

House of Assembly—No 135A

As reported with amendments, report agreed to and passed remaining stages,
4 June 2013

South Australia

Statutes Amendment (Fines Enforcement and Recovery) Bill 2013

A BILL FOR

An Act to amend the *Correctional Services Act 1982*; the *Courts Administration Act 1993*; the *Criminal Law (Sentencing) Act 1988*; the *Cross-border Justice Act 2009*; the *Expiation of Offences Act 1996*; the *Fisheries Management Act 2007*; the *Magistrates Court Act 1991*; the *Motor Vehicles Act 1959*; the *Summary Procedure Act 1921*; the *Victims of Crime Act 2001*; and the *Young Offenders Act 1993*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Correctional Services Act 1982*

- 4 Amendment of section 74AA—Board may impose community service for breach of conditions

Part 3—Amendment of *Courts Administration Act 1993*

- 5 Amendment of section 21A—Non-judicial court staff

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

- 6 Amendment of section 3—Interpretation
- 7 Amendment of section 13—Order for payment of pecuniary sum not to be made in certain circumstances
- 8 Amendment of section 47—Special provisions relating to community service
- 9 Amendment of section 56A—Appointment of authorised officers
- 10 Insertion of section 56B
 - 56B Preliminary
- 11 Substitution of Part 9 Division 3
 - Division 3—Enforcement of pecuniary sums
 - Subdivision 1—Preliminary
 - 60 Interpretation
 - 61 Amounts due under expiation notices may be treated as part of pecuniary sum
 - 62 Enforcement against youths
 - 63 Service of notices etc
 - Subdivision 2—Fines Enforcement and Recovery Officer
 - 64 Fines Enforcement and Recovery Officer
 - 65 Delegation
 - Subdivision 3—Payment of pecuniary sums
 - 66 Pecuniary sum is payable within 28 days
 - 67 Payment of pecuniary sum to Fines Enforcement and Recovery Officer
 - 68 Payment by credit card etc
 - 69 Amounts unpaid or unrecovered for more than certain period
 - 70 Arrangements as to manner and time of payment
 - 70A Minister may declare amnesty from payment of costs, fees and charges
 - 70B Investigation of debtor's financial position
 - 70C Power to require information
 - 70D Disclosure of information to prescribed interstate authority
 - 70E Power to require identification
 - 70F Publication of names of debtors who cannot be found
 - 70G Charge on land
 - 70H Reminder notice
 - 70I Enforcement actions
 - Subdivision 4—Powers relating to enforcement action
 - 70J Aggregation of pecuniary sums for the purposes of enforcement
 - 70K Seizure and sale of assets
 - 70L Garnishment
 - 70M Suspension of driver's licence
 - 70N Restriction on transacting business with Registrar of Motor Vehicles

	70O	Clamping or impounding of vehicle
	70P	Power to dispose of uncollected seized vehicles
	70Q	Publication of names of debtors subject to enforcement action
	70R	Costs
	70S	Liability
	70T	Fines Enforcement and Recovery Officer may be assisted by others
	Subdivision 5—Failure of enforcement process	
	70U	Community service orders
12	Amendment of section 71—Community service orders may be enforced by imprisonment	
13	Amendment of section 72—Identification of authorised officers	
14	Amendment of section 72A—Hindering authorised officer or assistant	
15	Amendment of section 75—Regulations	
16	Transitional provisions	
Part 5—Amendment of <i>Cross-border Justice Act 2009</i>		
17	Amendment of section 120—Terms used in this Part	
Part 6—Amendment of <i>Expiation of Offences Act 1996</i>		
18	Amendment of section 4—Interpretation	
19	Amendment of section 6—Expiation notices	
20	Amendment of section 7—Payment by card	
21	Amendment of section 8—Alleged offender may elect to be prosecuted etc	
22	Amendment of section 8A—Review of notices on ground that offence is trifling	
23	Substitution of sections 9 and 10	
	9	Arrangements as to manner and time of payment
24	Amendment of section 11—Expiation reminder notices	
25	Amendment of section 11A—Expiation enforcement warning notices	
26	Substitution of sections 12 to 14	
	12	Late payment
	13	Enforcement determinations
	14	Review of enforcement determinations by Court
	14A	Enforcement actions by Fines Enforcement and Recovery Officer
	14B	Amounts unpaid or unrecovered for more than certain period
27	Amendment of section 15—Effect of expiation	
28	Amendment of section 16—Withdrawal of expiation notices	
29	Amendment of section 17—Application of payments	
30	Substitution of sections 18, 18A and 18B	
	18	Provision of information
	18A	Minister may declare amnesty from payment of costs, fees and charges
	18B	Investigation of alleged offender's financial position
	18C	Power to require information
	18D	Disclosure of information to prescribed interstate authority
	18E	Power to require identification
31	Amendment of section 20—Regulations	
32	Transitional provisions	
Part 7—Amendment of <i>Fisheries Management Act 2007</i>		
33	Amendment of section 104—Demerit points for certain offences	
34	Amendment of section 108—Disqualification etc and discounting of demerit points	
Part 8—Amendment of <i>Magistrates Court Act 1991</i>		
35	Amendment of section 7A—Constitution of Court	
36	Amendment of section 9A—Petty Sessions Division	
37	Amendment of section 12—Administrative and ancillary staff	
38	Repeal of section 13A	

Part 9—Amendment of *Motor Vehicles Act 1959*

- 39 Amendment of section 5—Interpretation
- 40 Amendment of section 9—Duty to register
- 41 Amendment of section 85—Procedures for suspension, cancellation or variation of licence or permit
- 42 Amendment of section 93—Notice to be given to Registrar
- 43 Amendment of section 98B—Demerit points for offences in this State
- 44 Amendment of section 102—Duty to insure against third party risks
- 45 Amendment of section 139D—Confidentiality
- 46 Amendment of section 145—Regulations

Part 10—Amendment of *Summary Procedure Act 1921*

- 47 Amendment of section 189A—Costs payable by defendant in certain criminal proceedings

Part 11—Amendment of *Victims of Crime Act 2001*

- 48 Amendment of section 28—Right of Attorney-General to recover money paid out from offender etc
- 49 Amendment of section 32—Imposition of levy

Part 12—Amendment of *Young Offenders Act 1993*

- 50 Amendment of section 49A—Restrictions on performance of community service and other work orders
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Correctional Services Act 1982*

4—Amendment of section 74AA—Board may impose community service for breach of conditions

Section 74AA(4)(d)—delete "8" and substitute:

7.5

Part 3—Amendment of *Courts Administration Act 1993*

5—Amendment of section 21A—Non-judicial court staff

Section 21A(1)(ab)—delete paragraph (ab)

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

6—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *authorised officer*, (b)—delete paragraph (b) and substitute:

(b) the Fines Enforcement and Recovery Officer; or

(2) Section 3(1), definition of *authorised officer*, (e)—delete "by the Administrator"

(3) Section 3(1)—after the definition of *court* insert:

debtor means the person by whom a pecuniary sum is payable;

(4) Section 3(1)—after the definition of *ERD Court* insert:

Fines Enforcement and Recovery Officer means the Fines Enforcement and Recovery Officer under Part 9 Division 3;

(5) Section 3(1), definition of *the Manager, Penalty Management* or *the Manager*—delete the definition

7—Amendment of section 13—Order for payment of pecuniary sum not to be made in certain circumstances

Section 13(1a) and (2)—delete subsections (1a) and (2) and substitute:

(2) Subject to subsection (3), the court is not obliged to inform itself as to the defendant's means, but it should consider any evidence on the subject that the defendant or the prosecutor has placed before it.

(3) In considering whether the defendant would be able to comply with the order, the court should have regard to—

(a) the fact that the defendant could enter into an arrangement under Part 9 Division 3; and

(b) any information available to the court as to other pecuniary sums that have been paid, or are payable, by the defendant.

8—Amendment of section 47—Special provisions relating to community service

(1) Section 47(1)(a)—delete "16" and substitute:

15

(2) Section 47(1)(a) and (b)—delete "320" wherever occurring and substitute in each case:

300

- (3) Section 47(1)(f)—delete "eight" and substitute:

7.5

9—Amendment of section 56A—Appointment of authorised officers

- (1) Section 56A—before subsection (1) insert:

5 (a1) The Minister may appoint persons (including members of the staff of the State Courts Administration Authority) as authorised officers for the purposes of the enforcement of pecuniary sums under this Act.

- (2) Section 56A(2)—delete "subsection (1)" and substitute:

this section

- 10 (3) Section 56A(3)—delete "Administrator" and substitute:

Minister or Administrator (as the case requires)

10—Insertion of section 56B

Before section 57 insert:

56B—Preliminary

15 Unless the contrary intention appears, a reference in this Division to—

- (a) a *probationer* includes a reference to a debtor who has entered into a bond under Part 9 Division 3 Subdivision 5; and
20 (b) a *probative court* includes a reference to a court that made an order pursuant to which a debtor entered into a bond under Part 9 Division 3 Subdivision 5.

11—Substitution of Part 9 Division 3

Part 9 Division 3—delete Division 3 and substitute:

25 Division 3—Enforcement of pecuniary sums

Subdivision 1—Preliminary

60—Interpretation

- (1) In this Division—

30 *clamp*, in relation to a vehicle, means immobilise the vehicle by means of wheel clamps (and *clamped* has a corresponding meaning);

clamping or impounding period means the period for which a vehicle is liable to remain clamped or impounded in accordance with a determination under section 70O(1);

Court means—

- 35 (a) in relation to a debtor who is a youth—the Youth Court;
(b) in any other case—the Magistrates Court;

drive includes ride;

driver's licence includes a learner's permit;

land means, according to the context—

(a) land as a physical entity, including—

(i) any building or structure on, or improvement to, land (whether affixed to the land or not); or

(ii) land covered by water and, in such a case, the overlying water; or

(iii) a lot under the *Community Titles Act 1996* or a unit under the *Strata Titles Act 1988*; or

(b) a legal estate or interest in, or right in respect of, land;

ordinary business hours means the hours between 9 am and 5 pm on any day other than a Saturday, Sunday or public holiday;

person entitled to custody of a vehicle means—

(a) an owner of the vehicle; or

(b) a person authorised by an owner of the vehicle to take custody of the vehicle; or

(c) a person legally entitled to possession of the vehicle;

protected person has the same meaning as in the *Intervention Orders (Prevention of Abuse) Act 2009*;

public sector agency has the same meaning as in the *Public Sector Act 2009*;

registered owner of a vehicle means a person recorded in a register kept under the *Motor Vehicles Act 1959* or the law of another State or Territory of the Commonwealth as an owner of the vehicle;

road has the same meaning as in the *Motor Vehicles Act 1959*.

