by the order;
 - (ii) a WDO was not made under section 48 or could not be served on the offender;
 - (iii) a WDO was made under section 48 but was cancelled under section 52(1) because of non-compliance with the WDO;
- and
- (c) the Registrar is satisfied that —
 - (i) all applicable enforcement action that could be taken under this Act has been taken in relation to 1 or more of the relevant fines; and
 - (ii) any further enforcement action that could be taken under this Act is not applicable or is unlikely to result in the recovery of the amount owed in respect of the relevant fines.
- (3) The Registrar may make an application under subsection (1) if a previous warrant of commitment inquiry has been held in relation to any of the relevant fines and the offender has contravened any order made under section 52S(1) at that inquiry.

- (4) An application under subsection (1) can be made whether or not a warrant of commitment inquiry has previously been held in relation to the offender and any or all of the relevant fines or any other fine.

[Section 52N inserted: No. 25 of 2020 s. 56.]

52O. Information and evidence to be included in application

- (1) An application under section 52N must include the following information —
- (a) the offender's name and last known address;
 - (b) for each of the relevant fines referred to in section 52N(1) —
 - (i) the amount owed; and
 - (ii) a summary of the enforcement action taken under this Act before the application is made;
 - (c) the name and address of any other person the Registrar thinks should be summoned to the inquiry to give evidence;
 - (d) whether the Registrar requests that a summons under section 52Q(1)(a) or an arrest warrant under section 52Q(1)(b) be issued for the offender;
 - (e) the orders that the Registrar requests be made under section 52S at the inquiry and the reasons, expressed in general terms, for that request.
- (2) The application must be supported by —
- (a) documentation as to the matters in subsection (1)(b); and
 - (b) if the Registrar requests that an arrest warrant under section 52Q(1)(b) be issued for the offender — evidence on oath that there are grounds for the issue of the warrant under section 52Q(3).

[Section 52O inserted: No. 25 of 2020 s. 56.]

52P. Decision on application for warrant of commitment inquiry

- (1) The Magistrates Court may make a decision on an application under section 52N from a consideration of the documents lodged with the Court by the Registrar.
- (2) If the Court decides to hold a warrant of commitment inquiry, the Court must issue in relation to the offender either —
 - (a) a summons under section 52Q(1)(a); or
 - (b) an arrest warrant under section 52Q(1)(b).

[Section 52P inserted: No. 25 of 2020 s. 56.]

52Q. Issue of summons or arrest warrant

- (1) For the purposes of a warrant of commitment inquiry to be held in relation to an offender, the Magistrates Court may —
 - (a) issue a summons in accordance with Subdivision 3 for the offender to appear at the warrant of commitment inquiry and do either or both of the following —
 - (i) give oral evidence for the purpose of the inquiry;
 - (ii) produce for the Court, for use in the inquiry, any record or thing that may be relevant to the inquiry;
 - or
 - (b) subject to subsection (3), issue an arrest warrant in accordance with Subdivision 4 to have an offender arrested and brought before the Court for the warrant of commitment inquiry.
- (2) If the application for the warrant of commitment inquiry names 1 or more persons under section 52O(1)(c), the Court may also issue a summons in accordance with Subdivision 3 for any of those persons to appear at the warrant of commitment inquiry and do either or both of the things referred to in subsection (1)(a).

- (3) The Court must not issue an arrest warrant under subsection (1)(b) unless —
- (a) a summons under subsection (1)(a) in respect of the inquiry has been served on the offender in accordance with section 52V and the offender did not attend Court as required by the summons; or
 - (b) a summons under subsection (1)(a) in respect of a previous warrant of commitment inquiry was served on the offender in accordance with section 52V and the offender did not attend Court as required by the summons; or
 - (c) the offender has, on at least 2 occasions, contravened an order made under section 52S(1); or
 - (d) the offender has failed to comply with a conditional release undertaking entered into following the arrest of the offender under an arrest warrant that was issued under subsection (1)(b) for the purposes of the inquiry or a previous warrant of commitment inquiry.
- (4) If the Court issues a summons under subsection (1)(a) in relation to the offender, the Court must set a date for the inquiry and notify the Registrar of that date.

[Section 52Q inserted: No. 25 of 2020 s. 56.]

52R. Conduct of warrant of commitment inquiry

- (1) At a warrant of commitment inquiry the Magistrates Court is to determine the matters listed in section 52M(1).
- (2) At a warrant of commitment inquiry the offender must produce to the Court all records that relate to the matters listed in section 52M(1)(a) that are in the possession or under the control of the offender.
- (3) At a warrant of commitment inquiry the Court may itself examine the offender for the purposes of determining the matters listed in section 52M(1).

- (4) Subject to this Division —
- (a) the practice and procedure that applies to warrant of commitment inquiries and applications and orders under this Division is the general procedure under the *Magistrates Court (Civil Proceedings) Act 2004*; and
 - (b) rules of court made under that Act may deal with that practice and procedure.

[Section 52R inserted: No. 25 of 2020 s. 56.]

52S. Court may make orders or issue warrant of commitment

- (1) At a warrant of commitment inquiry the Magistrates Court may make any of the following orders in relation to the offender and any of the fines to which the inquiry relates —
- (a) an order that the Registrar make a time to pay order under section 33;
 - (b) an order that an order to attend for work and development should be issued;
 - (c) an order writing off all or part of the amount owed in respect of the fine;
 - (d) an order amending an order made at a previous warrant of commitment inquiry in relation to the fine, including by extending any time period in that order;
 - (e) an order that a warrant of commitment should be issued;
 - (f) any other order the Court considers appropriate in the circumstances.
- (2) In making an order under subsection (1), the Court must have regard to —
- (a) the matters set out in section 52M(1) that it has determined; and
 - (b) the principles set out in section 4(2); and
 - (c) any other matters the Court considers relevant.

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- (3) If the warrant of commitment inquiry relates to more than 1 fine, separate orders are to be made under subsection (1) in relation to each of the fines to which the inquiry relates.
- (4) If the Court makes an order under subsection (1)(e) in relation to an offender and a fine, it must issue a warrant of commitment in the prescribed form in relation to the fine.

[Section 52S inserted: No. 25 of 2020 s. 56.]

52T. Effect of orders under s. 52S(1)(a) to (c)

- (1) If the Magistrates Court makes an order under section 52S(1)(a), the Registrar must make a time to pay order under section 33 in relation to the fine, even though the offender has not applied for the time to pay order.
- (2) If the Court makes an order under section 52S(1)(b) —
 - (a) an order to attend for work and development is taken to have been issued and served under section 47 when the order under section 52S(1)(b) is made; and
 - (b) the offender must pay the amount owed, or report to a community corrections centre, as referred to in section 47B within the period of 7 days after the order under section 52S(1)(b) is made, unless the Court specifies a longer period.
- (3) If the Court makes an order under section 52S(1)(c), the offender's liability to pay the amount owed in respect of the fine is taken to be discharged to the extent specified in the order.

[Section 52T inserted: No. 25 of 2020 s. 56.]

Subdivision 3 — Summons to appear at warrant of commitment inquiry

[Heading inserted: No. 25 of 2020 s. 56.]

52U. Form of summons

A summons to appear at a warrant of commitment inquiry issued in relation to a person under section 52Q(1)(a) or (2) must —

- (a) be in the prescribed form; and
- (b) state when and where the warrant of commitment inquiry will be held; and
- (c) require the person to appear at that time and place; and
- (d) contain any information prescribed by the regulations; and
- (e) be signed by the magistrate who issues it.

[Section 52U inserted: No. 25 of 2020 s. 56.]

52V. Service of summons

- (1) A summons to appear at a warrant of commitment inquiry issued under section 52Q(1)(a) or (2) must be served personally unless the Magistrates Court has authorised oral service under subsection (2) or substituted service under subsection (3).
- (2) The Court may authorise oral service of a summons if the Court is satisfied that reasonable efforts to serve the order personally are unlikely to be successful.
- (3) The Court may authorise substituted service of a summons if the Court is satisfied that reasonable efforts to serve the order personally or by oral service are unlikely to be successful for any reason, including (but not limited to) the following —
 - (a) the person to be served does not have a fixed place of residence or business;

- (b) the person to be served has a place of residence or business that is in a remote area;
 - (c) the person to be served is likely to avoid personal or oral service.
- (4) The Court is to consider making an order for oral service or substituted service of a summons to appear at a warrant of commitment inquiry in every case.

[Section 52V inserted: No. 25 of 2020 s. 56.]

52W. Oral service or substituted service of summons

- (1) A summons to appear at a warrant of commitment inquiry is served by oral service if the person being served is informed of the following —
- (a) that the summons has been issued;
 - (b) that the person is required to appear at a warrant of commitment inquiry and the date and place where the person is required to appear;
 - (c) a place where a written copy of the summons can be obtained.
- (2) Oral service —
- (a) may be effected in person or by telephone, video conference or another similar method; and
 - (b) does not require the person serving the summons to be in possession of a copy of it at the time of service.
- (3) If a person to whom information is to be given under subsection (1) does not readily understand English, or the person serving the summons is not satisfied that the person understood the information, the person serving the summons is, as far as practicable, to arrange for someone else who has reached 18 years of age to give the information to the person in a way that the person can understand.

- (4) A summons to appear at a warrant of commitment inquiry is served by substituted service if the person serving the summons —
- (a) takes the steps that the Magistrates Court has directed to bring it to the attention of the person being served; or
 - (b) takes the steps (if any) prescribed by the regulations.

[Section 52W inserted: No. 25 of 2020 s. 56.]

52X. Summons ceases to have effect if application withdrawn

A summons to appear at a warrant of commitment inquiry ceases to have effect if the application for the warrant of commitment inquiry is withdrawn under section 52ZI.

[Section 52X inserted: No. 25 of 2020 s. 56.]

Subdivision 4 — Arrest warrant for appearance at warrant of commitment inquiry

[Heading inserted: No. 25 of 2020 s. 56.]

52Y. Form of arrest warrant

An arrest warrant for an offender issued under section 52Q(1)(b) must —

- (a) be directed to all members of the Police Force; and
- (b) be in the prescribed form; and
- (c) require the person who arrests the offender to bring the offender before the Magistrates Court in accordance with section 52Z(2)(a); and
- (d) contain any information prescribed by the regulations; and
- (e) be signed by the magistrate who issues it.

[Section 52Y inserted: No. 25 of 2020 s. 56.]

52Z. Effect of arrest warrant

- (1) An arrest warrant issued under section 52Q(1)(b) is itself sufficient authority to any person to whom it is directed to act according to it.
- (2) An offender arrested under an arrest warrant issued under section 52Q(1)(b) —
 - (a) must be brought before the Magistrates Court for the warrant of commitment inquiry —
 - (i) immediately after the arrest if it is practicable to do so; and
 - (ii) in any case, subject to section 52ZB, as soon as practicable after the arrest;
 - and
 - (b) may be brought before the Court at any place where it is sitting.
- (3) A police officer must obey any warrant issued under section 52Q(1)(b) or other order or direction of the Magistrates Court.
- (4) A police officer who contravenes subsection (3) is to be dealt with under the *Police Act 1892* section 23.
- (5) To avoid doubt, an arrest warrant issued under section 52Q(1)(b) is an arrest warrant for the purposes of the definition of **arrest warrant** in the *Criminal Investigation Act 2006* section 3(1).

[Section 52Z inserted: No. 25 of 2020 s. 56.]

52ZA. Duration of arrest warrant

An arrest warrant for an offender issued under section 52Q(1)(b) —

- (a) comes into force when it is issued; and

- (b) remains in force until whichever of the following occurs first —
 - (i) the offender is brought before the Magistrates Court for the warrant of commitment inquiry under the arrest warrant;
 - (ii) the offender appears voluntarily in Court for the warrant of commitment inquiry;
 - (iii) the offender is released under section 52ZB(1)(b) or (3);
 - (iv) the application for the warrant of commitment inquiry is withdrawn under section 52ZI.

[Section 52ZA inserted: No. 25 of 2020 s. 56.]

52ZB. Conditional release of arrested offender

- (1) If an offender is arrested under an arrest warrant issued under section 52Q(1)(b) and it is not practicable to bring the offender before the Magistrates Court for the warrant of commitment inquiry immediately after the arrest (including under section 52ZJ(2)(b)), the responsible officer —
 - (a) must, as soon as practicable, consider whether the offender should be released under paragraph (b); and
 - (b) may, subject to section 52ZD(1), release the offender.
- (2) The decision whether or not to release an offender under subsection (1)(b) is at the discretion of the responsible officer, having regard to the following —
 - (a) whether, if the offender is not kept in custody, the offender may fail to appear in Court in accordance with the offender's undertaking under section 52ZD;
 - (b) any other matter the responsible officer considers relevant.

- (3) The responsible officer must, subject to section 52ZD(1), release an offender arrested under an arrest warrant issued under section 52Q(1)(b) if —
 - (a) the offender has been in custody under the warrant for 24 hours; or
 - (b) at any time when the offender is in custody under the warrant, it becomes apparent that it is not practicable to bring the offender before the Court within 24 hours after the arrest (including under section 52ZJ(2)(b)).
- (4) Subsection (3) applies whether or not a decision has previously been made not to release the offender under subsection (1)(b).
- (5) The duties of a responsible officer under this section must be performed whether or not an application for conditional release is made by or on behalf of the offender.
- (6) The *Bail Act 1982* does not apply in relation to the arrest of an offender under an arrest warrant issued under section 52Q(1)(b), except to the extent provided in section 52ZH(2).

[Section 52ZB inserted: No. 25 of 2020 s. 56.]

52ZC. Responsible officer for conditional release of offender

- (1) If an offender is arrested under an arrest warrant issued under section 52Q(1)(b), the police officer who arrested the offender (the *arresting officer*) —
 - (a) may, if the arresting officer is not an authorised police officer, request an authorised police officer to perform any or all of the duties in section 52ZB in relation to the offender; and
 - (b) must, if it is not practicable for the arresting officer to perform any or all of the duties in section 52ZB in relation to the offender, request an authorised police officer to perform those duties.

- (2) The **responsible officer** in relation to an offender arrested under an arrest warrant issued under section 52Q(1)(b) is —
- (a) if a request under subsection (1) has not been made when the duty is required to be performed — the arresting officer; or
 - (b) if a request under subsection (1) has been made when the duty is required to be performed — the authorised police officer to whom the request was made.
- (3) A responsible officer commits an offence if the officer, wilfully and without reasonable excuse, fails to perform any duty of the officer under section 52ZB.

