

**House of Assembly—No 134**

As laid on the table and read a first time, 12 May 2021

South Australia

**Fines Enforcement and Debt Recovery  
(Miscellaneous) Amendment Bill 2021**

A BILL FOR

An Act to amend the *Fines Enforcement and Debt Recovery Act 2017* and to make related amendments to the *Enforcement of Judgments Act 1991*.

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

5 This Act may be cited as the *Fines Enforcement and Debt Recovery (Miscellaneous) Amendment Act 2021*.

**2—Commencement**

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

**3—Amendment provisions**

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

**Part 2—Amendment of *Fines Enforcement and Debt Recovery Act 2017***

**4—Amendment of section 3—Interpretation**

Section 3(1), definition of *personal details*—after paragraph (i) insert:

15 and

- (j) any other details of a kind prescribed by the regulations;

## 5—Insertion of section 3A

After section 3 insert:

### 3A—Application to youths

- (1) This Act applies to a debtor or alleged offender who is a youth.
- (2) However, an additional power exists, in relation to enforcement of a pecuniary sum or expiation notice, for the youth or the Chief 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 section 46 applied in respect of the pecuniary sum or the amount due under the expiation notice).
- (3) In this section—
- debtor* includes a person who is a debtor within the meaning of Part 8;
- youth* means a person under the age of 18 years and includes, in relation to pecuniary sums and expiation notices, a person who was under the age of 18 years at the time of the relevant offence or alleged offence.

## 6—Repeal of section 10

Section 10—delete the section

## 7—Amendment of section 12—Payment of pecuniary sum to Chief Recovery Officer

- (1) Section 12(2)(a)—delete paragraph (a) and substitute:
- (a) firstly, in satisfaction of any order made by a sentencing court that the debtor pay an amount by way of compensation or restitution to a particular person (and if the debtor is subject to more than 1 such order, payments are to be made to satisfy the amounts payable under those orders, in chronological order, until all such amounts have been paid, before any other payments are made under paragraphs (b) to (e) of this subsection);
- (2) Section 12(2)(b)—delete "defendant" and substitute:
- debtor

## 8—Repeal of section 14

Section 14—delete the section

## 9—Amendment of section 15—Arrangements as to manner and time of payment

- (1) Section 15(9)—delete subsection (9) and substitute:
- (9) An arrangement under this section may be varied—
- (a) by agreement between the debtor and the Chief Recovery Officer; or

(b) by the Chief Recovery Officer in accordance with subsection (11a).

(2) Section 15—after subsection (11) insert:

5 (11a) The Chief Recovery Officer may, on the Chief Recovery Officer's own initiative, vary an arrangement by extending it to apply to another pecuniary sum payable by the debtor (whether or not the 28 day period under section 11 has ended in relation to the other pecuniary sum).

10 (11b) For the avoidance of doubt, the prescribed fee under subsection (1) will not be payable by the debtor in respect of the extension of an arrangement to another pecuniary sum in accordance with subsection (11a).

(3) Section 15—after subsection (14) insert:

15 (14a) If an arrangement is varied under subsection (11a)—

15 (a) the debtor may, within the period of 14 days after the day on which the debtor was given notice of the variation under subsection (14), apply (in a manner specified in the notice) for rescission of the variation; and

20 (b) on receipt of such an application, the Chief Recovery Officer must rescind the variation (and the arrangement will apply to the debtor as if the variation had never been made).

(4) Section 15—after subsection (17) insert:

25 (18) If an arrangement is terminated under subsection (15) and is not reinstated, on the expiration of the 14 day period referred to in subsection (16) any amounts that would, but for the existence of the arrangement, have been added to the pecuniary sum under section 18(3a) will be added to, and form part of, the pecuniary sum payable by the debtor.

30 **10—Amendment of section 18—Amounts unpaid or unrecovered for more than certain period**

(1) Section 18(1)—delete "or entered into an arrangement under this Division in respect of the sum" and substitute:

, or the sum is not the subject of an arrangement under this Division

(2) Section 18—after subsection (3) insert:

35 (3a) Subject to subsection (4), if, at the end of the 14 day period commencing on the day on which a reminder notice relating to a pecuniary sum was given to a debtor in accordance with subsection (1), the debtor has not paid the sum, or the sum is not subject to an arrangement under this Division, the following provisions apply:

40 (a) the prescribed amount is added to, and forms part of, the pecuniary sum payable by the debtor;

(b) if, on the expiration of the 28 day period commencing immediately after that 14 day period, a part of the pecuniary sum remains unpaid or unrecovered from the debtor under Part 7, or the sum is not subject to an arrangement under this Division, a further prescribed amount is added to, and forms part of, the pecuniary sum payable by the debtor.

(3) Section 18(4)—delete "a reminder notice fee" and substitute:

the whole or any part of an amount payable by a debtor in accordance with this section

(4) Section 18—after subsection (4) insert:

(5) If, as a result of any proceedings, more than 1 order imposing a pecuniary sum is made against the debtor on the same day, the orders may be treated as if they were a single order for the purposes of this section, so that only 1 reminder notice is required to be sent in respect of all the pecuniary sums and only 1 reminder notice fee, prescribed amount or further prescribed amount (as the case may require) will be payable by the debtor in respect of all the pecuniary sums.