(2) For the purposes of this Division—

(a) *enforcement action* includes any action that may be taken by the Fines Enforcement and Recovery Officer in accordance with a determination under section 70I or a penalty enforcement order made under this Act as in force before the commencement of section 11 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*; and

(b) a debtor is *subject to a suppression order* if a suppression order forbidding publication of the debtor's name was made in the proceedings in which the pecuniary sum was imposed on the debtor and the order has not subsequently been revoked.

- (3) Unless the contrary intention appears, a reference in this Division to a pecuniary sum includes a reference to—
- (a) the amount outstanding of such a sum or, if a number of pecuniary sums have been aggregated, the amount outstanding of the aggregated sums; and
 - (b) any fees, charges or other amounts which are, in accordance with this Division, added to and form part of such a sum.

61—Amounts due under expiation notices may be treated as part of pecuniary sum

- (1) Subject to this section, the Fines Enforcement and Recovery Officer may make a determination under this section (an **aggregation determination**) if a debtor who owes a pecuniary sum also has an amount due under an expiation notice (an **expiation amount**) and—
- (a) the debtor has requested the making of the aggregation determination; or
 - (b) an enforcement determination has been made in relation to the expiation amount under the *Expiation of Offences Act 1996*.
- (2) If the debtor requests the making of the aggregation determination but no enforcement determination has been made under section 13 of the *Expiation of Offences Act 1996* in relation to the expiation amount, the Fines Enforcement and Recovery Officer may refuse to make a determination under this section unless the issuing authority pays the prescribed fee.
- (3) On the making of an aggregation determination—
- (a) the expiation amount will be taken to be part of the pecuniary sum owed by the debtor; and
 - (b) subject to the regulations, the debtor will, for the purposes of an Act or law other than this Act or the *Expiation of Offences Act 1996*, be taken to have expiated the offence or offences to which the determination relates (unless the debtor is already taken to have expiated the offence in accordance with section 9(14) or section 13 of the *Expiation of Offences Act 1996*); and
 - (c) any enforcement determination under the *Expiation of Offences Act 1996* made in relation to the expiation amount is suspended.
- (4) For the purposes of section 69, an expiation fee that is subject to an aggregation determination is taken to be a pecuniary sum imposed by order of a court and the 28 day period referred to in section 66 is taken to have ended on the day on which the expiation period ended under the *Expiation of Offences Act 1996*.

- 5
- (5) The Fines Enforcement and Recovery Officer may revoke an aggregation determination at any time by notice in writing given to the debtor.
- (6) A revocation takes effect 7 days from (and including) the day on which the notice referred to in subsection (5) was given to the debtor.
- (7) On the revocation of an aggregation determination under subsection (5)—
- 10
- (a) the remaining expiation amount must be determined by the Fines Enforcement and Recovery Officer, taking into account—
- 15
- (i) any deductions that should be made on account of amounts that have been paid by or recovered from the debtor since the making of the determination; and
- (ii) any additions that should be made on account of amounts that have accrued in accordance with section 69 since the making of the determination; and
- 20
- (b) the remaining expiation amount so determined will no longer be taken to be part of the pecuniary sum; and
- (c) —
- 25
- (i) if an enforcement determination had been made under the *Expiation of Offences Act 1996* prior to the making of the aggregation determination—the enforcement determination comes back into force (and the *Expiation of Offences Act 1996* applies to the remaining expiation amount as if the aggregation determination had not been made); or
- 30
- (ii) in any other case—the Fines Enforcement and Recovery Officer may make an enforcement determination in relation to the remaining expiation amount under section 13 of the *Expiation of Offences Act 1996* (and any procedural or other requirements relating to the making of such determinations will be taken to have been complied with).
- 35

62—Enforcement against youths

40

This Division applies to a debtor who is a youth (ie, a person who was under the age of 18 years at the time when the offence in respect of which the pecuniary sum was imposed was committed) but an additional power exists for the youth or the Fines Enforcement and Recovery Officer to apply, at any time, to the Youth Court for the making of a community service order in respect of the youth (as if Subdivision 5 applied in respect of the pecuniary sum).

63—Service of notices etc

(1) A notice, determination or other document required or authorised to be given or served under this Division may be given or served personally or by post.

(2) If—

(a) the Fines Enforcement and Recovery Officer is required under any provision of this Division to give to or serve on a debtor a notice, determination or other document; and

(b) the whereabouts of the debtor cannot, after reasonable enquiries, be ascertained,

the following provisions apply:

(c) subject to paragraph (d), the Fines Enforcement and Recovery Officer must instead publish details of the notice, determination or other document on a website determined by the Fines Enforcement and Recovery Officer (and on publishing such details the Fines Enforcement and Recovery Officer will, for the purposes of this Division, be taken to have given the debtor, or served the debtor with, the notice, determination or document);

(d) if the debtor is a youth, is subject to a suppression order or is a protected person, the requirement to give the debtor, or serve the debtor with, the notice, determination or other document does not apply but—

(i) the Fines Enforcement and Recovery Officer may cause details of the notice, determination or other document to be provided to the debtor by any other means reasonably available that do not involve public disclosure of the debtor's name; and

(ii) on providing such details the Fines Enforcement and Recovery Officer will, for the purposes of this Division, be taken to have given the debtor, or served the debtor with, the notice, determination or document.

Subdivision 2—Fines Enforcement and Recovery Officer

64—Fines Enforcement and Recovery Officer

(1) There is to be a *Fines Enforcement and Recovery Officer*.

(2) The Fines Enforcement and Recovery Officer will be a person employed in the Public Service of the State.

(3) The Fines Enforcement and Recovery Officer may, in addition to carrying out functions and exercising powers under this Act, carry out any other functions, or exercise any other powers, assigned to the Fines Enforcement and Recovery Officer by or under any other Act or law or by the Minister.

- 5 (4) If the Fines Enforcement and Recovery Officer carries out functions under any Act on behalf of a public sector agency, Local Government agency or other person or body, the Fines Enforcement and Recovery Officer may charge the agency, person or body a fee of such amount as may be agreed between the Fines Enforcement and Recovery Officer and the agency, person or body.

65—Delegation

- 10 (1) The Fines Enforcement and Recovery Officer may, by instrument in writing, delegate a power or function under this Act or any other Act—
- (a) to a particular person or committee; or
 - (b) to the person for the time being performing particular duties or holding or acting in a particular position.
- 15 (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
- (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act personally in a matter; and
 - 20 (c) is revocable at will.

Subdivision 3—Payment of pecuniary sums

66—Pecuniary sum is payable within 28 days

25 Subject to any arrangement under section 70, a pecuniary sum imposed by order of a court is payable within 28 days from (and including) the day on which the order was made.

67—Payment of pecuniary sum to Fines Enforcement and Recovery Officer

- 30 (1) A pecuniary sum is payable as follows (despite the fact that the order is in favour of some person):
- (a) to the Fines Enforcement and Recovery Officer; or
 - (b) to any agent appointed by the Fines Enforcement and Recovery Officer for the purpose.
- (2) On receipt of the whole or part of a pecuniary sum, the Fines Enforcement and Recovery Officer must pay the amount received as follows:
- 35 (a) firstly, if a VIC levy is payable by the defendant, then into the Victims of Crime Fund in satisfaction of that levy; and

- 5
- (b) secondly, if the sentencing court has ordered the defendant to pay any amount by way of compensation or restitution to a particular person, then to that person in satisfaction of that amount; and
- (c) thirdly, if any costs are payable to a party to the proceedings, then in satisfaction of those costs; and
- (d) fourthly, if any other money is payable under the order of the court to the complainant, then to the complainant; and
- 10 (e) fifthly, according to the directions of any other Act or, if no other Act contains directions as to payment, then to Treasury.

68—Payment by credit card etc

15 A pecuniary sum may be paid by using a credit card, charge card or debit card if facilities for their use are available in relation to the payment to be made.

69—Amounts unpaid or unrecovered for more than certain period

- 20 (1) Subject to subsection (2), if any part of a pecuniary sum imposed by order of a court remains—
- (a) unpaid by the debtor under this Subdivision; or
- (b) unrecovered from the debtor under Subdivision 4,
- on the expiration of the 28 day period referred to in section 66 an amount prescribed by, or calculated in accordance with, the regulations is added to, and forms part of, the pecuniary sum payable
- 25 by the debtor.
- (2) The Fines Enforcement and Recovery Officer may, in such circumstances as he or she thinks just, waive payment of the whole or any part of an amount payable by a debtor in accordance with this section.

70—Arrangements as to manner and time of payment

- 30 (1) Subject to this section, a debtor who pays to the Fines Enforcement and Recovery Officer the prescribed fee—
- (a) may, at any time during the 28 day period referred to in section 66, enter into an arrangement with the Fines Enforcement and Recovery Officer for payment of a pecuniary sum by instalments over a period determined by the Fines Enforcement and Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into); or
- 35 (b) if the Fines Enforcement and Recovery Officer agrees, may enter into some other kind of arrangement with the Fines Enforcement and Recovery Officer for payment of a pecuniary sum in accordance with subsection (3).
- 40

- 5
- (2) An arrangement for payment by instalments referred to in subsection (1)(a) must provide for instalments to be paid to the Fines Enforcement and Recovery Officer by direct debits by or through some other person or agency (eg, deductions from an ADI account or wages).
- (3) Other kinds of arrangements under this section may consist of or include—
- 10
- (a) payment by instalments (including instalments paid over a period exceeding 12 months);
 - (b) an extension of time to pay;
 - (c) the taking of a charge over land;
 - (d) the surrender of property to the Fines Enforcement and Recovery Officer;
 - 15 (e) payment of any amount, including by direct credit, by or through some other person or agency (eg, deductions from an ADI account or wages);
 - (f) any other form of arrangement agreed by the Fines Enforcement and Recovery Officer and the debtor.
- (4) If—
- 20
- (a) a debtor has previously been subject to enforcement action under this Division (whether in relation to the same, or a different, pecuniary sum); or
 - (b) a debtor is an undischarged bankrupt or is subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; or

25

 - (c) a debtor is of a class prescribed by the regulations, the Fines Enforcement and Recovery Officer may—
 - (d) refuse to enter into an arrangement under this section, or a particular type of arrangement under this section, with the debtor; or

30

 - (e) require the debtor to provide an irrevocable authority to obtain (in accordance with any prescribed requirements) financial and contact information about the debtor from any Commonwealth, State or Local Government agency, any ADI or an employer of the debtor; or

35

 - (f) require the debtor to provide security or obtain guarantees (as the Fines Enforcement and Recovery Officer thinks fit).
- (5) An arrangement under this section may be varied by agreement between the debtor and the Fines Enforcement and Recovery Officer.
- 40
- (6) If an arrangement is entered into or varied under this section, the Fines Enforcement and Recovery Officer must give a copy of the arrangement or varied arrangement (as the case requires) to the debtor.