Penalty for this subsection: imprisonment for 12 months, or a fine of \$1 000, or both.

[Section 52ZC inserted: No. 25 of 2020 s. 56.]

52ZD. Conditional release undertaking

- (1) An offender must not be released under section 52ZB(1)(b) or (3) unless the offender has entered into a conditional release undertaking for the offender's appearance at the warrant of commitment inquiry.
- (2) A conditional release undertaking is an undertaking in writing by an offender in the prescribed form —
- (a) that the offender will appear in the Magistrates Court for the warrant of commitment inquiry at —
 - (i) the time and place specified in the undertaking; or
 - (ii) if a different time and place has been substituted by notice served personally on the offender — at that substituted time and place;
- and
- (b) that if the offender fails to appear in the Court at that time and place the offender will, as soon as practicable,

appear in the Court at that place when the Court is sitting.

- (3) A conditional release undertaking may be entered into before any person before whom a bail undertaking may be entered into under the *Bail Act 1982* section 29.
- (4) The prescribed form for a conditional release undertaking must include an explanation of the obligations of the offender under the undertaking and the consequences of failure to comply with the undertaking.

[Section 52ZD inserted: No. 25 of 2020 s. 56.]

52ZE. Duties of person before whom conditional release undertaking entered into

- (1) The person before whom a conditional release undertaking is to be entered into by an offender must, before the undertaking is entered into, either —
 - (a) read it to the offender; or
 - (b) be informed by the offender that the offender has read it; or
 - (c) if necessary, have the undertaking translated to the offender or provide the offender with a written translation of the undertaking.
- (2) The person before whom a conditional release undertaking is entered into by an offender must give the offender, or cause the offender to be given, a copy of the completed undertaking.

[Section 52ZE inserted: No. 25 of 2020 s. 56.]

52ZF. Limitations on right to conditional release

If the responsible officer has decided to release an offender under section 52ZB(1)(b) or (3) and the offender has entered into a conditional release undertaking under section 52ZD, the offender is entitled to be released, subject to the following —

- (a) any requirement that the offender be in custody for some other reason;
- (b) the same limitations as apply under the *Bail Act 1982* section 12 to the right of a person granted bail under that Act to be at liberty;
- (c) the person before whom the conditional release undertaking is entered into signing a certificate in the prescribed form that the offender has a right to be released.

[Section 52ZF inserted: No. 25 of 2020 s. 56.]

52ZG. Offence of failure to comply with conditional release undertaking

- (1) A person who, without reasonable excuse, fails to comply with a requirement of a conditional release undertaking mentioned in section 52ZD(2)(a) commits an offence.

Penalty for this subsection: a fine of \$2 000.

- (2) A person who fails to comply with a requirement of a conditional release undertaking mentioned in section 52ZD(2)(b) commits an offence.

Penalty for this subsection: a fine of \$2 000.

- (3) A person must not be convicted of an offence under this section in the person's absence.

[Section 52ZG inserted: No. 25 of 2020 s. 56.]

52ZH. General provisions about conditional release

- (1) A conditional release undertaking for the appearance of an offender at a warrant of commitment inquiry remains in force until whichever of the following occurs first —
 - (a) the offender appears in the Magistrates Court in accordance with the undertaking;
 - (b) the application for the warrant of commitment inquiry is withdrawn under section 52ZI.
- (2) The *Bail Act 1982* sections 59B, 60 and 62 apply for the purposes of this Subdivision as if —
 - (a) a reference to an accused were a reference to an offender; and
 - (b) a reference to a bail undertaking were a reference to a conditional release undertaking; and
 - (c) a reference to section 28(2)(a) or (b) of that Act were a reference to section 52ZD(2)(a) or (b) of this Act; and
 - (d) a reference to release on bail or a grant of bail were a reference to conditional release under section 52ZB(1)(b) or (3); and
 - (e) the penalty specified for an offence under section 62 of that Act were a fine of \$1 000.

[Section 52ZH inserted: No. 25 of 2020 s. 56.]

Subdivision 5 — Miscellaneous provisions about warrant of commitment inquiry

[Heading inserted: No. 25 of 2020 s. 56.]

52ZI. Withdrawal of application for warrant of commitment inquiry

- (1) The Registrar may withdraw an application under section 52N for a warrant of commitment inquiry at any time before the inquiry is held.

- (2) The Registrar must withdraw an application under section 52N for a warrant of commitment inquiry if the amount owed in respect of each of the relevant fines referred to in the application is paid or the liability to pay the amount owed in respect of each of those fines is wholly discharged under section 52H or 52I.
- (3) Notice of a withdrawal under this section must be served on —
 - (a) the Magistrates Court; and
 - (b) the offender; and
 - (c) any person named under section 52O(1)(c) in the application for the warrant of commitment inquiry; and
 - (d) if an arrest warrant issued under section 52Q(1)(b) or a conditional release undertaking entered into under section 52ZD is in force in relation to the offender and the warrant of commitment inquiry when the application is withdrawn — the Commissioner of Police.

[Section 52ZI inserted: No. 25 of 2020 s. 56.]

52ZJ. Appearance of offender at warrant of commitment inquiry by video link or audio link

- (1) This section applies if —
 - (a) an offender who has been arrested under an arrest warrant issued under section 52Q(1)(b) is required to be brought before the Magistrates Court under section 52Z(2); or
 - (b) an offender who is in custody for any other reason is required to appear in the Magistrates Court under a summons issued under section 52Q(1)(a).
- (2) The person in charge of the offender must ensure that the offender is brought before the Court —
 - (a) in person; or
 - (b) if there is a video link or audio link between the place where the offender is held and the Court — by means of

a video link or audio link, unless the Court has ordered that the offender be brought before the Court in person.

- (3) The Court may make an order under subsection (2)(b) at any time on its own initiative or on an application by the Registrar or the offender if it is satisfied it is in the interests of justice to do so.
- (4) An audio link cannot be used under this section unless a video link is not available and cannot reasonably be made available.
- (5) When the offender appears before the Court by means of a video link or audio link, the Court may exercise any power in this Division as if the offender were personally present before it.

[Section 52ZJ inserted: No. 25 of 2020 s. 56.]

52ZK. Appeal

- (1) Except as provided in subsection (2), no appeal lies against an order of the Court under section 52S.
- (2) The offender may appeal under the *Magistrates Court (Civil Proceedings) Act 2004* section 40 against an order of the Magistrates Court under section 52S(1)(e) that a warrant of commitment should be issued.

[Section 52ZK inserted: No. 25 of 2020 s. 56.]

52ZL. Evidence of appearance or non-appearance of offender

For the purposes of this Division, evidence that an offender did or did not appear in the Magistrates Court at a particular time and place may be given by tendering a certificate to that effect signed by an officer of the Court.

[Section 52ZL inserted: No. 25 of 2020 s. 56.]

Subdivision 6 — Imprisonment under warrant of commitment

[Heading inserted: No. 25 of 2020 s. 57.]

53. Effect of warrant of commitment

[(1), (2) deleted]

- (3) A warrant of commitment issued under section 52S(4) in relation to a fine 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) deleted]

- (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; or
 - (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)-(8c) deleted]

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

[Section 53 amended: Gazette 12 Mar 1999 p. 1162; No. 9 of 2000 s. 7; No. 3 of 2008 s. 12; No. 25 of 2020 s. 4; No. 25 of 2020 s. 58.]

[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 3F — Interaction of enforcement action under this Part

[Heading inserted: No. 25 of 2020 s. 59.]

53A. Effect of enforcement instrument or WDO on other enforcement powers

- (1) If an enforcement instrument (other than a licence suspension order or enforcement warrant) or a WDO is in force in relation to a fine, the Registrar must not, despite any other provision of this Part —
- (a) make or issue another enforcement instrument in relation to the fine; or
 - (b) make an application under section 52N in relation to the fine.
- (2) If a licence suspension order is in force in relation to an offender and a fine —
- (a) a power of the Registrar under this Part to make or issue another enforcement instrument, or to make an application under section 52N, in relation to the offender and the fine is not affected; but
 - (b) the Registrar must cancel the licence suspension order as soon as practicable if —
 - (i) the Registrar issues an enforcement instrument (other than an enforcement warrant or an order to

- attend for work and development) in relation to the offender and the fine; or
- (ii) the Registrar serves an order to attend for work and development on the offender in relation to the fine; or
 - (iii) the Registrar makes an application under section 52N in relation to the offender and the fine.
- (3) If an enforcement warrant is in force in relation to an offender and a fine —
- (a) a power of the Registrar under this Part to make or issue another enforcement instrument, or to make an application under section 52N, in relation to the offender and the fine is not affected; but
 - (b) the Registrar must cancel the enforcement warrant as soon as practicable if —
 - (i) the Registrar issues an enforcement instrument (other than a licence suspension order or an order to attend for work and development) in relation to the offender and the fine; or
 - (ii) the Registrar serves an order to attend for work and development on the offender in relation to the fine; or
 - (iii) the Registrar makes an application under section 52N in relation to the offender and the fine.
- (4) A power under this Part to make or issue an enforcement instrument or WDO in relation to a fine is not affected by a previous enforcement instrument or WDO having been made or issued in relation to the fine and subsequently cancelled.

[Section 53A inserted: No. 25 of 2020 s. 59.]

53B. Effect of warrant of commitment inquiry process or warrant of commitment on other enforcement powers

- (1) The Registrar must not make or issue an enforcement instrument (other than a fine expiation order) in relation to a fine if a warrant of commitment inquiry process is occurring in relation to the fine.
- (2) The Registrar must not make or issue an enforcement instrument in relation to a fine if a warrant of commitment is in force in relation to the fine.
- (3) A power under this Part to make or issue an enforcement instrument or WDO in relation to an offender and a fine is not affected by a warrant of commitment inquiry process having previously occurred in relation to the offender and the fine.

[Section 53B inserted: No. 25 of 2020 s. 59.]

Division 4 — Miscellaneous

54. Functions of Registrar in relation to *Service and Execution of Process Act 1992* (Commonwealth) Part 7

- (1) The Registrar is authorised to exercise the functions conferred on the Registrar as a fine enforcement officer under the *Service and Execution of Process Act 1992* (Commonwealth) Part 7.
- (2) If the Registrar receives an amount in satisfaction in whole or in part of a fine under the *Service and Execution of Process Act 1992* (Commonwealth) Part 7, the Registrar must apply the money as if it had been received from the offender in satisfaction in whole or in part of the fine.

[Section 54 inserted: No. 25 of 2020 s. 60.]

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: No. 78 of 1995 s. 44; No. 8 of 1996 s. 9; No. 77 of 2006 s. 4.]

55A. Certain decisions of Registrar are final

A decision of the Registrar under Division 2 Subdivision 3, section 44A or Division 3D is final.

[Section 55A inserted: No. 25 of 2020 s. 61.]

[55B-55E. Deleted: No. 25 of 2020 s. 61]

Part 5A — Publication of details of persons on Registrar's website

[Heading inserted: No. 48 of 2012 s. 27.]

Division 1 — Preliminary

[Heading inserted: No. 48 of 2012 s. 27.]

56A. Terms used

In this Part —

aggregate amount owed, by a person, means the aggregate of —

- (a) the amount owed for each outstanding registered fine in relation to the person; and
- (b) the amount owed for each outstanding order to pay or elect in relation to the person;

amount owed —

- (a) for an order to pay or elect issued under section 17 — means that amount of the modified penalty, and enforcement fees, specified in the order that has not been paid or recovered under an enforcement warrant; or
- (b) for a fine — has the meaning given in section 28(1);

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

fine has the meaning given in section 28(1);

modified penalty has the meaning given in section 11;

outstanding order to pay or elect has the meaning given in section 56AA;

outstanding registered fine has the meaning given in section 56B;

relevant details has the meaning given in section 56C.

[Section 56A inserted: No. 48 of 2012 s. 27; amended: No. 25 of 2020 s. 62.]

56AA. Outstanding orders to pay or elect

An *outstanding order to pay or elect*, in relation to a person, means an order to pay or elect issued to the person under section 17, where —

- (a) the modified penalty, and enforcement fees, specified in that order have not been paid in full, or recovered in full under an enforcement warrant; and
- (b) an election has not been made under section 21 in relation to the infringement notice to which the order relates; and
- (c) no time to pay order is in force under section 21C in respect of the person and the infringement notice to which the order relates; and
- (d) if an enforcement warrant issued under section 21A is in force in respect of the person and the infringement notice to which the order relates — no arrangement under section 68A is in force in relation to the warrant; and
- (e) the prosecuting authority has not, under section 22, withdrawn proceedings in respect of the infringement notice to which the order relates.

[Section 56AA inserted: No. 25 of 2020 s. 63.]

56B. Outstanding registered fines

An *outstanding registered fine*, in relation to a person, means a fine imposed on the person, where —

- (a) the fine is an enforceable registered fine (as defined in section 28(1)); and
- (b) at least 28 days have elapsed since the day on which the fine was imposed; and

[(c) *deleted*]

- (d) no time to pay order under section 33 is in force in respect of the person and the amount owed; and
- (e) if an enforcement warrant is in force in respect of the person and the amount owed — no arrangement under section 68A is in force in relation to the warrant; and

[(f), (g) *deleted*]

- (h) either —
 - (i) the person has not appealed against the fine, or a decision giving rise to the fine, for the purposes of section 101B; or
 - (ii) any appeal against the fine, or a decision giving rise to the fine, has been disposed of (within the meaning of section 101B), and the fine is still payable.

[Section 56B inserted: No. 48 of 2012 s. 27; amended: No. 20 of 2013 s. 92; No. 25 of 2020 s. 64.]

56C. Relevant details of persons

The *relevant details* of a person are —

- (a) for an individual, the following details only —
 - (i) the individual's surname;
 - (ii) the individual's given names;
 - (iii) the street, and the suburb or town, in which the individual resides according to the individual's last known address;
 - (iv) whether there are one or more outstanding orders to pay or elect, or outstanding registered fines, or both, in relation to the individual;
 - (v) the aggregate amount owed by the individual;

or

- (b) for a body corporate, the following details only —
 - (i) the registered name of the body corporate;
 - (ii) the street, and the suburb or town, at which the registered office of the body corporate is located;
 - (iii) whether there are one or more outstanding orders to pay or elect, or outstanding registered fines, or both, in relation to the body corporate;
 - (iv) the aggregate amount owed by the body corporate.