(6) In this section—

*prescribed amount* means an amount prescribed by, or calculated in accordance with, the regulations.

## **11—Amendment of section 19—Enforcement action**

Section 19(1)—delete subsection (1) and substitute:

(1) If—

(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 18, paid the sum or entered into an arrangement under section 15 in respect of the sum; or

(b) an arrangement under section 15 has terminated,  
the Chief Recovery Officer may determine, at any time, in the Officer's absolute discretion, to do any of the following:

(c) enter into an arrangement, or further arrangement, with the debtor under section 15(1)(b);

(d) exercise any 1 or more of the powers under Part 7.

(1a) The Chief Recovery Officer may determine, at any time—

(a) to waive payment of the pecuniary sum or any part of the pecuniary sum (in the Officer's absolute discretion); or

(b) to write off the pecuniary sum if the Officer considers that—

(i) there is no reasonable prospect of recovering the sum; or

- (ii) the costs of recovery are likely to equal or exceed the amount to be recovered.

**12—Amendment of section 20—Arrangements as to manner and time of payment**

- 5       (1) Section 20(10)—delete subsection (10) and substitute:
- (10) An arrangement under this section may be varied—
    - (a) by agreement between the alleged offender and the Chief Recovery Officer; or
    - (b) by the Chief Recovery Officer in accordance with subsection (10b).
  - (10a) 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.
  - (10b) The Chief Recovery Officer may, on the Chief Recovery Officer's own initiative, vary an arrangement by extending it to apply to amounts payable under another expiation notice, given to the alleged offender, in relation to which an enforcement determination has been made under section 22.
  - (10c) For the avoidance of doubt, the prescribed fee under subsection (1) will not be payable by the alleged offender in respect of the extension of an arrangement to amounts payable under another expiation notice in accordance with subsection (10b).
- 10
- 15
- 20
- 25       (2) Section 20(12)—delete subsection (12) and substitute:
- (12) If an arrangement is varied under subsection (10b)—
    - (a) the alleged offender may, within the period of 14 days after the day on which the alleged offender was given notice of the variation under subsection (11), apply (in a manner specified in the notice) for rescission of the variation; and
    - (b) on receipt of such an application, the Chief Recovery Officer must rescind the variation (and the arrangement will apply to the alleged offender as if the variation had never been made).
- 30
- 35       (3) Section 20(17)—delete "an enforcement amount" and substitute:  
any outstanding amount due under an expiation notice
- (4) Section 20(18)—after "subsection (15) or (17)" insert:  
and an enforcement determination has not been made under section 22 in respect of the expiation notice

(5) Section 20—after subsection (19) insert:

(19a) If an arrangement is terminated under subsection (15) and is not reinstated, on the expiration of the 14 day period referred to in subsection (16) any amounts that would, but for the existence of the arrangement, have been added to the amount due under the notice under section 26(1)(b) will be added to, and form part of, the amount due under the notice.

**13—Amendment of section 25—Enforcement actions by Chief Recovery Officer**

Section 25(2)(c)—delete "a power" and substitute:

1 or more of the powers

**14—Amendment of section 26—Amounts unpaid or unrecovered for more than certain period**

Section 26(1)(b)—delete paragraph (b) and substitute:

(b) if, at the end of the 28 day period commencing on the day on which the enforcement determination is made, the alleged offender has not paid the amount due under the notice (including the amount added under paragraph (a)), or the amount due under the notice is not the subject of an arrangement under section 20, a further amount prescribed by, or calculated in accordance with, the regulations is added to, and forms part of, the amount due under the notice.

**15—Amendment of section 27—Writing off bad debts**

Section 27(1)—delete subsection (1) and substitute:

(1) The Chief Recovery Officer may write off an amount payable under an expiation notice if the Officer considers that—

- (a) there is no reasonable prospect of recovering the amount; or
- (b) the costs of recovery are likely to equal or exceed the amount to be recovered.

**16—Amendment of section 30—Power to require information**

Section 30(2)(a)—after "pecuniary sum" insert:

or an amount due under an expiation notice

**17—Amendment of section 32—Disclosure of information to prescribed authorities of other jurisdictions**

Section 32—delete "interstate authority" and substitute:

authority of another jurisdiction

**18—Amendment of section 33—Charge on land**

Section 33(1)—delete "outstanding" and substitute:

payable by the debtor



**19—Amendment of section 35—Aggregation of monetary amounts for the purposes of enforcement**

Section 35—after "debtor" insert:

or an alleged offender

5 **20—Amendment of section 36—Seizure and sale of assets**

Section 36—after subsection (2) insert:

(2a) If the determination provides for the sale of an interest in land, the Chief Recovery Officer may eject from the land any person who is not lawfully entitled to be on the land.