- (7) For the purposes of entering into, or varying, an arrangement, any number of pecuniary sums payable by the debtor may be aggregated.
- (8) If a debtor fails to comply with an arrangement under this section and the failure has endured for 14 days, the arrangement terminates.

5 **70A—Minister may declare amnesty from payment of costs, fees and charges**

- (1) The Minister may from time to time declare an amnesty from the payment of the whole or any part of 1 or more of the following:
 - (a) costs, fees and other charges under this Division;
 - 10 (b) costs and fees under Part 9 Division 3 of the Act as in force immediately before the commencement of section 11 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*.
- (2) An amnesty—
 - 15 (a) must be declared by notice in the Gazette; and
 - (b) applies—
 - (i) in relation to a debtor, or a class of debtors; and
 - (ii) to the extent,
 specified in the notice; and
 - 20 (c) is subject to the terms and conditions (if any) set out in the notice.
- (3) The Minister may vary or revoke the declaration of an amnesty under subsection (1) by notice in the Gazette.

25 **70B—Investigation of debtor's financial position**

- 25 (1) The Fines Enforcement and Recovery Officer may, at any time, investigate a debtor's means of satisfying a pecuniary sum and may give a written notice to a person requiring the person to produce to the Fines Enforcement and Recovery Officer, within a period stated in the notice, documents or other material relevant to the
30 investigation.
- (2) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
Maximum penalty: \$10 000.

35 **70C—Power to require information**

- (1) If a public sector agency is in possession of a debtor's contact details, the agency must, on request from the Fines Enforcement and Recovery Officer, provide those details to the Fines Enforcement and Recovery Officer.

- (2) This section does not apply to a public sector agency excluded from the application of this section by the regulations.

70D—Disclosure of information to prescribed interstate authority

5 The Fines Enforcement and Recovery Officer may disclose prescribed particulars of a debtor to a prescribed interstate authority.

70E—Power to require identification

- 10 (1) An authorised officer may require a person who the officer has reasonable cause to suspect may be a debtor to produce evidence of the person's identity.
- (2) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
- Maximum penalty: \$10 000.

15 **70F—Publication of names of debtors who cannot be found**

- (1) If the whereabouts of a debtor cannot, after reasonable enquiries, be ascertained, the Fines Enforcement and Recovery Officer may cause a notice to be published on a website determined by the Fines Enforcement and Recovery Officer, and in such other manner (if any) as he or she thinks fit, seeking information as to the debtor's whereabouts.
- (2) A notice under subsection (1)—
- 20 (a) must be in a form determined by the Fines Enforcement and Recovery Officer; and
- 25 (b) must not include any information relating to the debtor other than the debtor's—
- (i) actual name and any assumed name; and
- (ii) last known and former addresses; and
- (iii) date of birth.
- (3) However, a notice cannot be published under this section in relation to a debtor if the debtor is—
- 30 (a) a youth; or
- (b) subject to a suppression order; or
- (c) a protected person.

35 **70G—Charge on land**

- (1) The Fines Enforcement and Recovery Officer may, at any time, apply to the Registrar-General in the form determined by the Registrar-General to register a charge over land owned (whether solely or as a co-owner) by the debtor for the amount of the pecuniary sum outstanding from time to time.
- 40

(2) On receipt of an application under subsection (1), the Registrar-General must enter an appropriate note in the Register Book and, when that entry is made, a charge is created over the land in favour of the Crown.

(3) The effect of the charge is as follows:

(a) the Registrar-General must not, after entry of the note under subsection (2), register an instrument affecting the land over which the charge exists unless—

(i) the instrument—

(A) was executed before the entry was made; or

(B) has been executed under or pursuant to an agreement entered into before the entry was made; or

(C) relates to an instrument registered before the entry was made; or

(ii) the instrument is an instrument of a prescribed class; or

(iii) the instrument is expressed to be subject to the operation of the charge; or

(iv) the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made; and

(b) the Fines Enforcement and Recovery Officer (on behalf of the Crown) has the same powers in respect of the land over which the charge exists as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.

(4) An instrument registered under subsection (3)(a)(i) or (ii) has effect, in relation to the charge, as if it had been registered before the entry was made.

(5) If an instrument is registered under subsection (3)(a)(iv), the charge will be taken to be cancelled by the registration of the instrument and the Registrar-General must take whatever action the Registrar-General considers appropriate to give effect to the cancellation.

(6) The Fines Enforcement and Recovery Officer will apply to the Registrar-General, in the form determined by the Registrar-General, to have the registration of a charge under this section cancelled—

(a) on the pecuniary sum being fully satisfied; or

- (b) if the Fines Enforcement and Recovery Officer considers, in the circumstances of the particular case, that it is just to do so,

(and the Registrar-General must then cancel the relevant entry).

- 5 (7) Any fees incurred in relation to registration (or cancellation of registration) under this section are added to and form part of the pecuniary sum.

70H—Reminder notice

- 10 (1) If, at the end of the 28 day period from the making of an order imposing a pecuniary sum, the debtor has not paid the pecuniary sum or entered into an arrangement under this Subdivision in respect of the sum, the Fines Enforcement and Recovery Officer must cause a reminder notice to be given to the debtor.
- 15 (2) A reminder notice must—
- (a) be in a form determined by the Fines Enforcement and Recovery Officer; and
 - (b) contain information as to the enforcement action that can be taken against the debtor in the event of continued default.
- 20 (3) Subject to subsection (4), a prescribed reminder notice fee will be added to and form part of the pecuniary sum in respect of which the notice is issued.
- (4) The Fines Enforcement and Recovery Officer may, in such circumstances as he or she thinks just, waive payment of a reminder notice fee.

70I—Enforcement actions

- 25 (1) If—
- 30 (a) a debtor has not, within 14 days of (and including) the date on which a reminder notice relating to a pecuniary sum was given to the debtor in accordance with section 70H, paid the sum or entered into an arrangement under section 70 in respect of the sum; or
 - (b) an arrangement under section 70 has terminated,
- the Fines Enforcement and Recovery Officer may determine, at any time, in his or her absolute discretion, to do any of the following:
- 35 (c) enter into an arrangement, or further arrangement, with the debtor under section 70(1)(b);
 - (d) exercise any 1 or more of the powers under Subdivision 4 or Subdivision 5;
 - 40 (e) waive payment of the pecuniary sum or any part of the pecuniary sum.

- 5
- (2) If the Fines Enforcement and Recovery Officer determines to waive payment of any part of a pecuniary sum that includes an amount of compensation, the Fines Enforcement and Recovery Officer must take reasonable action to notify the person to whom the compensation is payable and that person may then recover the amount of the compensation as a debt from the debtor.

Subdivision 4—Powers relating to enforcement action

70J—Aggregation of pecuniary sums for the purposes of enforcement

10 Any number of pecuniary sums owed by a debtor may be aggregated for the purposes of exercising powers under this Subdivision.

70K—Seizure and sale of assets

- 15
- (1) The Fines Enforcement and Recovery Officer may, by written determination, determine to sell the debtor's land or personal property to satisfy a pecuniary sum.
- (2) A determination under this section authorises the Fines Enforcement and Recovery Officer to—
- 20
- (a) enter any land (using such force as may be necessary) on which the Fines Enforcement and Recovery Officer reasonably suspects personal property of the debtor is situated; and
- (b) seize and remove any personal property found on land referred to in paragraph (a) that apparently belongs (wholly or partly) to the debtor; and
- 25
- (c) affix clamps or any other locking device to any vehicle that is to be seized and removed from land referred to in paragraph (a) in order to secure the vehicle until it can be so seized and removed; and
- 30
- (d) seize and remove any documents evidencing the debtor's title to any real or personal property; and
- (e) place and keep any such personal property or documents in safe custody until completion of sale; and
- (f) sell real or personal property owned (whether solely or as a co-owner) by the debtor.
- 35
- (3) However—
- (a) powers under this section may not be exercised in relation to personal property, or property of a class, prescribed by the regulations; and
- 40
- (b) this section does not authorise the sale of land unless the amount of the pecuniary sum exceeds \$10 000; and

- (c) any amount realised from the sale of the debtor's real or personal property in excess of the pecuniary sum owed by a debtor must be paid to the debtor by the Fines Enforcement and Recovery Officer.
- 5 (4) The Fines Enforcement and Recovery Officer may exercise powers under this section in the absence of, and without prior notice to, the debtor.
- (5) When property is seized or removed from land, a copy of the written determination under this section and a notice listing the property
- 10 seized—
- (a) must be given personally to the debtor or to any other person apparently in charge of the land and apparently of or over the age of 16 years; or
- (b) if paragraph (a) cannot be complied with, must be left in or
- 15 attached to a conspicuous place on the land.
- (6) The Fines Enforcement and Recovery Officer may, if he or she thinks fit, leave a debtor in possession of property until it is sold pursuant to the order for sale.
- (7) If property that has been seized is left in the debtor's possession
- 20 pending sale, the debtor must not, except with the written approval of the Fines Enforcement and Recovery Officer, cause, permit or allow the property to be removed from the debtor's possession or to be sold or offered for sale.
- Maximum penalty: \$2 500.
- 25 (8) If a vehicle has been seized but left in the debtor's possession pending sale, the debtor must not, except with the written approval of the Fines Enforcement and Recovery Officer, drive the vehicle on a road.
- Maximum penalty:
- 30 (a) \$2 500; or
- (b) disqualification from holding or obtaining a driver's licence for a period (of whole months only) not exceeding 6 months.
- (9) A person must not interfere in any way—
- 35 (a) with any written determination attached by the Fines Enforcement and Recovery Officer to seized property left in a debtor's possession signifying that the property has been seized; or
- (b) with the means by which a vehicle has been immobilised pursuant to this section.
- 40 Maximum penalty: \$2 500.
- (10) Property seized under this section cannot be sold until 14 days have elapsed from (and including) the day on which it was seized.