[Section 56C inserted: No. 48 of 2012 s. 27.]

Division 2 — Publication of relevant details of persons on Registrar's website

[Heading inserted: No. 48 of 2012 s. 27.]

56D. Publication of relevant details of persons on Registrar's website

- (1) If, in relation to a person, there are one or more —
 - (a) outstanding orders to pay or elect; or
 - (b) outstanding registered fines,

the Registrar may cause some or all of the relevant details of the person to be published on the Registrar's website.

- (2) The Registrar must not cause any relevant details of a person to be published under this section if the Registrar has grounds to suspect —
 - (a) the person is a child; or
 - (b) all of the following conditions are satisfied —
 - (i) there are one or more outstanding registered fines in relation to the person;
 - (ii) an order prohibiting the publication of the person's name was made in the proceedings in

which any of those outstanding registered fines was imposed;

(iii) the order is in force;

or

(c) the person is a person protected under a violence restraining order, or police order, in force under the *Restraining Orders Act 1997*; or

(d) the publication of the relevant details would endanger the person's safety.

(3) If —

(a) relevant details of a person are published under this section on the Registrar's website; and

(b) the Registrar becomes aware that any of the relevant details of the person has changed; and

(c) section 56E(2) does not apply,

the Registrar must cause the relevant details published on the website to be updated as soon as practicable.

[Section 56D inserted: No. 48 of 2012 s. 27.]

56E. Removal of relevant details from website

(1) The Registrar may, at any time, cause some or all of the relevant details of a person to be removed from the Registrar's website.

(2) If —

(a) under section 56D, relevant details of a person are published on the Registrar's website; and

(b) there ceases to be any outstanding order to pay or elect, or outstanding registered fine, in relation to the person,

the Registrar must cause the relevant details of the person to be removed from the website as soon as practicable.

[Section 56E inserted: No. 48 of 2012 s. 27.]

Part 5 — Amounts forfeited under undertakings

[Heading amended: 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]

(ca) any amount of a recognisance entered into by an offender under the *Young Offenders Act 1994* section 69, in any case where any amount of the recognisance is ordered to be forfeited and —

(i) section 64 of that Act applies to the payment and enforcement of the amount concerned; or

(ii) under section 65(3)(a) of that Act, the court must register the amount forfeited under this Act;

or

(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: No. 78 of 1995 s. 43; amended: No. 59 of 2004 s. 107; No. 84 of 2004 s. 46; No. 20 of 2013 s. 93.]

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: No. 78 of 1995 s. 43; amended: 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: No. 84 of 2004 s. 44.]

s. 59A

59A. Automatic registration of amounts payable

- (1) Subsection (2) applies to the following orders —
 - (a) an order to which section 56(a) applies, other than an order to which the *Young Offenders Act 1994* section 65(1)(b) applies;
 - (b) an order to which section 56(ca)(i) or (c), 57 or 58 applies.
- (2) When an order to which this subsection applies is made, the amount that is ordered to be forfeited under the order is to be taken to be registered under Part 4 as if the amount were a fine.
- (3) If, under the *Young Offenders Act 1994* section 65(3)(a), the court must register the amount of a forfeited bail undertaking or forfeited recognisance under this Act, the amount that is forfeited is to be taken to be registered under Part 4 as if the amount were a fine.
- (4) This section does not limit the operation of Part 4 as applied by section 56, 57 or 58.
- (5) This section does not apply to or in relation to an order to which section 56, 57 or 58 applies if the order was made before the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 94 came into operation.

[Section 59A inserted: No. 20 of 2013 s. 94.]

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

59. Terms used

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: 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 an enforcement warrant for the purpose of recovering the amount outstanding.
- (3) An enforcement warrant is to be directed to the Sheriff of Western Australia and is to be executed under Part 7.
- (4) If the Registrar receives, subsequent to the request for enforcement, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount outstanding, the Registrar must —
 - (a) make a record of the payment; and

- (b) if the warrant issued under subsection (2) is unexecuted —
 - (i) if the amount outstanding has been paid in full — in writing, cancel the warrant and advise the Sheriff accordingly; or
 - (ii) if part of the amount outstanding remains unpaid — advise the Sheriff accordingly in writing, and thereafter the warrant is to be enforced as to the amount remaining unpaid.
- (5) A sum of money paid to or received by the Registrar in satisfaction in whole or in part of the amount outstanding must be remitted forthwith to the clerk or corresponding officer of the reciprocating court by which the fine was imposed.

[Section 61 amended: No. 8 of 1996 s. 9; No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

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: No. 59 of 2004 s. 107.]

Part 7 — Enforcement warrants

[Heading amended: No. 48 of 2012 s. 43.]

Division 1 — Preliminary

63. Terms used

(1) In this Part —

bank means —

- (a) an ADI (authorised deposit-taking institution) as defined in the *Banking Act 1959* (Commonwealth) section 5(1); or
- (b) a bank constituted by a law of a State, a Territory or the Commonwealth;

bank account garnishee order has the meaning given in section 95M(2)(b);

debtor means —

- (a) in relation to a warrant issued under Part 3 — the alleged offender in respect of whom the warrant is issued; or
- (b) in relation to a warrant issued under Part 4 — the offender in respect of whom the warrant is issued; or
- (c) in relation to a warrant issued under Part 6 — the body corporate in respect of which the warrant is issued;

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;

earnings —

- (a) has the meaning given in the *Civil Judgments Enforcement Act 2004* section 3; but

- (b) does not include amounts of a kind prescribed by the regulations for the purposes of this paragraph;

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

garnishee order has the meaning given in section 95M(2);

garnishee order on earnings has the meaning given in section 95M(2)(a);

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;

multiple payments garnishee order has the meaning given in section 95V(2)(b);

owner, in relation to a vehicle, means a person entitled to immediate possession of the vehicle;

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;

protected bank account amount means the amount prescribed by or determined under regulations made for the purposes of section 95ZB;

protected earnings amount, for a pay period, means the amount determined under regulations made for the purposes of section 95U(1);

relevant payer, in relation to a garnishee order on earnings, has the meaning given in section 95O(1);

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

single payment garnishee order has the meaning given in section 95V(2)(a);

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;

warning notice means a notice affixed to a vehicle under section 95B(1);

warrant means an enforcement warrant issued under Part 3, 4 or 6.

- (2) When this Part refers to removing the immobilisation of a vehicle it means —
- (a) if the vehicle was immobilised by a wheel clamp — removing the wheel clamp; or
 - (b) if the vehicle was immobilised using another means prescribed by the regulations — removing the effect of the means by which the vehicle was immobilised.
- (3) A reference in this Part to a vehicle of a debtor is a reference to —
- (a) a vehicle that is licensed under the *Road Traffic (Vehicles) Act 2012* in the name of the debtor (whether or not the vehicle licence is suspended); or
 - (b) a vehicle that is not licensed under the *Road Traffic (Vehicles) Act 2012* of which the debtor is an owner.

[Section 63 amended: No. 14 of 2003 s. 8; No. 59 of 2004 s. 98; No. 48 of 2012 s. 28; No. 25 of 2020 s. 65.]

[64. Deleted: No. 49 of 1997 s. 5.]

65. Warrant has indefinite life

Unless sooner cancelled, a warrant remains in force —

- (a) until the amount specified in the warrant, and any enforcement fees, are paid; or
- (b) until the amount specified in the warrant, and any enforcement fees, are recovered under the warrant,

[(c) deleted]

whichever happens first.

[Section 65 inserted: No. 48 of 2012 s. 29; amended: No. 25 of 2020 s. 66.]

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: 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 a debtor or of property of a debtor.
- (2) Members of the Police Force of Western Australia must comply with any such request by the Sheriff as soon as is practicable.

[Section 67 amended: No. 48 of 2012 s. 43.]

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 debtor enters into and complies with a written or oral arrangement with the Sheriff under which the debtor 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.

- (2A) The Sheriff must not enter into an arrangement under subsection (1) unless the debtor gives the Sheriff the debtor's current address.
- (2) As soon as practicable after a debtor enters into an oral arrangement under subsection (1), the Sheriff must serve a written version of it on the debtor.
- (3) A failure to comply with subsection (2) does not invalidate the arrangement or any payment made in accordance with it.
- (3A) If, when an arrangement under subsection (1) is entered into, a garnishee order has been issued to a relevant payer or bank under the warrant and has not been cancelled —
- (a) the Sheriff must serve a notice on the relevant payer or bank stating that no action is to be taken under the garnishee order until further notice; and
 - (b) for the purposes of Division 6B, the garnishee order is taken not to be in force during the period beginning when the notice is served and ending when the Sheriff

serves a notice on the relevant payer or bank under subsection (4A).

- (4) The Sheriff may at any time cancel an arrangement entered into under subsection (1) and proceed with executing the warrant.
- (4A) If the Sheriff cancels an arrangement made under subsection (1) and a notice under subsection (3A)(a) has been served on a relevant payer or bank as a result of that arrangement, the Sheriff must serve notice on the relevant payer or bank stating that action can again be taken under the garnishee order.

[(5A), (5B) deleted]

- (5) As soon as practicable after cancelling an arrangement under subsection (4), the Sheriff must serve a notice of the fact on the debtor.
- (6) A failure to comply with subsection (5) does not invalidate the cancellation, any action taken in connection with executing the warrant or any payment made by the debtor 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: No. 14 of 2003 s. 10; amended: No. 48 of 2012 s. 30 and 43; No. 25 of 2020 s. 67.]

68B. Notice of right to apply under s. 101AA to be given for warrants issued under Part 3

- (1) In this section —
enforcement action means any of the following actions taken under a warrant —
 - (a) seizing personal property in accordance with section 71;
 - (aa) serving a notice in accordance with section 78;
 - (b) seizing land in accordance with section 88;

- (c) immobilising a vehicle in accordance with section 95C;
 - (d) removing number plates from a vehicle in accordance with section 95F;
 - (e) issuing a garnishee order in accordance with section 95O or 95V.
- (2) When the Sheriff takes the first enforcement action under a warrant issued under Part 3, the Sheriff must give the debtor a notice explaining that —
- (a) the debtor may apply to the Magistrates Court for an order cancelling the warrant; and
 - (b) the application must be made within 14 days after the notice is given.
- (3) A notice under subsection (2) must be given —
- (a) if the first enforcement action is seizing personal property — by serving it on the debtor with the notice of seizure required to be served under section 80; or
 - (b) if the first enforcement action is seizing land — by serving it on the debtor as soon as practicable after the memorial referred to in section 89 is lodged; or
 - (c) if the first enforcement action is immobilising a vehicle — by affixing the notice to the vehicle with the notice required to be affixed to the vehicle under section 95C(4); or
 - (d) if the first enforcement action is removing number plates from a vehicle — by affixing the notice to the vehicle with the notice required to be affixed to the vehicle under section 95F(3); or
 - (e) if the first enforcement action is the issue of a garnishee order — by serving it on the debtor with the copy of the garnishee order required to be served under section 95O(4) or 95V(5).

[Section 68B inserted: No. 48 of 2012 s. 31; amended: No. 25 of 2020 s. 68.]

69. Examination in aid of seizure or exercise of additional powers relating to vehicles

(1) In respect of a warrant, the Sheriff may apply to the Magistrates Court for an order —

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

personally attend the court to be examined about —

- (c) the existence and whereabouts and value of any property that might be seized under the warrant including any debts due to the debtor; and
- (d) the existence and whereabouts of any vehicle of the debtor.

(2) An order under subsection (1) may include an order that the debtor bring and produce to the court any document relevant to the matters about which the debtor 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: No. 8 of 1996 s. 9; No. 59 of 2004 s. 107; No. 48 of 2012 s. 32 and 43; No. 25 of 2020 s. 89.]

70. Determining debtor'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, regional local government or regional subsidiary.

- (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 a debtor 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 debtor, 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; and
 - (b) if the interest is a security over the property —
 - (i) the amount secured against the property; and
 - (ii) the amount outstanding under the security; and
 - (iii) the amount and rate of interest accruing; and
 - (iv) any change that occurs to the terms of the security;
- and
- (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 debtor's interest in the property.

[Section 70 inserted: No. 59 of 2004 s. 99; amended: No. 43 of 2012 s. 43; No. 26 of 2016 s. 56.]

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

- (1) Under a warrant, a debtor'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 debtor'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 a debtor's saleable interests in real property and in personal property being sold at the same time.

[Section 70A inserted: No. 59 of 2004 s. 99; amended: No. 48 of 2012 s. 43.]

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: No. 59 of 2004 s. 99.]

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

- (1) Before selling a debtor'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 debtor to provide the Sheriff with such information relevant to the value of the interest as is known to the debtor or is reasonably capable of being ascertained by the debtor;
 - (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: No. 59 of 2004 s. 99; amended: No. 48 of 2012 s. 43.]

70D. Interests of others

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

- (a) the Sheriff is of the opinion that such a sale is desirable; and
- (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: No. 59 of 2004 s. 99; amended: No. 48 of 2012 s. 43.]

70E. Sale to be advertised

- (1) The Sheriff must advertise any intended sale under a warrant of a debtor's saleable interest in personal or real property in a reasonable manner.

- (2) A debtor'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.
- (4) If a warrant was issued under Part 3, an offender's saleable interest in real or personal property must not be sold under the warrant unless either —
 - (a) 14 days have elapsed since the notice under section 68B was given to the debtor, and no application has been made to the Magistrates Court under section 101AA in respect of the warrant; or
 - (b) any application made to the Magistrates Court under section 101AA has been disposed of (within the meaning of that section), and the warrant remains in force.

[Section 70E inserted: No. 59 of 2004 s. 99; amended: No. 48 of 2012 s. 33 and 43.]

Division 3 — Seizure and sale of personal property

71. Enforcement warrant, 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 a debtor —
 - (a) applies to any saleable interest that the debtor 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 debtor has a saleable interest and to sell that interest; and
 - (ii) to seize any money of the debtor; and
 - (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 debtor, 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 debtor'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: No. 59 of 2004 s. 100; amended: No. 48 of 2012 s. 43.]

[72, 73. Deleted: 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: No. 59 of 2004 s. 101.]

75. Property that cannot be seized and sold

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

- (a) property that the debtor holds in trust for another person and in which the debtor 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 debtor to earn income by personal exertion of a value that does not exceed the amount prescribed by the regulations.

[Section 75 inserted: No. 59 of 2004 s. 102; amended: No. 48 of 2012 s. 43.]

76. Seizure of documents

- (1) If the Sheriff seizes any document relating to any business or undertaking of the debtor 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.

[Section 76 amended: No. 48 of 2012 s. 43.]

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 debtor, 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 debtor.
- (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.

[Section 77 amended: No. 48 of 2012 s. 43.]

78. Debts due to debtor 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 debtor 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.

- (4) The Sheriff must not serve a notice under subsection (1) in relation to —
- (a) compensation that is or may become payable under the *Criminal Injuries Compensation Act 2003*; or
 - (b) money of a kind prescribed by the regulations.

[Section 78 amended: No. 48 of 2012 s. 43; No. 25 of 2020 s. 6.]

[79. Deleted: No. 59 of 2004 s. 107.]

80. Notice of seizure

- (1) On seizing personal property of a debtor the Sheriff must issue a notice of seizure.
- (2) A notice of seizure must be served on the debtor and, if the person who has custody of the property when it is seized is not the debtor, on that person.
- (3) A notice of seizure must —
- (a) name the debtor; and
 - (b) state the amount owed under the warrant and any enforcement fees owed; and
 - (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: No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

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 debtor or another person if the debtor or person, in writing, consents and agrees —
 - (a) to be responsible for its safekeeping; and
 - (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 debtor 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 debtor 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: No. 59 of 2004 s. 103; amended: No. 48 of 2012 s. 43.]

[82-84. Deleted: 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 debtor with a written notice advising the debtor —
 - (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 debtor 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 a debtor 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.

[Section 86 amended: No. 48 of 2012 s. 43.]

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 debtor —
 - (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 debtor 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.

[Section 87 amended: No. 48 of 2012 s. 43.]

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 a debtor —
- (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 debtor 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 debtor has at the time when the Sheriff receives the warrant;
 - (iii) any saleable interest in any other real property in the State that the debtor has at the time when the Sheriff receives the warrant;
- and
- (b) entitles the Sheriff —
- (i) to seize the land; and

- (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 debtor'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; and
 - (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: No. 59 of 2004 s. 104; amended: No. 48 of 2012 s. 43.]

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 debtor 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: No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

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 debtor 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 debtor'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: No. 59 of 2004 s. 105; amended: No. 48 of 2012 s. 43.]

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

- (1) The Sheriff may permit the debtor to sell or mortgage the debtor's saleable interest in any real property to which a warrant applies.
- (2) The Sheriff's permit must —
 - (a) be in writing; and
 - (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; and
 - (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; and
 - (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 debtor sells or mortgages the interest; and

- (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 debtor the money paid to the Sheriff is extinguished; and
- (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: No. 59 of 2004 s. 105; amended: No. 48 of 2012 s. 43.]

91B. Place and manner of sale

- (1) Subject to any order made by a court under this section, the sale under a warrant of a debtor's saleable interest in real property —
 - (a) may be conducted on the property or at any other place, as the Sheriff thinks fit; and
 - (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 debtor 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: No. 59 of 2004 s. 105; amended: No. 48 of 2012 s. 43.]

92. Sale and transfer of land seized

- (1) Subject to this Division, a warrant has effect in respect of land of the debtor as if the warrant were a property (seizure and sale) order issued under the *Civil Judgments Enforcement Act 2004* and the debtor 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 debtor in respect of whom the warrant was issued has or can or may have in or to the land.

[Section 92 amended: No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

Division 5 — Interpleader

93. Making claim to property seized

- (1) A person (the *claimant*), other than the debtor, 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.

[Section 93 amended: No. 48 of 2012 s. 43.]

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: No. 59 of 2004 s. 107.]

Division 6A — Additional powers relating to vehicles

[Heading inserted: No. 48 of 2012 s. 34.]

Subdivision 1 — General provisions

[Heading inserted: No. 48 of 2012 s. 34.]

95A. Application

This Division applies to a warrant issued under Part 3 or 4.

[Section 95A inserted: No. 48 of 2012 s. 34.]

95B. Warning notices

- (1) A warrant issued in respect of a debtor entitles the Sheriff to affix a notice that complies with subsection (2) to one or more vehicles of the debtor.
- (2) The notice must include information about the enforcement action that may be taken by the Sheriff in relation to the vehicle under this Division.
- (3) The power in subsection (1) may be exercised whether or not the Sheriff has previously exercised any other powers under the warrant in relation to the vehicle.

[Section 95B inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 89.]

Subdivision 2 — Immobilisation of vehicles

[Heading inserted: No. 48 of 2012 s. 34.]

95C. Immobilisation of vehicles

- (1) A warrant issued in respect of a debtor entitles the Sheriff to immobilise one or more vehicles of the debtor using —
 - (a) one or more wheel clamps; or
 - (b) another means prescribed by the regulations.
- (2) A vehicle must not be immobilised under a warrant at a particular place unless the Sheriff is satisfied that immobilising the vehicle at that place will not —
 - (a) cause the vehicle to be parked in contravention of a written law; or
 - (b) cause undue inconvenience to persons other than the debtor.

- (3) A vehicle must not be immobilised under a warrant if, at the time of the immobilisation —
- (a) the number plates of the vehicle have been removed in accordance with section 95F; and
 - (b) the number plates have not been returned to the debtor.
- (4) If the Sheriff immobilises a vehicle under a warrant, the Sheriff must affix to the vehicle a notice that complies with subsection (5).
- (5) A notice affixed to a vehicle under subsection (4) must include at least the following information —
- (a) that a warrant has been issued in respect of the person in whose name the vehicle is licensed or the owner of the vehicle; and
 - (b) the time at which the vehicle was immobilised; and
 - (c) that it is an offence to remove the notice while the vehicle remains immobilised under a warrant; and
 - (d) information about what the debtor may do to have the immobilisation of the vehicle removed; and
 - (e) that the Sheriff may take further enforcement action against the debtor if the debtor does not pay the amount owed under the warrant and any enforcement fees; and
 - (f) any other information prescribed by the regulations.
- (6) A notice under subsection (4) may be in 2 parts.

[Section 95C inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 69.]

95D. Removal of immobilisation of vehicle

- (1) The Sheriff may at any time remove the immobilisation of a vehicle that has been immobilised under a warrant.
- (2) If —
- (a) a vehicle is immobilised under a warrant; and

(b) the warrant ceases to be in force,

the Sheriff must remove the immobilisation of the vehicle as soon as practicable.

[Section 95D inserted: No. 48 of 2012 s. 34.]

95E. Offences relating to immobilisation of vehicles

- (1) A person must not, without reasonable excuse, remove a vehicle that is immobilised under a warrant from the place at which it is immobilised.

Penalty: a fine of \$2 000.

- (2) A person must not, without reasonable excuse —

- (a) interfere with or remove a wheel clamp by which a vehicle is immobilised under a warrant; or
(b) otherwise remove the immobilisation of a vehicle immobilised under a warrant.

Penalty: a fine of \$2 000.

- (3) A person must not, without reasonable excuse, interfere with or remove a notice affixed to a vehicle under section 95C(4), or any part of such a notice, at any time while the vehicle is immobilised under a warrant.

Penalty for an offence under subsection (3): a fine of \$2 000.

[Section 95E inserted: No. 48 of 2012 s. 34.]

Subdivision 3 — Removal of number plates

[Heading inserted: No. 48 of 2012 s. 34.]

95F. Removal of number plates

- (1) A warrant issued in respect of a debtor entitles the Sheriff to remove the number plates from one or more vehicles of the debtor.

- (2) The number plates of a vehicle must not be removed under a warrant if —
 - (a) the vehicle has been immobilised under a warrant; and
 - (b) the immobilisation of the vehicle has not been removed.
- (3) If the Sheriff removes the number plates of a vehicle under this section, the Sheriff must affix to the vehicle a notice that complies with subsection (4).
- (4) A notice affixed to a vehicle under subsection (3) must include at least the following information —
 - (a) that a warrant has been issued in respect of the person in whose name the vehicle is licensed or the owner of the vehicle; and
 - (b) the time at which the number plates were removed; and
 - (ba) if the vehicle is licensed under the *Road Traffic (Vehicles) Act 2012* when the number plates are removed — that the vehicle licence has been suspended; and
 - (c) that the debtor is disqualified from holding or obtaining a vehicle licence for the vehicle; and
 - (d) that it is an offence to remove the notice before the number plates are returned or a vehicle licence cancellation and disqualification order is made in respect of the vehicle; and
 - (e) information about what the debtor may do to have the number plates returned; and
 - (f) that the Sheriff may take further enforcement action against the debtor if the debtor does not pay the amount owed under the warrant and any enforcement fees; and
 - (g) any other information prescribed by the regulations.
- (5) A notice under subsection (3) may be in 2 parts.

- (6) Subject to sections 95H and 95J, number plates removed under a warrant are to be kept in safe custody by the Sheriff.

[Section 95F inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 70.]

95G. Vehicle licence suspension and disqualification order made when number plates are removed

- (1) At the time the number plates of a vehicle are removed under a warrant, the Sheriff must make a vehicle licence suspension and disqualification order in respect of the vehicle and the debtor.
- (1A) Subsection (1) applies whether or not a vehicle licence for the vehicle is in force when the order is made.
- (2) A vehicle licence suspension and disqualification order is an order disqualifying the debtor from holding or obtaining a vehicle licence for the vehicle.

Note for this subsection:

If a vehicle licence is in force in relation to the vehicle when the order is made, the licence is suspended under the *Road Traffic (Vehicles) Act 2012* section 16(2A) while the vehicle licence suspension and disqualification order is in force.

- (3) As soon as practicable after the number plates of a vehicle are removed under a warrant —
- (a) the Sheriff must advise the Registrar of the terms of the order; and
- (b) the Registrar must advise the Director General of the terms of the order.
- (4) For the purposes of this Act and the *Road Traffic (Vehicles) Act 2012*, a vehicle licence suspension and disqualification order made under subsection (1) —
- (a) takes effect when the number plates are removed; and
- (b) is in force from the time it takes effect to the time when it is cancelled.

- (5) If —
- (a) a vehicle licence suspension and disqualification order is made under subsection (1) when the number plates of a vehicle are removed under a warrant; and
 - (b) either —
 - (i) the warrant ceases to be in force; or
 - (ii) the number plates are returned to the debtor; or
 - (iii) a vehicle licence cancellation and disqualification order is made in respect of the vehicle under section 95J,

the vehicle licence suspension and disqualification order is taken to be cancelled.

- (6) If a vehicle licence suspension and disqualification order is cancelled under subsection (5), the Registrar must notify the Director General of the cancellation as soon as practicable.

[Section 95G inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 71.]

95H. Return of number plates

- (1) If the number plates of a vehicle of a debtor have been removed under a warrant, the Sheriff may at any time return the number plates to the debtor.
- (2) If —
- (a) the number plates of a vehicle of a debtor have been removed under a warrant; and
 - (b) the warrant ceases to be in force; and
 - (c) a vehicle licence cancellation and disqualification order has not been made in respect of the vehicle under section 95J; and
 - (d) when the warrant ceases to be in force, the debtor holds the vehicle licence for the vehicle (whether or not the vehicle licence is suspended),

the Sheriff must return the number plates to the debtor as soon as practicable.

- (3) Without limiting subsections (1) and (2), the Sheriff may return number plates to a debtor by —
- (a) notifying the debtor in writing that the debtor may collect the number plates from a place and during periods specified in the notice; and
 - (b) making the number plates available for collection in accordance with the notice.

[Section 95H inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 72.]

95I. Offence of interfering with or removing notice

- (1) In this section —
- affected vehicle*** means a vehicle from which the number plates have been removed under a warrant.
- (2) A person who, without reasonable excuse, interferes with or removes a notice affixed to an affected vehicle under section 95F(3), or any part of such a notice, commits an offence unless —
- (a) the number plates have been returned to the debtor; or
 - (b) a vehicle licence cancellation and disqualification order has been made in respect of the vehicle under section 95J.

Penalty: a fine of \$2 000.

[Section 95I inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 73.]

Subdivision 4 — Vehicle licence cancellation and disqualification orders

[Heading inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 74.]

95J. Vehicle licence cancellation and disqualification order

- (1) If —
 - (a) the number plates of a vehicle of a debtor have been removed under a warrant; and
 - (b) 28 days have elapsed since the day on which the number plates were removed; and
 - (c) the warrant remains in force,the Sheriff may make a vehicle licence cancellation and disqualification order in respect of the vehicle.
- (2) A vehicle licence cancellation and disqualification order is an order —
 - (a) if the vehicle is licensed under the *Road Traffic (Vehicles) Act 2012* when the order is made — cancelling that vehicle licence; and
 - (b) disqualifying the debtor from holding or obtaining a vehicle licence in respect of that vehicle.
- (3) If the Sheriff makes a vehicle licence cancellation and disqualification order, the Sheriff must —
 - (a) serve a copy of the order on the debtor; and
 - (b) advise the Registrar of the terms of the order; and
 - (c) give the number plates that were removed from the vehicle to the Director General.
- (4) As soon as practicable after receiving advice under subsection (3), the Registrar must advise the Director General of the terms of the vehicle licence cancellation and disqualification order.

- (5) For the purposes of this Act and the *Road Traffic (Vehicles) Act 2012*, a vehicle licence cancellation and disqualification order takes effect when it is made.
- (6) If —
- (a) a vehicle licence cancellation and disqualification order is made in respect of a vehicle and a debtor; and
 - (b) the warrant under which the order is made ceases to be in force,
- the vehicle licence cancellation and disqualification order is taken to be cancelled to the extent that the order would disqualify the debtor from holding or obtaining a vehicle licence in respect of that vehicle.
- (6A) The Sheriff may at any time, if the Sheriff considers that it is appropriate in the circumstances, cancel a vehicle licence cancellation and disqualification order made in respect of a vehicle to the extent that the order would disqualify the debtor from holding or obtaining a vehicle licence in respect of the vehicle.
- (7) If a vehicle licence cancellation and disqualification order is cancelled under subsection (6) or (6A), then as soon as practicable —
- (a) the Sheriff must notify the debtor of the cancellation; and
 - (b) the Registrar must notify the Director General of the cancellation.
- (8) The making of a vehicle licence cancellation and disqualification order under this section in relation to a vehicle does not entitle the debtor to the refund of any fee paid in respect of the grant or renewal of the vehicle licence.