- (11) If—
- (a) the debtor or any other person claims that property seized under this section is not liable to seizure and sale under this section; or
 - (b) a person (other than the debtor) claims an interest in property seized under this section,
- the Court may, if satisfied, on application by the debtor or other person, of the validity of the claim—
- (c) exclude the property from the sale; or
 - (d) direct the application of the proceeds of the sale of the property in such manner as the Court considers just.
- (12) A sale of land or tangible property under this section is to be conducted in a manner determined by the Fines Enforcement and Recovery Officer.
- (13) If land is sold in pursuance of this section, an instrument of transfer or conveyance (as appropriate) signed by the Fines Enforcement and Recovery Officer will, on registration, operate to vest title to the land in the purchaser.
- (14) The title vested in a purchaser under subsection (13) will be free of—
- (a) all mortgages and charges; and
 - (b) except in the case of land held from the Crown under lease, licence or agreement to purchase—all leases and licences.
- (15) An instrument of transfer or conveyance in pursuance of a sale under this section must, when lodged with the Registrar-General for registration, be accompanied by a statutory declaration made by the Fines Enforcement and Recovery Officer stating that the requirements of this section in relation to the sale of the land have been observed.
- (16) If it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section (or other relevant instrument), the Registrar-General may register a transfer or conveyance despite the non-production of the duplicate (or instrument), but in that event will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.
- (17) Where any part of the debtor's property consists of intangible property, the Fines Enforcement and Recovery Officer may sign any transfer or do anything else necessary to convert that property into money as if the Fines Enforcement and Recovery Officer were the debtor.
- (18) If the proceeds from a sale of property under this section exceed the amount necessary to satisfy the pecuniary sum owed by the debtor, the amount remaining after deduction of the pecuniary sum from the proceeds must be returned to the debtor.

- (19) If the Fines Enforcement and Recovery Officer determines not to sell any personal property seized under this section, the property must be returned to the debtor or left at the land from which it was seized.

70L—Garnishment

- 5 (1) The Fines Enforcement and Recovery Officer may, by written determination, provide that—
- (a) money owing or accruing to a debtor from a third person; or
 - (b) money of the debtor in the hands of a third person (including money in an ADI account),
- 10 be attached to satisfy a pecuniary sum owed by the debtor.
- (2) A determination under this section may authorise the garnishee to retain from the money subject to the attachment a reasonable sum, fixed by the written determination, as compensation for the garnishee's expenses in complying with the determination.
- 15 (3) The Fines Enforcement and Recovery Officer must cause a copy of a written determination under this section to be given to the debtor and the garnishee.
- (4) A garnishee must comply with a determination under this section. Maximum penalty: \$10 000.
- 20 (5) If the garnishee does not comply with a determination under this section, the garnishee becomes personally liable for payment to the Fines Enforcement and Recovery Officer of the amount subject to attachment.
- 25 (6) If, because a determination has been made under this section in relation to an employee, the employer—
- (a) dismisses the employee; or
 - (b) injures the employee in employment; or
 - (c) alters the employee's position to the employee's prejudice,
- the employer is guilty of an offence.
- 30 Maximum penalty: \$10 000.
- (7) A reference in this section to a *third person* includes the Crown or any person or body holding money on behalf of the Crown.

70M—Suspension of driver's licence

- 35 (1) The Fines Enforcement and Recovery Officer may, by written determination, suspend a debtor's driver's licence (and such a determination may be issued despite the fact that the debtor is currently disqualified from holding or obtaining a licence).
- (2) The Fines Enforcement and Recovery Officer must —
- (a) cause a copy of the written determination under subsection (1) to be given to the debtor; and
- 40

- (b) notify the Registrar of Motor Vehicles of the determination.
- (3) A licence suspension under this section—
- (a) takes effect 14 days from (and including) the day on which the determination under subsection (1) was given to the debtor; and
- (b) may be cancelled by the Fines Enforcement and Recovery Officer by written determination (provided that the Fines Enforcement and Recovery Officer must make such a written determination if all pecuniary sums owed by the debtor are paid in full).
- (4) If the Fines Enforcement and Recovery Officer makes a determination under subsection (3)(b)—
- (a) the Fines Enforcement and Recovery Officer must notify the Registrar of Motor Vehicles of the determination; and
- (b) the licence suspension continues in operation until the Registrar of Motor Vehicles is so notified.

70N—Restriction on transacting business with Registrar of Motor Vehicles

- (1) The Fines Enforcement and Recovery Officer may, by written determination, impose a prohibition on the debtor transacting any business with the Registrar of Motor Vehicles.
- (2) The Fines Enforcement and Recovery Officer must—
- (a) cause a copy of the written determination under subsection (1) to be given to the debtor; and
- (b) notify the Registrar of Motor Vehicles of the determination.
- (3) A prohibition under this section—
- (a) takes effect on the Registrar of Motor Vehicles being notified under subsection (2); and
- (b) may be cancelled by the Fines Enforcement and Recovery Officer by written determination (provided that the Fines Enforcement and Recovery Officer must make such a written determination if all pecuniary sums owed by the debtor are paid in full).
- (4) If the Fines Enforcement and Recovery Officer makes a determination under subsection (3)(b)—
- (a) the Fines Enforcement and Recovery Officer must notify the Registrar of Motor Vehicles of the determination; and
- (b) the prohibition continues in operation until the Registrar of Motor Vehicles is so notified.

5 (5) The effect of a prohibition under this section is that, while the prohibition continues in operation, the Registrar of Motor Vehicles will not process any application made by or on behalf of the debtor, whether the application was made before or after the prohibition took effect.

(6) However, subsection (5) does not apply in relation to an application to transfer the registration of a vehicle of which the debtor is a registered owner—

10 (a) to a person who is not a joint registered owner of the vehicle; or

(b) to a person where the transfer has been ordered by a court.

700—Clamping or impounding of vehicle

15 (1) The Fines Enforcement and Recovery Officer may, by written determination, determine to clamp or impound any vehicle that the debtor owns or is accustomed to drive, or that was used in the commission of an offence to which action under this Division relates, for a period specified in the determination or until the Fines Enforcement and Recovery Officer determines to end the clamping or impounding period under this section.

20 (2) The Fines Enforcement and Recovery Officer must cause a copy of the written determination to clamp or impound a vehicle to be given to the debtor and to each registered owner of the vehicle.

(3) A determination under this section authorises the Fines Enforcement and Recovery Officer—

25 (a) to clamp a vehicle referred to in subsection (1); or

(b) to seize such a vehicle for the purpose of clamping or impounding it.

30 (4) If a determination has been made under this section in relation to a vehicle, the Fines Enforcement and Recovery Officer may do anything reasonably necessary for the purposes of carrying out functions under this section, including exercising any of the following powers in relation to the vehicle:

35 (a) giving an owner of the vehicle written notice in the prescribed form requiring the owner to produce the vehicle at a time and place specified in the notice;

40 (b) entering any place, including a public place, (using such force as may be necessary) at which the Fines Enforcement and Recovery Officer reasonably suspects the vehicle is situated and breaking into or opening any garage or other structure in which the vehicle can be seen to be stored at the place;

(c) requiring a person to stop the vehicle;

(d) causing a locking device or other feature of the vehicle to be removed, dismantled or neutralised;

- 5
- (e) requiring a person to surrender the keys to the vehicle, or starting the vehicle by other means;
- (f) temporarily affixing clamps or any other locking device to the vehicle on a public road or in any other place in order to secure the vehicle until it can be seized and moved;
- 10
- (g) moving the vehicle to a place determined by the Fines Enforcement and Recovery Officer and clamping or impounding the vehicle at that place (and, if the Fines Enforcement and Recovery Officer so determines, subsequently moving the vehicle to, and clamping or impounding the vehicle at, some other place);
- (h) driving, towing or pushing the vehicle, or moving the vehicle in any other manner.
- 15
- (5) A person must not, without reasonable excuse (proof of which lies on the person), refuse or fail to comply with a notice or requirement under subsection (4)
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- 20
- (6) The Fines Enforcement and Recovery Officer—
- (a) must determine to end the clamping or impounding period if all pecuniary sums owed by the debtor are paid in full; and
- (b) may determine to end the clamping or impounding period at any other time in his or her absolute discretion.
- 25
- (7) At the end of the clamping or impounding period, the Fines Enforcement and Recovery Officer may—
- (a) remove the clamps; or
- (b) release the vehicle, including to a person who applies for release of the vehicle and satisfies the Fines Enforcement and Recovery Officer that he or she is entitled to custody of the vehicle.
- 30
- (8) However, the Fines Enforcement and Recovery Officer is not obliged to remove clamps from a vehicle or release a vehicle—
- (a) outside of ordinary business hours; or
- (b) if the Fines Enforcement and Recovery Officer believes that the removal or release would result in the vehicle being left in the custody of a person not entitled to custody of the vehicle.
- 35
- 40
- (9) The Fines Enforcement and Recovery Officer may ask a person questions for the purpose of carrying out functions under this section, including questions for the purpose of determining whether a particular vehicle is liable to be clamped or impounded under this section and questions for the purpose of determining whether a person who applies for release of a vehicle is entitled to custody of the vehicle.

- (10) A person who—
- (a) refuses or fails, without reasonable excuse, to answer a question under subsection (9); or
 - (b) in response to a question under subsection (9) gives an answer that is false or misleading in a material particular,
- is guilty of an offence.
- Maximum penalty: \$2 500 or imprisonment for 6 months.