[Section 95J inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 75.]

Subdivision 5 — Powers for this Division

[Heading inserted: No. 48 of 2012 s. 34.]

95K. Powers enabling immobilisation of vehicles and removal of number plates etc.

- (1) Under a warrant, using any force and assistance that is reasonably necessary in the circumstances, the Sheriff may do any or all of the following —
 - (a) enter any place that is occupied by the debtor for the purpose of immobilising, removing the number plates of, or affixing a warning notice to, a vehicle of the debtor;
 - (b) enter any place that —
 - (i) is not occupied by the debtor; and
 - (ii) is not a public place,for the purpose of immobilising, removing the number plates of, or affixing a warning notice to, a vehicle of the debtor;
 - (c) from time to time re-enter any place described in paragraph (a) or (b) for the purpose of performing the Sheriff's functions under this Act and the warrant.
- (2) The powers in —
 - (a) subsection (1)(a); and
 - (b) subsection (1)(c), to the extent that it applies in relation to a place referred to in subsection (1)(a),may be exercised at any time of the day or night.
- (3) The powers in —
 - (a) subsection (1)(b); and

- (b) subsection (1)(c), to the extent that it applies in relation to a place referred to in subsection (1)(b),

may be exercised at any time of the day or night but must not be exercised without the consent of the occupier of the place or, if there is no occupier, the owner.

- (4) Despite subsection (3), if —
- (a) the consent referred to in subsection (3) is unreasonably withheld; or
- (b) the Sheriff, after reasonable attempts to do so, cannot contact the owner or occupier of the place,

the Sheriff may exercise the powers referred to in subsection (3) without that consent.

[Section 95K inserted: No. 48 of 2012 s. 34; amended: No. 25 of 2020 s. 89.]

Division 6B — Garnishment

[Heading inserted: No. 25 of 2020 s. 76.]

Subdivision 1 — Preliminary

[Heading inserted: No. 25 of 2020 s. 76.]

95L. Application

This Division applies to a warrant issued under Part 3 or 4.

[Section 95L inserted: No. 25 of 2020 s. 76.]

95M. Garnishee orders

- (1) A warrant issued in respect of a debtor entitles the Sheriff, in accordance with this Division, to issue a garnishee order in respect of the debtor and the amount owed under the warrant and any enforcement fees.

- (2) A *garnishee order* is —
- (a) an order (a *garnishee order on earnings*) issued under section 95O that a person who pays, or is likely to pay, earnings to a debtor pay an amount or amounts of those earnings to the Sheriff; or
 - (b) an order (a *bank account garnishee order*) issued under section 95V that a bank with which a debtor has 1 or more accounts pay an amount or amounts to the Sheriff from those accounts.
- (3) A reference in this Division to a garnishee order is to the order as amended from time to time.
- (4) The Sheriff must ensure that only 1 garnishee order is in force under an enforcement warrant at any time.

[Section 95M inserted: No. 25 of 2020 s. 76.]

95N. Duration, amendment and cancellation of garnishee order

- (1) A garnishee order —
- (a) comes into force on the day that is 7 days after —
 - (i) for a garnishee order on earnings — the day on which a copy of it is served on the relevant payer to whom it is issued under section 95O(4); or
 - (ii) for a bank account garnishee order — the day on which a copy of it is served on the bank to which it is issued under section 95V(5);
- and
- (b) is in force until whichever of the following occurs first —
 - (i) it is cancelled under subsection (2) or (4);
 - (ii) for a garnishee order on earnings — the relevant payer gives the Sheriff a notice under section 95Q(4);

- (iii) for a single payment garnishee order — the bank gives the Sheriff a return under section 95W(1)(c);
 - (iv) for a bank account garnishee order — the bank gives the Sheriff a notice under section 95X(2).
- (2) A garnishee order is cancelled when the warrant under which it is issued ceases to be in force.
- (3) A debtor in relation to whom a garnishee order is in force may apply to the Sheriff in the approved form for the amendment or cancellation of the order.
- (4) The Sheriff may, if the Sheriff thinks fit, amend or cancel a garnishee order on an application under subsection (3) or on the Sheriff's own initiative.
- (5) If a garnishee order is amended or cancelled, notice of the amendment or cancellation must be served on —
 - (a) the debtor; and
 - (b) the relevant payer or bank to whom the order was issued.

[Section 95N inserted: No. 25 of 2020 s. 76.]

Subdivision 2 — Garnishee orders on earnings

[Heading inserted: No. 25 of 2020 s. 76.]

95O. Issue of garnishee order on earnings

- (1) The Sheriff may, under a warrant issued in respect of a debtor, issue a garnishee order on earnings to a person (the **relevant payer**) if the Sheriff is satisfied that the relevant payer pays, or is likely to pay, earnings to the debtor on the relevant payer's own behalf and not as an employee or agent of another person.
- (2) A garnishee order on earnings must —
 - (a) be in the approved form; and
 - (b) state —

- (i) the amount owed under the warrant and any enforcement fees; and
 - (ii) the amount of the debtor's earnings for each week that is to be deducted from the debtor's earnings and paid to the Sheriff; and
 - (iii) when deductions under the order must be made; and
 - (iv) when and how amounts deducted under the order must be paid to the Sheriff; and
 - (v) when and how returns under section 95P(2)(c) must be given to the Sheriff;
 - and
 - (c) explain how the amount deducted from the debtor's earnings for a pay period is to be determined under section 95P.
- (3) A garnishee order on earnings must not include any information about —
- (a) if it is issued under an enforcement warrant issued under Part 3 in relation to an infringement notice — the alleged offence for which the infringement notice was issued; or
 - (b) if it is issued under an enforcement warrant issued under Part 4 in relation to a fine — the offence for which the fine was imposed.
- (4) A copy of a garnishee order on earnings must be served on the debtor and the relevant payer.

[Section 95O inserted: No. 25 of 2020 s. 76.]

95P. Compliance with garnishee order on earnings

- (1) This section applies if —
- (a) a garnishee order on earnings issued to a relevant payer is in force in relation to a debtor; and

- (b) earnings are payable by the relevant payer to the debtor for a period (the *pay period*).
- (2) The relevant payer must —
- (a) deduct from the earnings payable to the debtor for the pay period an amount determined under subsection (3); and
 - (b) pay that amount to the Sheriff in accordance with the order; and
 - (c) give the Sheriff a return in the approved form in accordance with the order.
- Penalty for this subsection: a fine of \$2 000.
- (3) For the purposes of subsection (2)(a), the amount to be deducted is the lowest of the following —
- (a) the amount determined by multiplying the weekly amount specified in the garnishee order under section 95O(2)(b)(ii) by the number of weeks in the pay period;
 - (b) the amount, if any, that would reduce the debtor's earnings for the pay period to the protected earnings amount;
 - (c) the amount that would result in the total amount deducted under the order for all pay periods being equal to the total amount stated in the order under section 95O(2)(b)(i).
- (4) If the debtor's earnings for the pay period are equal to or less than the protected earnings amount, the relevant payer must not deduct any amount from the earnings under subsection (2).
- (5) If the pay period is not a number of whole weeks, the number of weeks in the pay period for the purposes of subsection (3)(a) is to be determined by dividing the number of days in the pay period by 7 (rounded to 2 decimal places).

- (6) A reference in this section to a debtor's earnings for a pay period is a reference to the amount remaining after deducting any amount the relevant payer is required to withhold or deduct from the earnings under —
- (a) the *Taxation Administration Act 1953* (Commonwealth) or another law of the Commonwealth; or
 - (b) a written law (other than the *Civil Judgments Enforcement Act 2004* Part 4 Division 4).

[Section 95P inserted: No. 25 of 2020 s. 76.]

95Q. Notices and returns to be given in relation to garnishee orders on earnings

- (1) This section applies if a garnishee order on earnings issued to a relevant payer is in force in relation to a debtor.
- (2) If the relevant payer pays earnings to the debtor for a pay period, the relevant payer must, no later than 7 days after the earnings are paid, ensure that the debtor is notified of —
- (a) the amount deducted under the garnishee order; or
 - (b) if no deduction was made — that no deduction was made under the garnishee order.

Penalty for this subsection: a fine of \$2 000.

- (3) If, in a particular month, the relevant payer does not deduct any amount from the debtor's earnings under the garnishee order, the relevant payer must give the Sheriff a return in the approved form within 7 days after the end of the month.

Penalty for this subsection: a fine of \$2 000.

- (4) If the debtor ceases to be a person to whom the relevant payer pays, or is likely to pay, earnings, the relevant payer must give the Sheriff notice of the cessation in the approved form within 14 days after the cessation.

Penalty for this subsection: a fine of \$2 000.

[Section 95Q inserted: No. 25 of 2020 s. 76.]

95R. Discharge of liability to pay debtor

If a relevant payer deducts an amount from a debtor's earnings in compliance with section 95P, the relevant payer's liability to pay the amount to the debtor, or any person other than the Sheriff, is discharged.

[Section 95R inserted: No. 25 of 2020 s. 76.]

95S. Records to be kept by relevant payers

- (1) A relevant payer to whom a garnishee order on earnings has been issued in relation to a debtor must keep records of —
- (a) the debtor's earnings payable by the relevant payer while the garnishee order is in force; and
 - (b) amounts deducted from the debtor's earnings and paid to the Sheriff under this Subdivision; and
 - (c) returns and notices given in accordance with this Subdivision.

Penalty for this subsection: a fine of \$2 000.

- (2) Records kept under subsection (1) must be retained for 2 years after the garnishee order on earnings ceases to be in force.

Penalty for this subsection: a fine of \$2 000.

[Section 95S inserted: No. 25 of 2020 s. 76.]

95T. Protection of employees

- (1) If a garnishee order on earnings is issued to an employer of the debtor, the employer must not, on the ground of the issue of the order, treat the debtor less favourably than it would treat an employee whose earnings are not the subject of a garnishee order in the same circumstances or in circumstances that are not materially different.

Penalty for this subsection: a fine of \$5 000.

- (2) Subsection (3) applies if —
- (a) an employer is charged with an offence under subsection (1) that is alleged to have been committed within 6 months after the employer was served with the garnishee order on earnings concerned; and
 - (b) all of the elements of the offence are proved except the grounds for the employer's treatment of the debtor.
- (3) The onus of proving that the grounds for the employer's treatment of the debtor were not the issue of the garnishee order is on the employer.

[Section 95T inserted: No. 25 of 2020 s. 76.]

95U. Regulations for this Subdivision

- (1) The regulations may prescribe a method for determining the protected earnings amount for a pay period for the purposes of section 95P.
- (2) Different methods may be prescribed for different classes of debtors.
- (3) The regulations may include provision for determining, in cases where a relevant payer pays earnings to a debtor otherwise than for a particular period, the period for which those earnings are taken to be paid for the purposes of this Subdivision.

[Section 95U inserted: No. 25 of 2020 s. 76.]

Subdivision 3 — Garnishee orders on bank accounts

[Heading inserted: No. 25 of 2020 s. 76.]

95V. Issue of bank account garnishee order

- (1) The Sheriff may, under a warrant issued in respect of a debtor, issue a bank account garnishee order to a bank if the Sheriff is satisfied that the debtor has an account with the bank.

- (2) A bank account garnishee order may be —
- (a) an order (a *single payment garnishee order*) that a single payment be made to the Sheriff from money that is or may be held for the debtor in an account with the bank; or
 - (b) an order (a *multiple payments garnishee order*) that multiple payments be made to the Sheriff from money that is or may be held for the debtor in an account with the bank at times, or in circumstances, specified in the order.
- (3) A bank account garnishee order must —
- (a) be in the approved form; and
 - (b) state —
 - (i) the amount owed under the warrant and any enforcement fees; and
 - (ii) the amount or amounts required to be deducted and paid under the order; and
 - (iii) when deductions under the order must be made; and
 - (iv) when and how amounts deducted under the order must be paid to the Sheriff; and
 - (v) when and how returns under section 95W(1)(c) or (2)(c) must be given to the Sheriff;and
 - (c) explain how an amount deducted under the order is to be determined under section 95W.
- (4) A bank account garnishee order must not include any information about —
- (a) if it is issued under an enforcement warrant issued under Part 3 in relation to an infringement notice — the alleged offence for which the infringement notice was issued; or

- (b) if it is issued under an enforcement warrant issued under Part 4 in relation to a fine — the offence for which the fine was imposed.
- (5) A copy of a bank account garnishee order must be served on the debtor and the bank.

[Section 95V inserted: No. 25 of 2020 s. 76.]

95W. Compliance with bank account garnishee order

- (1) If a single payment garnishee order issued to a bank is in force in relation to a debtor, the bank must, as soon as practicable after the order comes into force —
 - (a) deduct the amount determined under subsection (3) from the account or accounts the debtor has with the bank; and
 - (b) pay that amount to the Sheriff in accordance with the order; and
 - (c) give the Sheriff a return in the approved form in accordance with the order.

Penalty for this subsection: a fine of \$2 000.

- (2) If a multiple payments garnishee order issued to a bank is in force in relation to a debtor, the bank must, whenever required to make a payment under the order —
 - (a) deduct the amount determined under subsection (3) from the account or accounts the debtor has with the bank; and
 - (b) pay that amount to the Sheriff in accordance with the order; and
 - (c) give the Sheriff a return in the approved form in accordance with the order.

Penalty for this subsection: a fine of \$2 000.

- (3) For the purposes of subsections (1)(a) and (2)(a), the amount to be deducted is the lowest of the following —
- (a) the amount specified in the order as the amount for the relevant deduction;
 - (b) the amount, if any, that would reduce the total amount held for the debtor in accounts with the bank at the time of the deduction to the protected bank account amount;
 - (c) the amount that would result in the total amount deducted under the order (including any previous deductions) being equal to the total amount stated in the order under section 95V(3)(b)(i).
- (4) If, when a deduction is required to be made under a bank account garnishee order, the total amount held for the debtor in accounts with the bank is equal to or less than the protected bank account amount, the bank must not deduct any amount under subsection (1) or (2), but is still required to give the Sheriff a return under subsection (1)(c) or (2)(c), as the case requires.
- (5) If money is held for the debtor in more than 1 account with the bank, the bank may decide the account or accounts from which to make the deduction under subsection (1) or (2).
- (6) The bank must not make a deduction under subsection (1) or (2) that would result in any of the debtor's accounts becoming overdrawn.
- (7) A deduction under this section is to be made after deducting any amount the bank is required to deduct from the account under —
- (a) the *Taxation Administration Act 1953* (Commonwealth) or another law of the Commonwealth; or
 - (b) a written law (other than the *Civil Judgments Enforcement Act 2004* Part 4 Division 5).

[Section 95W inserted: No. 25 of 2020 s. 76.]

95X. Notices to be given by banks

- (1) If a bank deducts an amount from a debtor's account under a bank account garnishee order, the bank must ensure that the debtor is notified of the amount deducted under the garnishee order within 7 days after the deduction is made.

Penalty for this subsection: a fine of \$2 000.

- (2) If a debtor closes all of the debtor's accounts with a bank while a bank account garnishee order issued to the bank is in force in relation to the debtor, the bank must give the Sheriff notice in the approved form within 7 days after the end of the month in which the debtor closes the account.

Penalty for this subsection: a fine of \$2 000.

[Section 95X inserted: No. 25 of 2020 s. 76.]

95Y. Records to be kept by banks

- (1) A bank to which a bank account garnishee order has been issued in relation to a debtor must keep records of —

- (a) amounts deducted from the debtor's accounts and paid to the Sheriff under this Subdivision; and
- (b) returns and notices given in accordance with this Subdivision.

Penalty for this subsection: a fine of \$10 000.

- (2) Records kept under subsection (1) must be retained for 2 years after the bank account garnishee order ceases to be in force.

Penalty for this subsection: a fine of \$10 000.

[Section 95Y inserted: No. 25 of 2020 s. 76.]

95Z. Administration fee for deduction under bank account garnishee order

If a bank charges a debtor an amount for the administrative cost of making a deduction under a bank account garnishee order, the

amount of the charge must not exceed the amount prescribed by the regulations.

Penalty: a fine of \$10 000.

[Section 95Z inserted: No. 25 of 2020 s. 76.]

95ZA. Requirements for debtor if bank account garnishee order issued

- (1) This section applies if a bank account garnishee order has been issued to a bank in relation to a debtor.
- (2) The debtor must not, with the intention of preventing the execution of the order, do any of the following —
 - (a) make a withdrawal or transfer of money from any of the debtor's accounts with the bank that results in a deduction not being able to be made under the order;
 - (b) prevent any earnings or other amount from being paid into any of the debtor's accounts with the bank;
 - (c) close any of the debtor's accounts with the bank.

Penalty for this subsection: a fine of \$2 000.

- (3) The debtor must notify the Sheriff if —
 - (a) the debtor closes all of the debtor's accounts with the bank; or
 - (b) a person who makes regular deposits of earnings or other amounts into any of the debtor's accounts with the bank discontinues those deposits.

Penalty for this subsection: a fine of \$2 000.

[Section 95ZA inserted: No. 25 of 2020 s. 76.]

95ZB. Regulations for this Subdivision

- (1) The regulations may prescribe a protected bank account amount, or a method for determining a protected bank account amount, for the purposes of section 95W.

- (2) Different protected bank account amounts or methods may be prescribed for different classes of debtors.

[Section 95ZB inserted: No. 25 of 2020 s. 76.]

Subdivision 4 — General provisions

[Heading inserted: No. 25 of 2020 s. 76.]

95ZC. Sheriff may refund money deducted under garnishee order

- (1) A debtor may apply to the Sheriff, in accordance with the regulations, for a refund of any money —
- (a) deducted from the debtor's earnings under a garnishee order on earnings and paid to the Sheriff; or
 - (b) deducted from the debtor's accounts with a bank under a bank account garnishee order and paid to the Sheriff.
- (2) On an application under subsection (1), the Sheriff may, if the Sheriff thinks fit, refund the amount or part of it to the debtor.

[Section 95ZC inserted: No. 25 of 2020 s. 76.]

95ZD. Obtaining information relevant to garnishee order

- (1) The powers in this section can only be exercised by the Sheriff after receiving a warrant and for the purpose of determining whether to exercise a function under this Division.
- (2) The Sheriff may, in writing, request any person who the Sheriff suspects pays, or may pay, earnings to the debtor to disclose to the Sheriff specified information about the following —
- (a) whether the person pays, or is likely to pay, earnings to the debtor;
 - (b) the debtor's earnings;
 - (c) any other information the Sheriff considers is or may be relevant to determining whether to exercise a function under this Division.

- (3) The Sheriff may, in writing, request any bank that the Sheriff suspects holds or may hold money for the debtor in an account to disclose to the Sheriff specified information about any of the following —
- (a) the debtor's accounts (if any) with the bank;
 - (b) the balance of those accounts and any payments into those accounts;
 - (c) any other information the Sheriff considers is or may be relevant to determining whether to exercise a function under this Division.

- (4) A person commits an offence if the person does not comply with a request made under subsection (2) or (3).

Penalty for this subsection: a fine of \$2 000.

- (5) A person commits an offence if the person discloses information to the Sheriff in response to a request under subsection (2) or (3) that the person knows is false or misleading in a material particular.

Penalty for this subsection: a fine of \$2 000.

[Section 95ZD inserted: No. 25 of 2020 s. 76.]

95ZE. Relevant payer or bank must not disclose information

- (1) This section applies to a person who is or has been —
- (a) a relevant payer or bank to whom a garnishee order has been issued in relation to a debtor; or
 - (b) a person employed by, or performing services for, a relevant payer or bank referred to in paragraph (a).
- (2) The person must not, directly or indirectly, collect, use or disclose information about a debtor obtained because of the issue of the garnishee order, or in performing the person's duties under this Division, except —

- (a) for the purpose of, or in connection with, performing the duties of the relevant payer or bank under this Division; or
- (b) if it is necessary to do so in carrying on the business affairs of the relevant payer or bank.

Penalty for this subsection: a fine of \$10 000.

[Section 95ZE inserted: No. 25 of 2020 s. 76.]

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 a debtor, they have priority according to the time of receipt by the Sheriff.

[Section 95 amended: No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

96. How amounts recovered to be applied

- (1) The Sheriff is to apply the money recovered under a warrant (the *proceeds*) in accordance with this section.
- (2) Firstly, if the money is recovered from the sale of property under the warrant, 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 70D; and
 - (b) any claim admitted by the Sheriff under section 94; and

- (c) the rights or entitlements of a person, other than the debtor, 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.
- (4A) Fourthly, the proceeds are to be applied in the payment to the Registrar of the amount owed in respect of any other enforceable registered fine (as those terms are defined in section 28(1)) of the debtor.
- (5) Fifthly, the proceeds are to be applied in the payment of any surplus to the debtor.
- (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: No. 10 of 2001 s. 220; No. 77 of 2006 s. 4; No. 42 of 2011 s. 18; No. 48 of 2012 s. 43; No. 25 of 2020 s. 77.]

97. Warrant may be satisfied at any time

- (1) Despite any other provision in this Part, a debtor 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.

[Section 97 amended: No. 48 of 2012 s. 43.]

98A. Seized property to be released if warrant ceases to be in force

If —

- (a) a warrant ceases to be in force; and
(b) at the time of the cessation, property has been seized under the warrant but has not been sold,

the Sheriff must release the property from seizure as soon as practicable.

[Section 98A inserted: No. 48 of 2012 s. 35.]

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: 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: No. 42 of 2011 s. 19.]

Part 7A — Information

[Heading inserted: No. 25 of 2020 s. 78.]

100. Terms used

In this Part —

alleged offender has the meaning given in section 11;

contractor has the meaning given in the *Court Security and Custodial Services Act 1999* section 3;

offender has the meaning given in section 28(1);

public authority means —

- (a) a department of the Public Service; or
- (b) a State agency or instrumentality; or
- (c) a court or tribunal to the extent that it is an agency for the purposes of the *Freedom of Information Act 1992*; or
- (d) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a written law;

relevant information means —

- (a) in relation to the Registrar — information that, in the opinion of the Registrar, is or is likely to be relevant to the performance of any function of the Registrar under this Act or another written law; or
- (b) in relation to the Sheriff — information that, in the opinion of the Sheriff, is or is likely to be relevant to the performance of any function of the Sheriff under this Act or another written law;

research means research to promote the development of criminology or corrective services.

[Section 100 inserted: No. 25 of 2020 s. 78.]

s. 100A

100A. Disclosure of information to Registrar or Sheriff

- (1) The Registrar or Sheriff (the *requesting officer*) may request a public authority, contractor or electricity corporation to disclose relevant information to the requesting officer.
- (2) A request under subsection (1) —
 - (a) may relate to particular information or information of a particular kind; and
 - (b) may relate to information that may be held from time to time.
- (3) A person to whom a request under subsection (1) is made must disclose information in compliance with the request.
- (4) A person, other than a public authority, who contravenes a request made under subsection (1) is guilty of a contempt of the Magistrates Court.

[Section 100A inserted: No. 25 of 2020 s. 78.]

100B. Disclosure of information by Registrar or Sheriff

- (1) The Minister may, from time to time, approve circumstances in which, or purposes for which, information relating to an offender or alleged offender may be disclosed by the Registrar or Sheriff to a person or class of persons in a government department or agency of the State, the Commonwealth, another State, a Territory or another country.
- (2) The Registrar or Sheriff may disclose information as approved under subsection (1).
- (3) The Registrar or Sheriff may —
 - (a) disclose information relating to offenders, alleged offenders, fines or infringement notices to a public authority or other body for use in research; or
 - (b) disclose information prescribed by the regulations in circumstances prescribed by the regulations.

- (4) The Registrar must —
- (a) establish written procedures for the disclosure of information by the Registrar or Sheriff under this section; and
 - (b) ensure that the procedures are published on the Registrar's website.

[Section 100B inserted: No. 25 of 2020 s. 78.]

100C. Registrar and Sheriff to have access to records of Director General

The Registrar and the Sheriff are entitled, to the extent that it is necessary or convenient for the performance of functions under this Act or another written law, to have access to and make use of the records kept by the Director General under a road law in relation to drivers' licences and vehicle licences.

[Section 100C inserted: No. 25 of 2020 s. 78.]

100D. Regulations relating to information

The regulations may provide for the following —

- (a) the conditions subject to which information may be disclosed or accessed under this Part;
- (b) the receipt, use and storage of information disclosed or accessed under this Part;
- (c) the restriction of access to information disclosed or accessed under this Part;
- (d) the maximum period for which information disclosed or accessed under this Part may be retained;
- (e) the circumstances in which information disclosed or accessed under this Part must be destroyed.

[Section 100D inserted: No. 25 of 2020 s. 78.]

s. 100E

100E. Disclosure not subject to other laws

- (1) Information may be disclosed or accessed under this Part despite any written law relating to confidentiality or secrecy.
- (2) If information is disclosed or accessed, in good faith, under this Part —
 - (a) no civil or criminal liability is incurred in respect of the disclosure or access; and
 - (b) the disclosure or access is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure or access is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

[Section 100E inserted: No. 25 of 2020 s. 78.]

100F. Confidentiality

- (1) A person must not, directly or indirectly, collect, use or disclose information of the following kinds except as authorised under subsection (2) —
 - (a) information obtained because of the person's office, position, employment or engagement for the purposes of this Act;
 - (b) information disclosed to the person under section 100A or 100B.

Penalty for this subsection: a fine of \$10 000.

- (2) The collection, use or disclosure of information to which subsection (1) applies is authorised if the information is collected, used or disclosed in good faith —
 - (a) for the purpose of, or in connection with, performing a function under this Act or another written law; or
 - (b) as required or allowed under this Act or another written law; or

- (c) for the purposes of any legal proceedings arising under this Act or another written law; or
 - (d) under an order of a court or other person or body acting judicially; or
 - (e) with the written consent of the person to whom the information relates; or
 - (f) in the case of information disclosed under section 100B — for the purposes for which the information was disclosed; or
 - (g) in circumstances prescribed by the regulations.
- (3) Subsection (1) does not apply in relation to the collection, use or disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

[Section 100F inserted: No. 25 of 2020 s. 78.]

Part 8 — Miscellaneous

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 enforce issued under section 18 in respect of the infringement notice;
 - (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: No. 8 of 1996 s. 6; No. 51 of 2000 s. 10; No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

101AA. Magistrates Court may set aside enforcement warrant issued under Part 3

- (1) In this section —
disposed of means determined, dismissed or discontinued.
- (2) A person in respect of whom an enforcement warrant has been issued under Part 3 (the *applicant*) may apply to the Magistrates Court for an order cancelling the warrant.
- (3) The application must be made no later than 14 days after the Sheriff gives the applicant the notice under section 68B in respect of the enforcement warrant.
- (4) A person cannot apply if the person has previously applied in relation to the enforcement warrant or in relation to any other enforcement warrant made in respect of the infringement notice to which the warrant relates, and the application was refused.
- (5) The application must be made in accordance with the Magistrates Court's rules of court.
- (6) An enforcement warrant that is in force at the time when an application is made under subsection (2) does not cease to be in force by reason only of the making of the application, but no further action is to be taken under the warrant until the application is disposed of.

s. 101A

- (7) 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 warrant;
 - (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 enforce issued under section 18 in respect of the infringement notice;
 - (e) any notice confirming licence suspension issued under section 19(6) in respect of the infringement notice,

the Court may make an order cancelling the enforcement warrant.

- (8) If the Court makes an order cancelling an enforcement warrant Part 3 applies in relation to the infringement notice to which the warrant relates as if the Registrar had never issued the warrant.

[Section 101AA inserted: No. 48 of 2012 s. 36.]

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; and
 - (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 enforce 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: No. 8 of 1996 s. 7; amended: No. 59 of 2004 s. 107; No. 48 of 2012 s. 43.]