70P—Power to dispose of uncollected seized vehicles

- (1) Despite this or any other law, if no person who is entitled to custody of a vehicle that has been seized and clamped or impounded under section 70O applies to the Fines Enforcement and Recovery Officer for release of the vehicle within 28 days of the vehicle ceasing to be liable to be so clamped or impounded, the Fines Enforcement and Recovery Officer may, subject to this section, dispose of the vehicle.
- (2) A vehicle must not be disposed of under subsection (1) unless, not less than 14 days before the disposal, notice of the disposal—
- (a) was sent by post to—
 - (i) in the case of a registered vehicle—the registered address of each registered owner of the vehicle; or
 - (ii) in any other case—the address of any owner of the vehicle of which the Fines Enforcement and Recovery Officer is aware; and
 - (b) was given to each person registered under the *Personal Property Securities Act 2009* of the Commonwealth as a secured party in relation to a security interest for which the vehicle is collateral; and
 - (c) was published on a website determined by the Fines Enforcement and Recovery Officer.
- (3) Subject to subsection (4), a disposal of a vehicle under this section is to be by sale by public auction or public tender.
- (4) A vehicle may be disposed of under this section otherwise than by sale if—
- (a) the Fines Enforcement and Recovery Officer believes on reasonable grounds that the vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of the sale; or
 - (b) the vehicle has been offered for sale and was not sold.

- 5
- (5) Subject to subsection (6), the proceeds of the sale of a vehicle under this section must be dealt with as follows:
- (a) if the debtor is the owner of the vehicle—the proceeds must be applied towards satisfaction of the pecuniary sum owed and any remaining amount must be dealt with in accordance with section 7A of the *Unclaimed Moneys Act 1891* as money the owner of which cannot be found;
- 10 (b) in any other case—the proceeds must be dealt with in accordance with section 7A of the *Unclaimed Moneys Act 1891* as money the owner of which cannot be found.
- (6) If, before the disposal of a vehicle under this section, a person (other than the debtor) claims an interest in a vehicle that has been seized and clamped or impounded under section 70O the Court may, if satisfied, on application by the person, of the validity of the claim direct—
- 15 (a) that the vehicle be released into the custody of the person; or
- (b) the application of the proceeds of the sale of the vehicle in such manner as the Court considers just.
- (7) Despite any other Act or law, if a vehicle is sold or otherwise disposed of under this section—
- 20 (a) any interests in the vehicle existing prior to the sale or disposal are extinguished; and
- (b) any purchaser of the vehicle, or of any part of the vehicle, acquires a good title.

25 **70Q—Publication of names of debtors subject to enforcement action**

- (1) The Fines Enforcement and Recovery Officer may cause a notice to be published on a website determined by the Fines Enforcement and Recovery Officer, and in such other manner (if any) as he or she thinks fit, identifying a debtor who is subject to enforcement action under this Division and specifying the amount of the pecuniary sum that is payable at the date of the notice.
- 30
- (2) A notice under subsection (1)—
- (a) must be in a form determined by the Fines Enforcement and Recovery Officer; and
- 35 (b) must not include any identifying information relating to the debtor other than the debtor's—
- (i) actual name and any assumed name; and
- (ii) date of birth.
- (3) However, a notice cannot be published under this section in relation to a debtor if the debtor is—
- 40 (a) a youth; or

- (b) subject to a suppression order; or
- (c) a protected person.

- 5 (4) The Fines Enforcement and Recovery Officer must remove a notice published under subsection (1) from the website as soon as is reasonably practicable after the debtor has paid in full the pecuniary sum to which the notice relates.

70R—Costs

10 Any costs incurred by the Fines Enforcement and Recovery Officer in relation to the exercise of powers and functions under this Subdivision are added to and form part of the pecuniary sum owed by the debtor.

70S—Liability

- 15 (1) No civil liability is incurred by the Crown, the Fines Enforcement and Recovery Officer or a public sector employee (within the meaning of the *Public Sector Act 2009*) in respect of the exercise, or purported exercise, of powers or functions under this Subdivision.

- (2) A person—

- 20 (a) to whom powers or functions under this Subdivision are delegated by the Fines Enforcement and Recovery Officer; and
- (b) who is not a public sector employee within the meaning of the *Public Sector Act 2009*,

does not incur any civil liability in respect of the exercise, or purported exercise, in good faith of those powers or functions.

70T—Fines Enforcement and Recovery Officer may be assisted by others

30 The Fines Enforcement and Recovery Officer or an authorised officer may, in the exercise of any powers or functions under this Subdivision, be assisted by such other persons (including a member of the police force) as the Fines Enforcement and Recovery Officer or authorised officer considers necessary in the circumstances.

Subdivision 5—Failure of enforcement process

70U—Community service orders

- 35 (1) The Court may, on application by the Fines Enforcement and Recovery Officer, make a community service order in relation to a debtor, if the Court is satisfied that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum without the debtor or his or her dependants suffering hardship.

- 5
- 10
- 15
- 20
- 25
- 30
- 35
- (2) If a community service order is made by the Court under this section, the following provisions apply:
 - (a) the number of hours of community service to be performed by the debtor is—
 - (i) if the pecuniary sum is equal to or less than the prescribed unit—7.5 hours; or
 - (ii) if the pecuniary sum exceeds the prescribed unit—7.5 hours for each prescribed unit of the pecuniary sum and for any fraction left after dividing the sum by that unit, up to a maximum of 500 hours;
 - (b) the debtor must not, during the period for which the order applies, leave the State for any reason except in accordance with the written permission of the Fines Enforcement and Recovery Officer.
 - (3) The Fines Enforcement and Recovery Officer must give the debtor a notice specifying—
 - (a) the number of hours of community service to be performed in accordance with subsection (2)(a); and
 - (b) the requirement set out in subsection (2)(b); and
 - (c) any other matter prescribed by regulation.
 - (4) The requirements specified in subsection (2) apply and are enforceable as if they were terms of the order under subsection (1).
 - (5) Subject to this section, Part 6 applies to an order for community service under this section as if it were a sentence of community service.
 - (6) Section 47(1)(a) and (b) do not apply to an order for community service under this section.
 - (7) Part 6 of the *Young Offenders Act 1993* applies, with necessary modifications, in relation to an order under this section made in relation to a youth as if it were an order for community service under that Act.
 - (8) The pecuniary sum to which a community service order relates is reduced by 1 prescribed unit for each 7.5 hours of community service performed under the order.
 - (9) If, while a community service order is in force, part of the pecuniary sum to which it relates is paid, the number of hours of community service to be performed under the order will be reduced by a proportionate amount.

(10) However, if the Court, on application by the Fines Enforcement and Recovery Officer at any time, is satisfied that a person subject to a community service order under this section has the means to pay a fine without the person or his or her dependants suffering hardship, the Court may—

- (a) revoke the community service order; and
- (b) order the restoration of the pecuniary sum in respect of which the community service order was made (and for the purposes of taking enforcement action against the person, the pecuniary sum so restored is to be treated as having been imposed on the day on which the court makes an order under this paragraph).

(11) In restoring a pecuniary sum under subsection (10), the Court must take into account the number of hours of community service (if any) that the person performed under the revoked community service order.

12—Amendment of section 71—Community service orders may be enforced by imprisonment

(1) Section 71(1)—delete "of a court or authorised officer"

(2) Section 71(2)(a)—delete "eight" and substitute:

7.5

(3) Section 71(2)(b)—delete "six months" and substitute:

the prescribed period

(4) Section 71—after subsection (9) insert:

(10) In this section—

prescribed period means—

- (a) in relation to an order made under section 70U—12 months;
- (b) in any other case—6 months.

13—Amendment of section 72—Identification of authorised officers

(1) Section 72(1)—delete "Administrator" and substitute:

Minister

(2) Section 72—after subsection (3) insert:

(4) A person appointed as an authorised officer by the Minister must, within 2 days after ceasing to be an authorised officer, return his or her identity card to the Minister.

Maximum penalty: \$250.

14—Amendment of section 72A—Hindering authorised officer or assistant

Section 72A(2)—after "officer" insert:

appointed by the Administrator

15—Amendment of section 75—Regulations

(1) Section 75(2)(b)—after "officers" insert:

or any other matter relating to the functions of authorised officers

(2) Section 75(2)—after (b) insert:

- 5 (c) prescribe, or provide for the calculation of, costs, fees or charges for the purposes of this Act;
- (e) exempt any person or class of persons from the obligation to pay any costs, fees or charges so prescribed;
- 10 (f) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance with, a regulation.

(3) Section 75—after subsection (2) insert:

- (3) The regulations may—
- (a) be of general or limited application; and
- 15 (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
- 20 (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, an authorised officer or another prescribed person.
- 25 (4) The regulations may make provisions of a savings or transitional nature consequent on the commencement of any provisions of this Act (including provisions of a transitional nature modifying any provisions of this Act).

30 16—Transitional provisions

(1) Subject to this section and to any regulations made under section 75(4) of the principal Act (as inserted by this Act)—

- 35 (a) Part 9 Division 3 of the principal Act as in force immediately after the commencement day applies in relation to enforcement of a pecuniary sum regardless of whether the liability to pay the pecuniary sum arose before or after the commencement day; and
- (b) section 61 of the principal Act (as inserted by this Act) applies to an expiation amount regardless of whether the liability to pay the expiation amount arose before or after the commencement day.

- 5 (2) If, immediately before the commencement day, a debtor is subject to an arrangement with an authorised officer under section 64 of the principal Act, or is subject, or apparently subject, to any requirement as to the manner and time of payment of a pecuniary sum pursuant to an order made, or purportedly made, under Part 9 Division 3 of the principal Act, that arrangement or requirement continues as if it were an arrangement with the Fines Enforcement and Recovery Officer under section 70 of the principal Act as in force after the commencement day (but such an arrangement or requirement is, despite the provisions of section 70, to have effect according to its terms).
- 10 (3) A charge on land imposed under section 68 of the principal Act as in force before the commencement day continues as if it were a charge on land imposed under section 70G of the principal Act after the commencement day.
- 15 (4) Without derogating from any powers or functions that may be exercised in accordance with subsection (1), a relevant order continues in operation after the commencement day (whether or not the order had taken effect before the commencement day).
- 20 (5) Part 9 Division 3 of the principal Act as in force before the commencement day (other than Subdivision 7) continues to apply in relation to a relevant order continued in operation under subsection (4) as if references in that Division to the Manager, the Registrar or an authorised officer were references to the Fines Enforcement and Recovery Officer.
- (6) However, the Fines Enforcement and Recovery Officer may, with the consent of the relevant debtor, revoke a relevant order continued in operation under subsection (4).
- 25 (7) Despite section 69 of the principal Act (as inserted by this Act) no amount is payable under that section in relation to an amount that is taken to be a pecuniary sum imposed by order of a court by virtue of the making of an enforcement order under section 13 of the *Expiation of Offences Act 1996* before the commencement of section 26 of this Act.
- (8) In this section—
- 30 *commencement day* means the day on which section 11 of this Act comes into operation;
- principal Act* means the *Criminal Law (Sentencing) Act 1988*;
- relevant order* means a penalty enforcement order (and any warrant or order issued in relation to the penalty enforcement order) made under Part 9 Division 3 of the principal Act as in force before the commencement day.