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*.

s. 101B

- (2) When the Registrar is notified that a person is appealing against a fine or the decision giving rise to a fine no action is to be taken under this Act except as provided by this section or the regulations.
- (3) If when a person appeals against a fine or the decision giving rise to a fine —
- (a) a time to pay order is in force, the order ceases to have effect;
 - (b) a notice of intention to enforce 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) an enforcement warrant issued under section 45 is in force, but —
 - (i) no property has been seized under the warrant; and
 - (ii) no vehicle has been immobilised under the warrant; and
 - (iii) no number plates have been removed from a vehicle under the warrant; and
 - (iv) no money has been paid in compliance with a notice served under section 78 under the warrant; and
 - (v) no money has been deducted in compliance with a garnishee order issued under the warrant,the warrant is to be taken as being cancelled from that time;
 - (e) an order to attend for work and development has been issued under section 47 but not served, the order is to be taken as being cancelled as from that time;

(f) an ongoing fine expiation order (as defined in section 28(1)) is in force in relation to the fine, the order continues in force after the appeal is made, subject to section 52J.

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

(a) an enforcement warrant issued under section 45 is in force and —

(i) property has been seized under the warrant; or

(ii) a vehicle is or has been immobilised under the warrant; or

(iii) number plates have been removed from a vehicle under the warrant; or

(iv) money has been paid in compliance with a notice served under section 78 under the warrant; or

(v) money has been deducted in compliance with a garnishee order issued under the warrant,

no further action is to be taken under the warrant;

[(b) deleted]

(c) an order to attend for work and development issued under section 47 has been served, the order ceases to have effect;

(d) a work and development order made under section 48 is in force, the order ceases to have effect,

until the appeal is disposed of and, if the fine is then still payable, subsection (5) operates.

(5A) If when a person appeals against a fine or the decision giving rise to a fine —

(a) subsection (4)(a) applies to an enforcement warrant; and

(b) a vehicle is immobilised under the warrant,

s. 101B

the Sheriff must, as soon as practicable, remove the immobilisation of the vehicle (within the meaning of section 63(2)).

- (5B) If when a person appeals against a fine or the decision giving rise to a fine —
- (a) subsection (4)(a) applies to an enforcement warrant; and
 - (b) number plates have been removed from a vehicle under the warrant; and
 - (c) those number plates have not been returned; and
 - (d) a vehicle licence cancellation and disqualification order has not been made under section 95J in respect of the vehicle; and
 - (e) the person holds the vehicle licence for the vehicle (whether or not the vehicle licence is suspended),

the Sheriff must, as soon as practicable, return the number plates to the person (either in accordance with section 95H(3) or otherwise).

- (5C) If when a person appeals against a fine or the decision giving rise to a fine —
- (a) subsection (4)(a) applies to an enforcement warrant; and
 - (b) a vehicle licence cancellation and disqualification order has been made under section 95J in respect of a vehicle under the warrant,

the vehicle licence cancellation and disqualification order is taken to be cancelled to the extent that the order would disqualify the person from holding or obtaining a vehicle licence in respect of that vehicle, and the Registrar must notify the Director General of that cancellation and disqualification as soon as practicable.

- (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 enforcement warrant;
 - (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: No. 8 of 1996 s. 7; amended: No. 59 of 2004 s. 107; No. 84 of 2004 s. 45; No. 3 of 2008 s. 15; No. 48 of 2012 s. 37 and 43; No. 25 of 2020 s. 79.]

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 by the Registrar 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 by the Registrar under this Act,

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

- (2A) Evidence —
- (a) that a vehicle licence suspension and disqualification order was made under section 95G or a vehicle licence cancellation and disqualification order was made under section 95J;

s. 101D

- (b) of the details of a vehicle licence suspension and disqualification order made under section 95G, or a vehicle licence cancellation and disqualification order made under section 95J, and of the matter to which it relates;
- (c) that a vehicle licence suspension and disqualification order made under section 95G had not, at a particular time, been cancelled;
- (d) that a vehicle licence cancellation and disqualification order made under section 95J had not, at a particular time, been cancelled to the extent that the order would disqualify a person from holding or obtaining a vehicle licence;
- (e) that a document issued by the Sheriff under this Act has been served on a person in accordance with section 5;
- (f) of any matter relevant to the service of a document issued by the Sheriff under this Act,

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

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

[Section 101C inserted: No. 8 of 1996 s. 7; amended: No. 48 of 2012 s. 38; No. 25 of 2020 s. 80.]

101D. Validity of certain orders not affected by non-receipt of documents

(1A) In this section —

licence suspension order includes a vehicle licence suspension and disqualification order made under section 95G.

(1) The validity of a licence suspension order or vehicle licence cancellation and disqualification 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: No. 8 of 1996 s. 7; amended: No. 48 of 2012 s. 39; No. 25 of 2020 s. 81.]

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: No. 3 of 2008 s. 4(4).]

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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, the CEO (fines enforcement) or the CEO (corrections).

[Section 103 amended: No. 65 of 2006 s. 64; No. 25 of 2020 s. 82.]

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) An enforcement warrant 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.

[Section 105 amended: No. 48 of 2012 s. 43; No. 25 of 2020 s. 83.]

105A. Delegation by CEO (fines enforcement)

- (1) The CEO (fines enforcement) may delegate to any person any power or duty of the CEO (fines enforcement) under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO (fines enforcement).
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the CEO (fines enforcement) to perform a function through an officer or agent.
[Section 105A inserted: No. 25 of 2020 s. 84.]

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 an enforcement warrant 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.

[Section 106 amended: No. 48 of 2012 s. 43.]

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.
- (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

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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 this Act; 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 Part 4; 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 enforce; 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: No. 4 of 2009 s. 4; amended: No. 48 of 2012 s. 43; No. 25 of 2020 s. 85.]

108B. Amounts to be credited to agency special purpose account

An amount equal to the amounts credited to the Consolidated Account under sections 27(2), 55(2) and 96(6) is to be —

- (a) credited to an agency special purpose account that is —
- (i) established under the *Financial Management Act 2006* section 16 for the purposes of the department of the Public Service principally assisting the Minister in the administration of this Act; and
 - (ii) nominated by the Minister in writing for the purposes of this section;

and

- (b) charged to the Consolidated Account,

and this section appropriates the Consolidated Account accordingly.

[Section 108B inserted: No. 48 of 2012 s. 40.]

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 —

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- (i) an infringement notice that has been the subject of a successful application under section 101 or 101AA;
 - (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 for the purposes of this Act;
 - (c) requiring alleged offenders and offenders to verify information supplied for the purposes of this Act by a statutory declaration or by other means;
 - (d) providing for offences against the regulations and prescribing penalties for those offences not exceeding a fine of \$5 000.
- (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 enforce to be imposed on an alleged offender either when a licence suspension order is made or when an enforcement warrant is issued, but not twice;

- (ea) a fee for issuing an enforcement warrant to be imposed on an alleged offender when the warrant is issued;
 - (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 enforce to be imposed on an offender either when a licence suspension order is made or when an enforcement warrant is issued, but not twice;
 - (b) a fee for issuing an enforcement warrant to be imposed on an offender when the warrant is issued;
 - (ba) a fee for the service of a summons under Part 4 Division 3E Subdivision 3;
 - (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 a debtor (as defined in section 63) in connection with the exercise of powers under an enforcement warrant.
- (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.

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- (8) The amount of an enforcement fee prescribed under this section may be more than the amount, or an estimate of the amount, needed to allow recovery of expenditure —
- (a) incurred in connection with the matter in relation to which the enforcement fee is imposed; or
 - (b) that is relevant to the scheme or system under which the enforcement fee is imposed.
- (9) Subsection (8) does not apply to an enforcement fee prescribed in accordance with subsection (6).

[Section 108 amended: 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); No. 48 of 2012 s. 41 and 43; No. 25 of 2020 s. 86.]

109. Imposition of tax

To the extent that any fee that the regulations prescribe under section 108 is a tax, the fee is imposed.

[Section 109 inserted: No. 28 of 2012 s. 4.]

109A. Review of certain amendments made by *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020*

- (1) The Minister must review the operation and effectiveness of the following amendments made by the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* (the **amending Act**), and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which section 87 of the amending Act comes into operation —
- (a) the amendments to this Act made by Part 2 Divisions 2 and 3 of the amending Act;
 - (b) the amendments to the *Sentence Administration Act 2003* made by Part 3 Division 7 of the amending Act;
 - (c) the amendments to the *Sentencing Act 1995* made by sections 129 and 130 of the amending Act.

- (2) The Minister must cause the report under subsection (1) to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.
- (3) The Minister must also review the operation and effectiveness of the amendments referred to in subsection (1), and prepare a report based on the review, as soon as practicable after the 7th anniversary of the day on which section 87 of the amending Act comes into operation.
- (4) The Minister must cause the report under subsection (3) to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 7th anniversary.
- (5) The Minister must transmit a copy of a report under subsection (1) or (3) to a Clerk of a House of Parliament if —
 - (a) the report has been prepared; and
 - (b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.
- (6) A copy of a report transmitted to the Clerk of a House is taken to have been laid before that House.
- (7) The laying of a copy of a report that is taken to have occurred under subsection (6) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

[Section 109A inserted: No. 25 of 2020 s. 87.]

109B. Review of Part 4 Division 3C Subdivision 2

- (1) The Minister must review the operation and effectiveness of Part 4 Division 3C Subdivision 2, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Fines, Penalties and Infringement Notices*

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Enforcement Amendment Act 2020 section 103 comes into operation.

- (2) The Minister must cause the report under subsection (1) to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.
- (3) The Minister must also review the operation and effectiveness of Part 4 Division 3C Subdivision 2, and prepare a report based on the review, as soon as practicable after the 7th anniversary of the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* section 103 comes into operation.
- (4) The Minister must cause the report under subsection (3) to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 7th anniversary.
- (5) The Minister must transmit a copy of a report under subsection (1) or (3) to a Clerk of a House of Parliament if —
 - (a) the report has been prepared; and
 - (b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.
- (6) A copy of a report transmitted to the Clerk of a House is taken to have been laid before that House.
- (7) The laying of a copy of a report that is taken to have occurred under subsection (6) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

[Section 109B inserted: No. 25 of 2020 s. 103.]

Part 9 — Transitional and validation provisions

[Heading inserted: No. 48 of 2012 s. 42.]

Division 1 — Provisions for *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012*

[Heading inserted: No. 25 of 2020 s. 7.]

110. Transitional provisions as to warrants of execution

- (1) A warrant of execution in force immediately before the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* section 43 comes into operation is, on and after the coming into operation of that section and until it ceases to be in force under this Act, taken to be an enforcement warrant for the purposes of this Act.
- (2) Despite subsection (1), a warrant of execution referred to in that subsection does not authorise any action that can be taken to enforce the payment of the fine under Part 7 Division 6A.

[Section 110 inserted: No. 48 of 2012 s. 42.]

111. Transitional provisions as to notices of intention to suspend licences issued under s. 18

- (1) In this section —
commencement means the coming into operation of the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* section 11.
- (2) A notice of intention to suspend licences issued before commencement is, on and after commencement, taken for the purposes of this Act —
 - (a) to be a notice of intention to enforce given in accordance with section 18 as in force after commencement; and

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- (b) to have been issued on the day when the notice of intention to suspend licences was issued.

[Section 111 inserted: No. 48 of 2012 s. 42.]

112. Transitional provisions as to notices of intention to suspend licences issued under s. 42

- (1) In this section —

commencement means the coming into operation of the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* section 20.

- (2) A notice of intention to suspend licences issued under section 42 before commencement is, on and after commencement, taken for the purposes of this Act —

- (a) to be a notice of intention to enforce given in accordance with section 42 as in force after commencement; and
- (b) to have been issued on the day when the notice of intention to suspend licences was issued.

[Section 112 inserted: No. 48 of 2012 s. 42.]

113. Transitional provisions as to infringement notices

- (1) In this section —

commencement means the coming into operation of the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* section 14;

transitional period means the period of 12 months beginning on commencement.

- (2) This section applies despite any other provision of a written law.
- (3) An infringement notice issued under a written law —
 - (a) before commencement; or
 - (b) during the transitional period,

is not invalid merely because the infringement notice does not inform the alleged offender of action that may be taken under this Act only because of the amendments to this Act made by the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012*.

[Section 113 inserted: No. 48 of 2012 s. 42.]

114. Validation

Regulations made, or purporting to have been made, under section 108 before the commencement of this section are, and are taken to have always been, as effective as they would have been if section 108(8) had been enacted and commenced before those regulations were made.

[Section 114 inserted: No. 48 of 2012 s. 42.]

Division 2 — Provisions for *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020*

[Heading inserted: No. 25 of 2020 s. 8.]

115. Terms used

In this Division —

first commencement day means the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* Part 2 Division 2 comes into operation under section 2(1)(b) of that Act;

former Act means this Act as in force immediately before the second commencement day;

period of concurrent imprisonment, in relation to a warrant of commitment issued or to be issued in relation to an offender under this Act, means any period or term of imprisonment the offender is or would be serving concurrently with imprisonment under the warrant of commitment (other than a period of imprisonment under another warrant of commitment issued under this Act);

second commencement day means the day on which the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* sections 9 to 86, 88 and 89 come into operation under section 2(1)(c) of that Act;

transitional period means the period beginning on the first commencement day and ending immediately before the second commencement day.

[Section 115 inserted: No. 25 of 2020 s. 8.]

116. Offender not yet arrested under warrant of commitment issued before first commencement day

- (1) This section applies if —
 - (a) a warrant of commitment has been issued under this Act before the first commencement day in relation to an offender and a fine; and
 - (b) immediately before the first commencement day, the offender has not been arrested under the warrant.
- (2) The warrant of commitment is cancelled on the first commencement day.
- (3) The cancellation of a warrant of commitment in relation to an offender and a fine under this section does not prevent the Registrar from taking any other enforcement action under Part 4 in relation to the offender and the fine.

[Section 116 inserted: No. 25 of 2020 s. 8.]

117. Offender in custody under warrant of commitment issued before first commencement day

- (1) This section applies if —
 - (a) 1 or more warrants of commitment (the *relevant warrants*) have been issued under this Act before the first commencement day in relation to an offender and 1 or more fines (the *relevant fines*); and

- (b) immediately before the first commencement day, the offender is imprisoned under the relevant warrants (whether or not the offender is serving 1 or more periods of concurrent imprisonment).
- (2) If immediately before the first commencement day the offender is not serving any period of concurrent imprisonment —
 - (a) the relevant warrants are cancelled on the first commencement day; and
 - (b) the offender is to be released from imprisonment on the first commencement day; and
 - (c) the liability of the offender to pay the amount owed in respect of each of the relevant fines is taken to be wholly discharged under section 53 on the first commencement day, even though only a part of the period for which the offender was to be imprisoned under each of the relevant warrants has been served.
- (3) If immediately before the first commencement day the offender is serving 1 or more periods of concurrent imprisonment, the relevant warrants remain in force on and after the first commencement day, subject to sections 53 and 118(2) and (3).

[Section 117 inserted: No. 25 of 2020 s. 8.]

118. Issue and cancellation of warrants of commitment in transitional period

- (1) During the transitional period, the Registrar must not issue a warrant of commitment in relation to an offender under section 53(1) or 55D(1) unless the offender is already serving a period of concurrent imprisonment.
- (2) Without limiting section 53, a warrant of commitment issued under this Act that is in force in the transitional period (whether issued before or during the transitional period) is cancelled if the offender ceases to be serving any period of concurrent imprisonment.

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- (3) A warrant of commitment issued under this Act that is in force immediately before the second commencement day is cancelled on the second commencement day.
- (4) The cancellation of a warrant of commitment in relation to an offender and a fine under this section does not prevent the Registrar from taking any other enforcement action under Part 4 in relation to the offender and the fine.

[Section 118 inserted: No. 25 of 2020 s. 8.]

119. Notices issued under s. 78(1) before first commencement day

- (1) This section applies if —
 - (a) before the first commencement day, the Sheriff served a notice under section 78(1) (the **section 78 notice**) in relation to compensation that was or could become payable under the *Criminal Injuries Compensation Act 2003*; and
 - (b) no money has been paid to the Sheriff in compliance with the section 78 notice before the first commencement day.
- (2) The section 78 notice is cancelled on the first commencement day.
- (3) If a compensation award made under the *Criminal Injuries Compensation Act 2003* before the first commencement day included a direction that an amount of compensation (the **relevant amount**) be paid to the Sheriff in compliance with the section 78 notice —
 - (a) despite that direction, the relevant amount must not be paid to the Sheriff; and
 - (b) an assessor, as defined in section 3 of that Act, must make another direction as to how the relevant amount is to be paid, or otherwise dealt with, in accordance with that Act.

[Section 119 inserted: No. 25 of 2020 s. 8.]

120. Application of amendments

Subject to this Division, the amendments made by the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* Part 2 Division 3 apply to and in relation to —

- (a) an infringement notice whether it was issued or registered with the Registry for enforcement before, on or after the second commencement day; and
- (b) a fine whether it was imposed or registered with the Registry for enforcement before, on or after the second commencement day.

[Section 120 inserted: No. 25 of 2020 s. 88.]

121. Time to pay orders

- (1) A time to pay order made before the second commencement day under section 27A of the former Act is, on and from the second commencement day, taken to be a time to pay order made under section 21C.
- (2) If an alleged offender has made a request under section 27A of the former Act before the second commencement day but the Registrar has not made a decision on the request before the second commencement day, the request is, on and from the second commencement day, taken to be both —
 - (a) an application for a time to pay order under section 21B; and
 - (b) if the request was under section 27A(1)(b) of the former Act — a request under section 20A(1).
- (3) A time to pay order made before the second commencement day under section 55A of the former Act is, on and from the second commencement day, taken to be a time to pay order made under section 33.
- (4) If an offender has made a request under section 55A of the former Act before the second commencement day but the

Registrar has not made a decision on the request before that day, the request is, on and from that day, taken to be both —

- (a) an application for a time to pay order under section 32C; and
- (b) if the request was under section 55A(1)(b) of the former Act — a request under section 44A(1).

[Section 121 inserted: No. 25 of 2020 s. 88.]

122. Enforcement warrant issued before second commencement day authorises issue of garnishee order

- (1) This section applies if an enforcement warrant issued under Part 3 or 4 is in force immediately before the second commencement day.
- (2) The Sheriff may issue a garnishee order in relation to the debtor under the warrant under section 95O or 95V even though —
 - (a) Part 7 Division 6B was not in force when the warrant was issued; and
 - (b) the terms of the warrant do not refer to garnishment.
- (3) At least 28 days before issuing a garnishee order as referred to in subsection (2), the Sheriff must serve on the debtor a notice in the approved form explaining that a garnishee order can be issued under the enforcement warrant.
- (4) If a debtor is served with a notice under subsection (3), the debtor must not, with the intention of preventing the execution of any garnishee order that may be issued under the enforcement warrant, do any of the following —
 - (a) make a withdrawal or transfer of money from any of the debtor's accounts with a bank that would result in a deduction not being able to be made under a garnishee order;
 - (b) prevent any earnings or other amount from being paid into any of the debtor's accounts with a bank;

(c) close any of the debtor's accounts with a bank.

Penalty for this subsection: a fine of \$2 000.

[Section 122 inserted: No. 25 of 2020 s. 88.]

123. Instruments issued under provisions of former Act

An instrument of a kind specified in column 1 of an item of the Table that was made or issued before the second commencement day is, on and from that day, taken to be an instrument of the kind specified in column 2 of that item.

Table

Item	Column 1	Column 2
1.	Licence suspension order made under — (a) section 27C of the former Act; or (b) section 68A of the former Act in relation to an enforcement warrant issued under Part 3	Licence suspension order made under section 19
2.	Licence suspension order made under — (a) section 48A, 53A or 55C of the former Act; or (b) section 68A of the former Act in relation to an enforcement warrant issued under Part 4	Licence suspension order made under section 43
3.	Enforcement warrant issued under section 55D of the former Act	Enforcement warrant issued under section 45

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Item	Column 1	Column 2
4.	Order to attend for work and development issued under section 47A or 55D of the former Act	Order to attend for work and development issued under section 47(1)
5.	Vehicle licence suspension order issued under section 95G of the former Act	Vehicle licence suspension and disqualification order issued under section 95G
6.	Vehicle licence cancellation order issued under section 95J of the former Act	Vehicle licence cancellation and disqualification order issued under section 95J

[Section 123 inserted: No. 25 of 2020 s. 88.]

124. Administrative information sharing arrangements

- (1) Any administrative arrangements made between the Registrar and the Director General for the purposes of section 10 of the former Act are, on and from the second commencement day, taken to be made for the purposes of section 100C.
- (2) If information is permitted under section 100B to be disclosed to a person with whom the Registrar had, before the second commencement day, made administrative arrangements for the purposes of section 10A of the former Act, those administrative arrangements are, on and from the second commencement day, taken to be made for the purposes of section 100B.

[Section 124 inserted: No. 25 of 2020 s. 88.]

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

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Notes

This is a compilation of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* and includes amendments made by other written laws^{1M, 1}. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

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)
Reprint of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> as at 12 Mar 1997 (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)

Fines, Penalties and Infringement Notices Enforcement Act 1994**Notes** Compilation table

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000 Pt. 2</i>	51 of 2000	28 Nov 2000	5 Feb 2001 (see s. 2 and <i>Gazette</i> 30 Jan 2001 p. 615)
<i>Corporations (Consequential Amendments) Act 2001 s. 220</i>	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)
Reprint of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> as at 2 Nov 2001 (includes amendments listed above)			
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002 s. 61</i>	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> ²	14 of 2003	17 Apr 2003	17 Apr 2003 (see s. 2)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 29(3)</i>	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 Pt. 13</i>	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 Pt. 9 and s. 80</i>	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))
Reprint 3: The <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> as at 9 Dec 2005 (includes amendments listed above)			
<i>Road Traffic Amendment Act 2006 Pt. 4 Div. 1</i>	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 Pt. 8</i>	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 s. 4</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)

Short title	Number and year	Assent	Commencement
<i>Fines Legislation Amendment Act 2008 Pt. 2</i>	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)
Reprint 4: The Fines, Penalties and Infringement Notices Enforcement Act 1994 as at 8 Aug 2008 (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))
<i>Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 23</i>	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)
<i>Fines, Penalties and Infringement Notices Enforcement Amendment (Taxation) Act 2012</i>	28 of 2012	3 Sep 2012	s. 1 and 2: 3 Sep 2012 (see s. 2(a)); Act other than s. 1 and 2: 1 May 2013 (see s. 2(b) and <i>Gazette</i> 30 Apr 2013 p. 1687)
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 Pt. 2</i>	48 of 2012	29 Nov 2012	s. 3, 39, 40, 41(3) and 42: 1 May 2013 (see s. 2(b) and <i>Gazette</i> 30 Apr 2013 p. 1687); s. 4-38, 41(1) and (2) and 43: 21 Aug 2013 (see s. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815)
Reprint 5: The Fines, Penalties and Infringement Notices Enforcement Act 1994 as at 11 Oct 2013 (includes amendments listed above except those in the <i>Road Traffic Legislation Amendment Act 2012</i>)			

Fines, Penalties and Infringement Notices Enforcement Act 1994

Notes Uncommenced provisions table

Short title	Number and year	Assent	Commencement
<i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013</i> Pt. 3 Div. 12 (other than s. 95 ³)	20 of 2013	4 Nov 2013	Pt. 3 Div. 12 (other than s. 75 and 95): 25 Nov 2013 (see s. 2(b) and <i>Gazette</i> 22 Nov 2013 p. 5391); s. 75: 14 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4631)
<i>Electricity Corporations Amendment Act 2013</i> s. 43	25 of 2013	18 Dec 2013	1 Jan 2014 (see s. 2(c) and <i>Gazette</i> 27 Dec 2013 p. 6465)
<i>Local Government Legislation Amendment Act 2016</i> Pt. 3 Div. 15	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
Reprint 6: The Fines, Penalties and Infringement Notices Enforcement Act 1994 as at 24 May 2019 (includes amendments listed above)			
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020</i> Pt. 2 Div. 1-3 and s. 103	25 of 2020	19 Jun 2020	Pt. 2 Div. 1 and 2, s. 87 and 103: 20 Jun 2020 (see s. 2(1)(b)); s. 9-86, 88 and 89: 29 Sep 2020 (see s. 2(1)(c) and SL 2020/159 cl. 2(a))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020</i> s. 90-102, 104 and 105	25 of 2020	19 Jun 2020	30 Sep 2020 (see s. 2(1)(d) and SL 2020/159 cl. 2(b))

Other notes

^{1M} 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.

¹ The *Sentencing Legislation Amendment and Repeal Act 1999* s. 26 did not come into operation and was deleted by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 31.

² 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.

³ The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* s. 95 had not come into operation when it was deleted by the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* s. 107.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
affected vehicle	95I(1)
aggregate amount owed	56A
alleged offence	11
alleged offender	11, 100
amending Act	109A(1)
amount outstanding	61(1)
amount owed	28(1), 56A
applicant	101(1), 101AA(2), 101A(1)
approved form	3(1)
arresting officer	52ZC(1)
audio link	28(1)
authorised police officer	28(1)
bank	63(1)
bank account garnishee order	63(1), 95M(2)
CCO	28(1)
CEO (corrections)	3(1)
CEO (fines enforcement)	3(1)
child	3(1)
claimant	93(1)
commencement	111(1), 112(1), 113(1)
commencement date	32(5)
Commissioner of Police	3(1)
community corrections activities	28(1)
community corrections centre	28(1)
community corrections officer	28(1)
contractor	100
court	28(1)
court custody centre	28(1)
court officer	28(1)
Court Security and Custodial Services Act 1999	28(1)
daily expiation amount	52B
debtor	63(1)
detainee	28(1)
detention centre	28(1)
Director General	3(1)
dishonoured payment	3(1)
disposed of	101AA(1)
disposed of	101B(6)
driver's licence	3(1)
due date	18(3), 42(3)

dwelling	63(1)
earnings	63(1)
election	11
electricity corporation	3(1)
enforceable registered fine	28(1)
enforcement action	68B(1)
enforcement fees	11, 28(1), 56A, 63(1)
enforcement instrument	28(1)
enforcement warrant	11, 28(1)
fine	28(1), 56A, 59
fine enforcement (WDO) order	28(1)
fine expiation order	28(1)
first commencement day	115
former Act	115
garnishee order	63(1), 95M(2)
garnishee order on earnings	63(1), 95M(2)
give	3(1)
hardship	3(1)
infringement notice	11, 26(4)
interest	70(1)
issue day	52H(1)
licence suspension order	11, 28(1), 101D(1A)
mobile home	63(1)
modified penalty	11, 56A
multiple payments garnishee order	63(1), 95V(2)
number plate	3(1)
offender	28(1), 100, 108A(1)
ongoing fine expiation order	28(1), 52I(1)
order to attend for work and development	28(1)
outstanding order to pay or elect	56A, 56AA
outstanding registered fine	56A, 56B
owner	63(1)
paid	3(1)
pay period	95P(1)
period of concurrent imprisonment	115
period served	53(7)
person in court custody	28(1)
personal property	63(1)
place	63(1)
police facility	28(1)
prescribed enactment	11
principal enactment	11
prison	28(1)
prisoner	28(1)
proceeds	96(1)

Defined terms

prosecuting authority	11, 32B(2)
prosecuting officer	11
protected bank account amount.....	63(1)
protected earnings amount	63(1)
public authority	70(1), 100
reciprocating court	59
reciprocating State or Territory	59
registered.....	11, 28(1), 96(7)
Registrar.....	3(1)
Registrar's website.....	3(1)
Registry.....	3(1)
relevant amount.....	10B(1), 119(3)
relevant details	56A, 56C
relevant fines.....	52N(1), 117(1)
relevant information.....	100
relevant payer.....	63(1), 95O(1)
relevant warrants.....	117(1)
remote area.....	3(1)
requesting officer	100A(1)
required hours	50(1)
research	100
responsible officer.....	28(1), 52ZC(2)
road law	3(1)
saleable interest.....	63(1), 71(1), 88(1)
second commencement day	115
section 78 notice	119(1)
serve.....	3(1)
Sheriff	3(1)
single payment garnishee order.....	63(1), 95V(2)
specified period.....	53(7)
time to pay order	11, 28(1)
transitional period	113(1), 115
unpaid infringement amount	11
vehicle.....	63(1)
vehicle licence.....	3(1)
video link	28(1)
warning notice.....	63(1)
warrant	63(1)
warrant amount	53(6), 53(7)
warrant of commitment.....	28(1)
warrant of commitment inquiry	28(1), 52M(1)
warrant of commitment inquiry process	28(1), 52M(2)
work and development order (WDO)	3(1)
young person.....	10B(1)