35 **Part 5—Amendment of *Cross-border Justice Act 2009***

17—Amendment of section 120—Terms used in this Part

Section 120, definition of *Fines Director*—delete "Manager, Penalty Management" and substitute:

Fines Enforcement and Recovery Officer

Part 6—Amendment of *Expiation of Offences Act 1996*

18—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *child* insert:

community corrections officer means an officer or employee of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982* whose duties include the supervision of offenders in the community;

- (2) Section 4(1), definition of *expiation period*—after "expiation fee" insert:

(in the absence of an arrangement under section 9)

- (3) Section 4(1)—after the definition of *expiation period* insert:

Fines Enforcement and Recovery Officer means the Fines Enforcement and Recovery Officer under the *Criminal Law (Sentencing) Act 1988*;

- (4) Section 4(1), definitions of *the Manager*, *Penalty Management* and *Registrar*—delete the definitions and substitute:

protected person has the same meaning as in the *Intervention Orders (Prevention of Abuse) Act 2009*.

- (5) Section 4—after subsection (2) insert:

- (3) Subject to this Act, a person *expiates* an offence if a person pays all of the amounts due under the expiation notice (including any levy payable under the *Victims of Crime Act 2001*) or such amounts are recovered from the person in accordance with this Act.

19—Amendment of section 6—Expiation notices

Section 6(1)(c)—after "the notice" insert:

unless an arrangement is entered into under section 9

20—Amendment of section 7—Payment by card

Section 7—delete "at the place at which the payment is to be made" and substitute:

in relation to the payment to be made

21—Amendment of section 8—Alleged offender may elect to be prosecuted etc

Section 8(2)—delete subsection (2) and substitute:

- (2) An election to be prosecuted for an offence cannot be made after—
- (a) if the alleged offender enters into an arrangement under section 9—the day on which the arrangement is entered into; or
- (b) in any other case—the day on which an enforcement determination is made under section 13 in relation to the expiation notice.

22—Amendment of section 8A—Review of notices on ground that offence is trifling

(1) Section 8A(4)—delete "an enforcement order" and substitute:

an enforcement determination under section 13

(2) Section 8A(6)—delete subsection (6) and substitute:

(6) However, an expiation notice cannot be withdrawn under this section in respect of an offence if—

(a) any amount due under the notice in respect of that offence has been paid; or

(b) the alleged offender has entered into an arrangement under section 9; or

(c) an enforcement determination has been made under section 13 in relation to the expiation notice.

23—Substitution of sections 9 and 10

Sections 9 and 10—delete the sections and substitute:

9—Arrangements as to manner and time of payment

(1) Subject to this section, an alleged offender who has been given an expiation notice and who pays to the Fines Enforcement and Recovery Officer the prescribed fee—

(a) may, at any time during the expiation period, enter into a arrangement with the Fines Enforcement and Recovery Officer for payment of the amount due under the notice by direct debit instalments in accordance with subsection (3); or

(b) if the Fines Enforcement and Recovery Officer agrees, may enter into some other kind of arrangement with the Fines Enforcement and Recovery Officer in relation to the amount due under the notice in accordance with subsection (4).

(2) The Fines Enforcement and Recovery Officer must give the issuing authority notice (in a manner agreed between the Fines Enforcement and Recovery Officer and the issuing authority) of any arrangement entered into under this section.

(3) An arrangement for payment by instalments referred to in subsection (1)(a)—

(a) may not be entered into after an enforcement determination has been made under section 13 in respect of the expiation notice; and

(b) must provide for instalments to be paid to the Fines Enforcement and Recovery Officer by direct debits by or through some other person or agency (eg, deductions from an ADI account or wages); and

(c) must require payment in full within a period determined by the Fines Enforcement and Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into).

5 (4) Other kinds of arrangements referred to in subsection (1)(b) may consist of or include—

(a) payment by instalments (including instalments paid over a period exceeding 12 months);

(b) an extension of time to pay;

10 (c) the taking of a charge over land;

(d) the surrender of property to the Fines Enforcement and Recovery Officer;

15 (e) payment of any amount, including by direct credit, by or through some other person or agency (eg, deductions from an ADI account or wages);

(f) subject to subsection (5)—requirements for the performance of community service by the alleged offender (in accordance with a scheme prescribed by the regulations);

20 (g) any other form of arrangement agreed by the Fines Enforcement and Recovery Officer and the alleged offender.

(5) The Fines Enforcement and Recovery Officer may only agree to an arrangement requiring the performance of community service if—

25 (a) the Fines Enforcement and Recovery Officer is satisfied that the alleged offender does not have, and is not likely within a reasonable time to have, the means to satisfy the amount due under an expiation notice without the alleged offender or his or her dependants suffering hardship; and

30 (b) an enforcement determination has been made by the Fines Enforcement and Recovery Officer under section 13 in relation to the expiation notice.

(6) If—

35 (a) an alleged offender has previously been subject to enforcement action under this Act (whether in relation to the same, or a different, expiation notice) or under Part 9 Division 3 Subdivision 4 of the *Criminal Law (Sentencing) Act 1988*; or

(b) an alleged offender is an undischarged bankrupt or is subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; or

40 (c) an alleged offender is of a class prescribed by the regulations,

the Fines Enforcement and Recovery Officer may—

- 5
- (d) refuse to enter into an arrangement under this section, or a particular type of arrangement under this section, with the alleged offender; or
- (e) require the alleged offender to provide an irrevocable authority to obtain (in accordance with any prescribed requirements) financial and contact information about the alleged offender from any Commonwealth, State or Local Government agency, any ADI or an employer of the alleged offender; or
- 10
- (f) require the alleged offender to provide security or obtain guarantees (as the Fines Enforcement and Recovery Officer thinks fit).
- (7) An arrangement under this section may be varied by agreement between the alleged offender and the Fines Enforcement and Recovery Officer.
- 15
- (8) If an arrangement is entered into or varied under this section, the Fines Enforcement and Recovery Officer must give a copy of the arrangement or varied arrangement (as the case requires) to the alleged offender personally or by post.
- 20
- (9) For the purposes of entering into, or varying, an arrangement, any number of amounts due under expiation notices given to the alleged offender may be aggregated.
- (10) If an alleged offender fails to comply with an arrangement under this section and the failure has endured for 14 days, the arrangement terminates.
- 25
- (11) If the Fines Enforcement and Recovery Officer determines that an alleged offender who is subject to an arrangement requiring the performance of community service has the means to satisfy an enforcement amount without the alleged offender or his or her dependants suffering hardship, the arrangement terminates.
- 30
- (12) If an arrangement terminates under subsection (10) or (11), the Fines Enforcement and Recovery Officer must give the issuing authority notice (in a manner agreed between the Fines Enforcement and Recovery Officer and the issuing authority) of the termination and the amount then outstanding (taking into account, where the arrangement required the performance of community service, the number of hours of community service so performed).
- 35
- (13) If an alleged offender complies with an arrangement under this section or pays to the Fines Enforcement and Recovery Officer, at any time, the amount then outstanding, the arrangement is discharged.
- 40

- 5 (14) Subject to the regulations, an alleged offender who enters into an arrangement under this section will, for the purposes of any other Act or law, be taken to expiate the offence or offences to which the arrangement relates on the day on which the arrangement is entered into (unless the alleged offender is already taken to have expiated the offence in accordance with section 13 or in accordance with section 61 of the *Criminal Law (Sentencing) Act 1988*) regardless of whether the arrangement is subsequently discharged or terminates before being discharged.

10 **24—Amendment of section 11—Expiation reminder notices**

- (1) Section 11(1)—delete "been granted relief under this Act" and substitute:

entered into an arrangement under section 9

- (2) Section 11(1a)(a)—delete paragraph (a) and substitute:

15 (a) must specify the amount of the expiation fee and to whom the expiation fee is payable; and

- (3) Section 11(2)—delete subsection (2)

- (4) Section 11(4)—delete subsection (4)

25—Amendment of section 11A—Expiation enforcement warning notices

- (1) Section 11A(2)(b)—delete paragraph (b) and substitute:

20 (b) must specify the amount of the expiation fee and to whom the expiation fee is payable; and

- (2) Section 11A(3)—delete subsection (3)

- (3) Section 11A(5)—delete subsection (5)

26—Substitution of sections 12 to 14

25 Sections 12 to 14 (inclusive)—delete the sections and substitute:

12—Late payment

The issuing authority may accept late payment of the amount due under an expiation notice at any time before an enforcement determination is made under section 13.

30 **13—Enforcement determinations**

- (1) An expiation notice may be enforced against the alleged offender by the issuing authority sending to the Fines Enforcement and Recovery Officer—

35 (a) a certificate that contains the particulars determined by the Fines Enforcement and Recovery Officer relating to—

(i) the alleged offender; and

(ii) the offence or offences that remain unexpiated; and

(iii) the amount due under the notice; and

- (iv) compliance by the authority with the requirements of this Act and any other Act; and
- (b) the prescribed fee.
- 5 (2) The Fines Enforcement and Recovery Officer may make an enforcement determination in relation to an expiation notice given to a person—
- (a) if the Fines Enforcement and Recovery Officer has, within the relevant period, received a certificate under subsection (1) and—
- 10 (i) 14 clear days have elapsed from the date on which a reminder notice relating to the expiation notice was sent by post in accordance with section 11; or
- (ii) 14 clear days have elapsed from the date on which an expiation enforcement warning notice relating to the expiation notice was sent by post in accordance with section 11A; or
- 15 (b) if an arrangement under section 9 relating to the notice has terminated in accordance with that section and the Fines Enforcement and Recovery Officer has, within the relevant period, received a certificate under subsection (1) following that termination.
- 20 (3) Subject to the regulations, on the making of an enforcement determination the alleged offender will, for the purposes of any other Act or law, be taken to have expiated the offence or offences to which the enforcement determination relates (unless the alleged offender is already taken to have expiated the offence in accordance with section 9(14) or in accordance with section 61 of the *Criminal Law (Sentencing) Act 1988*).
- 25 (4) The Fines Enforcement and Recovery Officer may—
- (a) vary an enforcement determination at any time; and
- (b) on application under this section made within 30 days of notice of an enforcement determination being given, sent or published in accordance with this section—revoke the enforcement determination.
- 30 (5) An application under subsection (4)(b) must be accompanied by the prescribed fee.
- 35 (6) The Fines Enforcement and Recovery Officer may entertain an application under subsection (4)(b) made out of time if he or she thinks good reason exists for doing so.
- 40 (7) The Fines Enforcement and Recovery Officer may refuse to entertain an application under subsection (4)(b) if the Fines Enforcement and Recovery Officer considers that the application is frivolous or vexatious or is not made in good faith.

- 5
- (8) An application under subsection (4)(b) for the revocation of an enforcement determination can only be made on the ground that—
- (a) the expiation notice to which the determination relates should not have been given to the applicant in the first instance; or
 - (b) the procedural requirements of this Act or any other Act were not complied with; or
 - (c) the applicant failed to receive a notice required by this Act or any other Act; or
 - 10 (d) the issuing authority failed to receive—
 - (i) a notice sent to the authority by the applicant electing to be prosecuted for the offence; or
 - (ii) a statutory declaration or other document sent to the authority by the applicant in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
 - (e) the applicant has expiated the offence, or offences, under the notice.
- 15
- (9) If the Fines Enforcement and Recovery Officer revokes an enforcement determination—
- (a) the determination will be taken to be void and of no effect (and subsection (3) is taken never to have applied in relation to the determination); and
 - (b) any enforcement action taken under section 14A in relation to the determination will be taken to have been revoked; and
 - 25 (c) the Fines Enforcement and Recovery Officer may, if he or she thinks fit, refund the fee paid in accordance with subsection (5).
- (10) Despite any other provision of this Act, if the Fines Enforcement and Recovery Officer revokes an enforcement determination on a ground referred to in subsection (8)(b), (c) or (d), the following provisions apply:
- 30 (a) if the period of 1 year from the date of commission of the alleged offence, or offences, has not expired, the applicant will be taken to have been given an expiation notice by the issuing authority in respect of the alleged offence, or offences, for the first time on the day on which the determination was revoked; and
 - 35 (b) the expiation notice will also be taken to have been issued on that day; and
 - 40 (c) the expiation period will be taken to be the period of 28 days from (and including) that day; and

(d) a prosecution can be commenced for the alleged offence, or offences, within 6 months of the expiry of that expiation period (despite the fact that the time for the commencement of the prosecution may have already otherwise expired).

5 (11) Subject to subsection (12), on an enforcement determination being made, varied or revoked, the Fines Enforcement and Recovery Officer must cause a written notice of the determination, variation or revocation containing the particulars (if any) prescribed by the regulations—

10 (a) to be—

(i) given personally or by post to the alleged offender;
or

15 (ii) if the whereabouts of the alleged offender cannot, after reasonable enquiries, be ascertained—
published on a website determined by the Fines Enforcement and Recovery Officer; and

(b) to be given to the issuing authority.

(12) If—

20 (a) the alleged offender was under the age of 18 years at the time the offence is alleged to have been committed or is a protected person; and

(b) the whereabouts of the alleged offender cannot, after reasonable enquiries, be ascertained,

25 the Fines Enforcement and Recovery Officer may not publish the written notice in accordance with subsection (11)(a)(ii) but may, if he or she is satisfied that other reasonable means of contacting the alleged offender (not involving public disclosure of the alleged offender's name) are available, cause the written notice to be given to the alleged offender by such other means.

30 (13) The Fines Enforcement and Recovery Officer is not required to conduct a hearing for the purposes of making, varying or revoking an enforcement determination.

(14) In this section—

relevant period, in relation to an expiation notice, means—

35 (a) for the purposes of subsection (2)(a)—

(i) the period ending 90 days after the end of the expiation period; or

(ii) such longer period as the Fines Enforcement and Recovery Officer may allow (provided that the Fines Enforcement and Recovery Officer may not extend the period so as to allow a certificate to be received after the time for commencement of a prosecution against the person for the unexpired offence or offences to which the certificate relates has expired); and

(b) for the purposes of subsection (2)(b)—the period of 30 days after the day on which the arrangement terminated.

14—Review of enforcement determinations by Court

(1) Subject to this section, if an enforcement determination has been made by the Fines Enforcement and Recovery Officer under section 13 in relation to an expiation notice, the alleged offender may apply to the Court for a review of the determination within 30 days of notice of the determination being given, sent or published under section 13.

(2) The Court may entertain an application made out of time if it thinks good reason exists for doing so.

(3) An application can only be made under this section on the ground that the alleged offender did not commit the offence or offences to which the expiation notice relates.

(4) The Court, after conducting a review of an enforcement determination, may—

(a) confirm the determination; or

(b) vary or revoke the determination,

and the Court may make any consequential or ancillary order that the Court considers necessary or expedient.

(5) If the Court varies or revokes the determination, the Court must notify the issuing authority of that fact.

(6) If the Court revokes an enforcement determination—

(a) the determination will be taken to be void and of no effect (and section 13(3) is taken never to have applied in relation to the determination); and

(b) any subsequent enforcement action taken under section 14A will be taken to have been revoked.

(7) A decision of the Court made on a review of an enforcement determination is not subject to appeal by the alleged offender.

14A—Enforcement actions by Fines Enforcement and Recovery Officer

- 5 (1) If an enforcement determination has been made by the Fines Enforcement and Recovery Officer under section 13 in relation to an expiation notice (and has not been revoked), the Fines Enforcement and Recovery Officer may take enforcement action against the alleged offender to secure payment of the amount due under the notice.
- 10 (2) The Fines Enforcement and Recovery Officer may take enforcement action against a person by doing any of the following:
- 15 (a) entering into an arrangement, or further arrangement, with the person under section 9(1)(b);
 - (b) registering a charge on land under Part 9 Division 3 Subdivision 3 of the *Criminal Law (Sentencing) Act 1988* or exercising any 1 or more of the powers under Part 9 Division 3 Subdivision 4 or Subdivision 5 of that Act as if—
 - 20 (i) references to a pecuniary sum were references to the amount due; and
 - (ii) references to the debtor were references to the person against whom the enforcement action is being taken;
 - (c) waiving payment of the amount due or any part of the amount due.
- 25 (3) If the Fines Enforcement and Recovery Officer takes enforcement action of a kind described in subsection (2)(b), any costs, fees or other charges that would be recoverable by the Fines Enforcement and Recovery Officer under the *Criminal Law (Sentencing) Act 1988* in respect of such action are recoverable by the Fines Enforcement and Recovery Officer for the purposes of this Act (and will be added to, and form part of, the amount due).
- 30 (4) Where more than 1 enforcement determination has been made in respect of expiation notices issued to a person, the amounts due under the notices may be aggregated for the purposes of taking enforcement action.

35 14B—Amounts unpaid or unrecovered for more than certain period

- 40 (1) Subject to subsection (2), if any part of an expiation fee remains unpaid by, or unrecovered from, the alleged offender at the end of the expiation period, an amount prescribed by, or calculated in accordance with, the regulations is added to, and forms part of, the amount due under the notice.

- (2) The Fines Enforcement and Recovery Officer may, in such circumstances as he or she thinks just, waive payment of the whole or part of an amount payable by an alleged offender in accordance with this section.

5 **27—Amendment of section 15—Effect of expiation**

- (1) Section 15(4)—delete "an application for relief" and substitute:

the entry into an arrangement

- (2) Section 15(5)—after "conviction" insert:

or finding of guilt

10 **28—Amendment of section 16—Withdrawal of expiation notices**

- (1) Section 16(3)(a)—delete "order has been made under this Act in respect of the offence" and substitute:

determination has been made under section 13 in relation to the expiation notice

- 15 (2) Section 16(3)(b)—delete paragraph (b) and substitute:

(b) the period of 60 days from the date of the notice has expired.

- (3) Section 16(5)—delete "an instalment or applied for relief under this Act" and substitute:

entered into arrangement under section 9

- 20 (4) Section 16(11)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) the issuing authority must, if an enforcement determination has been made under section 13, inform the Fines Enforcement and Recovery Officer of the withdrawal of the notice; and

- 25 (b) any aggregation determination under section 61 of the *Criminal Law (Sentencing) Act 1988* in relation to the notice will be taken to have been revoked; and

(ba) any enforcement determination made under this Act in respect of the notice will be taken to have been revoked (and any subsequent enforcement action is discontinued or rescinded); and

- 30 (5) Section 16—after subsection (11) insert:

(11a) If an expiation notice is withdrawn—

(a) after an arrangement has been entered into under section 9 in relation to the notice—section 9(14) is taken never to have applied in relation to that arrangement; or

- 35 (b) after an enforcement determination has been made under section 13 in relation to the notice—section 13(3) is taken never to have applied in relation to that determination.

29—Amendment of section 17—Application of payments

Section 17(1)—delete "expiation fees" and substitute:

amounts due under expiation notices (other than any part of such amounts attributable to the levy under the *Victims of Crime Act 2001*)

5 **30—Substitution of sections 18, 18A and 18B**

Sections 18, 18A and 18B—delete the sections and substitute:

18—Provision of information

(1) Each issuing authority must enter into an agreement with the Fines Enforcement and Recovery Officer in relation to—

10 (a) the manner in which the Fines Enforcement and Recovery Officer is to provide information to the issuing authority in relation to action taken by the Fines Enforcement and Recovery Officer under this Act in respect of an expiation notice issued by the issuing authority; and

15 (b) the manner in which the issuing authority is to provide information to the Fines Enforcement and Recovery Officer in relation to the issuing of an expiation notice by the issuing authority or any other action taken by the issuing authority in respect of an expiation notice so issued.

20 (2) An agreement will be taken to contain any provisions prescribed by the regulations.

18A—Minister may declare amnesty from payment of costs, fees and charges

25 (1) The Minister may from time to time declare an amnesty from the payment of the whole or any part of 1 or more of the following:

(a) costs, fees (other than an expiation fee) and charges under this Act;

30 (b) costs and fees (other than an expiation fee) under this Act as in force immediately before the commencement of Part 5 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*.

(2) An amnesty—

(a) must be declared by notice in the Gazette; and

(b) applies—

35 (i) in relation to an alleged offender, or a class of alleged offenders; and

(ii) to the extent,
specified in the notice; and

40 (c) is subject to the terms and conditions (if any) set out in the notice.

- (3) The Minister may vary or revoke the declaration of an amnesty under subsection (1) by notice in the Gazette.

18B—Investigation of alleged offender's financial position

- (1) The Fines Enforcement and Recovery Officer may, at any time, investigate an alleged offender's means of paying an amount due under an expiation notice and may give a written notice to a person requiring the person to produce to the Fines Enforcement and Recovery Officer, within a period stated in the notice, documents or other material relevant to the investigation.
- (2) A notice under subsection (1) may be given personally or by post.
- (3) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
- Maximum penalty: \$10 000.

18C—Power to require information

- (1) If a public sector agency within the meaning of the *Public Sector Act 2009* is in possession of the contact details of an alleged offender, the agency must, on request from the Fines Enforcement and Recovery Officer, provide those details to the Fines Enforcement and Recovery Officer.
- (2) This section does not apply to a public sector agency excluded from the application of this section by the regulations.

18D—Disclosure of information to prescribed interstate authority

The Fines Enforcement and Recovery Officer may disclose prescribed particulars of an alleged offender to a prescribed interstate authority.

18E—Power to require identification

- (1) The Fines Enforcement and Recovery Officer may require a person who the Fines Enforcement and Recovery Officer has reasonable cause to suspect may be a person to whom an expiation notice has been given to produce evidence of the person's identity.
- (2) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
- Maximum penalty: \$10 000.

31—Amendment of section 20—Regulations

Section 20—after its present contents (now to be designated as subsection (1) insert:

- (2) Without limiting the generality of subsection (1), the regulations may—
- 5 (a) prescribe, or provide for the calculation of, any costs, fees or charges for the purposes of this Act;
- (b) exempt any person or class of persons from the obligation to pay costs, fees or charges so prescribed;
- 10 (c) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance with, a regulation.
- (3) The regulations may—
- (a) be of general or limited application; and
- (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- 15 (c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
- 20 (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Fines Enforcement and Recovery Officer or another prescribed person.
- 25 (4) The regulations may make provisions of a savings or transitional nature consequent on the commencement of any provisions of this Act (including provisions of a transitional nature modifying any provisions of this Act).

32—Transitional provisions

- 30 (1) Subject to this section and to any regulations made under section 20(4) of the principal Act (as inserted by this Act), the principal Act as in force immediately after the commencement day applies in relation to an expiation notice whether given before or after the commencement day.
- 35 (2) If an order for relief has been made in relation to an expiation notice given before the commencement day, the principal Act as in force before the commencement day continues to apply in relation to the expiation notice unless the order for relief is cancelled (in which case the principal Act as in force immediately after the commencement day applies in relation to the expiation notice as if an arrangement under section 9 of the principal Act relating to the expiation notice had terminated).
- 40 (3) For the avoidance of doubt, if an order for relief referred to in subsection (2) is cancelled, section 10 of the principal Act (as in force immediately before the commencement day) does not apply in relation to the cancellation.

- (4) The Registrar (within the meaning of the principal Act as in force immediately before the commencement day) may—
- (a) with the agreement of the alleged offender, vary an order for relief referred to in subsection (2); and
 - 5 (b) delegate any functions and powers relating to an order for relief referred to in subsection (2) to the Fines Enforcement and Recovery Officer.
- (5) A power or function delegated under subsection (4)(b) may, if the instrument of delegation so provides, be further delegated.
- (6) A delegation under subsection (4)(b)—
- 10 (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act personally in a matter; and
 - (c) is revocable at will; and
 - (d) operates despite any direction under section 18A of the principal Act (as in 15 force before the commencement day).
- (7) In this section—
- principal Act* means the *Expiation of Offences Act 1996*;
- commencement day* means the day on which this Part comes into operation.

Part 7—Amendment of *Fisheries Management Act 2007*

33—Amendment of section 104—Demerit points for certain offences

Section 104(2) and (3)—delete subsections (2) and (3)

34—Amendment of section 108—Disqualification etc and discounting of demerit points

Section 108(5)(b)—delete "convicted" and substitute:

found guilty

Part 8—Amendment of *Magistrates Court Act 1991*

35—Amendment of section 7A—Constitution of Court

Section 7A(2)—after paragraph (b) insert:

- 30 (ba) to hear and determine applications for review of enforcement determinations under section 14 of the *Expiation of Offences Act 1996*; or

36—Amendment of section 9A—Petty Sessions Division

- (1) Section 9A(1)(a)—delete paragraph (a)
- (2) Section 9A(1)(c)—delete "10 or"

37—Amendment of section 12—Administrative and ancillary staff

Section 12(1)(ab)—delete paragraph (ab)

38—Repeal of section 13A

Section 13A—delete the section

5 **Part 9—Amendment of *Motor Vehicles Act 1959***

39—Amendment of section 5—Interpretation

Section 5(6)—delete subsection (6)

40—Amendment of section 9—Duty to register

(1) Section 9(1), penalty provision—delete "\$2 500" and substitute:

10 \$7 500

(2) Section 9(3), penalty provision—delete "\$2 500" and substitute:

\$7 500

41—Amendment of section 85—Procedures for suspension, cancellation or variation of licence or permit

15 Section 85—after its present contents (now to be designated as subsection (1)) insert:

(2) This section does not apply where the Registrar is required, under any Act or law, to exercise a power to suspend, cancel or vary a person's licence or learner's permit.

42—Amendment of section 93—Notice to be given to Registrar

20 (1) Section 93(3a)—delete subsection (3a) and substitute:

(3a) If a person expiates an offence that—

(a) attracts demerit points under this Act; or

(b) is an offence of contravening a condition of a learner's permit, probationary licence or provisional licence,

25 the Commissioner of Police, the issuing authority (within the meaning of the *Expiation of Offences Act 1996*) or the Fines Enforcement and Recovery Officer (whoever first becomes aware that the person has expiated the offence) must send to the Registrar notice in writing of the expiation.

30 (2) Section 93—after subsection (3b) insert:

(3c) If a person is, for the purposes of subsection (3a), taken to have expiated an offence to which that subsection applies on the making of an enforcement determination under the *Expiation of Offences Act 1996* and the enforcement determination is subsequently revoked under that Act—

35 (a) in the case of revocation by a court—the court; or

- (b) in any other case—the Fines Enforcement and Recovery Officer,

must forthwith notify the Registrar in writing of the revocation.

43—Amendment of section 98B—Demerit points for offences in this State

5 Section 98B(1a)—delete "granted an order for relief under the *Expiation of Offences Act 1996* in respect of an expiation notice for that offence" and substitute:

 treated as if he or she has expiated the offence in accordance with the *Expiation of Offences Act 1996*

44—Amendment of section 102—Duty to insure against third party risks

10 (1) Section 102(1), penalty provision—delete "\$5 000" and substitute:

 \$10 000

(2) Section 102(2), penalty provision—delete "\$5 000" and substitute:

 \$10 000

45—Amendment of section 139D—Confidentiality

15 Section 139D(1)(ea)—delete paragraph (ea) and substitute:

 (ea) as may be required for the purposes of Part 9 Division 3 of the *Criminal Law (Sentencing) Act 1988*; or

46—Amendment of section 145—Regulations

Section 145(1)(n)—delete "\$1 250" and substitute:

20 \$2 500

Part 10—Amendment of *Summary Procedure Act 1921*

47—Amendment of section 189A—Costs payable by defendant in certain criminal proceedings

Section 189A(1)(b)—delete paragraph (b)

Part 11—Amendment of *Victims of Crime Act 2001*

48—Amendment of section 28—Right of Attorney-General to recover money paid out from offender etc

Section 28—after subsection (6) insert:

- 5 (7) If a debt arises from a judgment entered in favour of the Crown and
 against an offender in accordance with this section, the Fines
 Enforcement and Recovery Officer may take action on behalf of the
 Crown to recover the debt and for that purpose may, subject to
10 subsection (8), exercise any power or do any thing that the Fines
 Enforcement and Recovery Officer is authorised or required to
 exercise or do in relation to an enforcement determination under the
 Expiation of Offences Act 1996 as if—
- (a) the debt that may be recovered from the offender in
 accordance with this section was the amount due under the
15 expiation notice to which the enforcement determination
 relates; and
- (b) the offender was a person against whom enforcement action
 was being taken.
- 20 (8) The Fines Enforcement and Recovery Officer, in acting under
 subsection (7) in relation to an offender—
- (a) may not enter into an arrangement requiring the offender to
 complete community service under section 9 of the
 Expiation of Offences Act 1996; and
- 25 (b) may only waive payment under section 14A of that Act with
 the approval of the Attorney-General.
- (9) Section 14B of the *Expiation of Offences Act 1996* does not apply to
 a debt to be recovered under this section.
- 30 (10) Section 61 of the *Criminal Law (Sentencing) Act 1988* applies in
 relation to a debt under this section in the same way as it applies to
 an expiation amount (other than an expiation fee).

49—Amendment of section 32—Imposition of levy

- (1) Section 32(5)—after paragraph (c) insert:
- 35 (ca) whether the offence is expiated by payment of the expiation fee, or
 other arrangements in relation to payment of the expiation fee,
 during the expiation period or otherwise;
- (2) Section 32(6)—delete subsection (6) and substitute:
- (6) If a levy is payable under this section by a person who expiates an
 offence, the amount of the levy must be shown on the expiation
 notice.

Part 12—Amendment of *Young Offenders Act 1993*

50—Amendment of section 49A—Restrictions on performance of community service and other work orders

Section 49A(b)(ii)—delete "8" and substitute:

5

7.5