10 **21—Amendment of section 38—Suspension of driver's licence**

(1) Section 38(3)(a)—after "on which" insert:

notice of

(2) Section 38(5)—delete "this section" and substitute:

subsection (1)

15 **22—Amendment of section 39—Restriction on transacting business with Registrar of Motor Vehicles**

Section 39(7)—delete "this section" and substitute:

subsection (1)

20 **23—Amendment of section 40—Suspension of section 97A of *Motor Vehicles Act 1959***

Section 40(5)—delete "this section" and substitute:

subsection (1)

**24—Amendment of section 46—Community service**

(1) Section 46(1)—delete subsection (1) and substitute:

25 (1) If the Court is satisfied that a debtor or alleged offender does not have, and is not likely within a reasonable time to have, the means to satisfy a monetary amount owed by the debtor or alleged offender without the debtor or alleged offender, or the dependants of the debtor or alleged offender, suffering hardship, the Court may, on  
30 application by the Chief Recovery Officer, make a community service order in relation to the debtor or alleged offender.

(2) Section 46(6)—delete subsection (6)

(3) Section 46(12)—delete ", and the time spent by the person in an approved treatment program,"

35 (4) Section 46(13), (14) and (15)—delete subsections (13), (14) and (15)

**25—Amendment of section 47—Community service may be enforced by imprisonment**

- (1) Section 47—delete "or the completion of an approved treatment program" wherever occurring
- 5 (2) Section 47(3)—delete subsection (3)
- (3) Section 47(8)(b)(i) and (ii)—delete "or complete the approved treatment program" wherever occurring
- (4) Section 47(8)(b)(iii) and (iv)—delete subparagraphs (iii) and (iv) and substitute:
- 10 (iii) cancel the whole or a number of the unperformed hours of community service under the order.
- (5) Section 47(10)—delete subsection (10) and substitute:
- (10) In imposing a fine under subsection (9), the court must take into account the number of hours of community service (if any) that the person performed under the revoked order.

**26—Amendment of section 48—Interpretation**

- (1) Section 48(1), definition of *debt*—delete "but does not include a pecuniary sum or an amount payable under an expiation notice" and substitute:
- but does not include—
- (a) a pecuniary sum; or
- 20 (b) an amount payable under an expiation notice; or
- (c) a judgment debt; or
- (d) a tax (within the meaning of the *Taxation Administration Act 1996*); or
- 25 (e) the emergency services levy under the *Emergency Services Funding Act 1998*; or
- (f) a debt of a prescribed kind;

- (2) Section 48(1)—after the definition of *enforcement notice* insert:

*judgment debt* has the same meaning as in the *Enforcement of Judgments Act 1991*;

**27—Insertion of section 48A**

After section 48 insert:

**48A—Provision of information**

35 A public authority may, despite any other Act or law, provide the Chief Recovery Officer with such information as the authority considers necessary, or as the Chief Recovery Officer requests, to enable the Chief Recovery Officer to take action under this Part in relation to a debt.

## 28—Insertion of Part 8 Division 1A

Part 8—after Division 1 insert:

### Division 1A—Recovery of civil judgment sum

#### 48B—Chief Recovery Officer may act for judgment creditor

- 5                   (1) Subject to subsection (2), the Chief Recovery Officer may, on application by a public authority that is a judgment creditor in respect of a monetary judgment, assume the role of the authority for the purposes of recovering the sum of money to which the authority is entitled in accordance with the judgment (the **judgment sum**) and, if necessary, taking proceedings under the *Enforcement of Judgments Act 1991* for enforcement of the judgment.
- 10
- 15                   (2) The Chief Recovery Officer may not assume the role of an authority under subsection (1) for the purposes of recovering a judgment sum if the Court would not have the jurisdiction to hear and determine an action for an amount equal to that sum.
- 20                   (3) An application under subsection (1) must be in a form approved by the Chief Recovery Officer.
- (4) The Chief Recovery Officer may refuse an application under subsection (1) on any grounds the Chief Recovery Officer thinks fit.
- 25                   (5) If the Chief Recovery Officer assumes the role of a public authority under this section, any action that may be taken by the authority for the purposes of recovering the judgment sum, including taking proceedings for enforcement of the judgment under the *Enforcement of Judgments Act 1991*, may be taken by the Chief Recovery Officer on behalf of the authority, on the Chief Recovery Officer's initiative, as if the Chief Recovery Officer were the authority.
- 30                   (6) However, the Chief Recovery Officer may not waive or write off a judgment sum on behalf of a public authority.
- (7) The Chief Recovery Officer may cease to act on behalf of a public authority under this section in respect of a judgment sum at any time and may, when referring a matter back to a public authority, make recommendations as to any further action that should be taken by the authority in respect of the judgment sum.
- 35                   (8) In any proceedings, an apparently genuine certificate purporting to be signed by the Chief Recovery Officer certifying that, at a specified time, the Chief Recovery Officer had assumed the role of a public authority under subsection (1) is, in the absence of proof to the contrary, proof of the matter so certified.
- 40                   (9) In this section—  
**judgment creditor** and **monetary judgment** have the same respective meanings as they have in the *Enforcement of Judgments Act 1991*.

**29—Amendment of section 49—Notification of debt**

- (1) Section 49—after subsection (1) insert:
  - (1a) A debt may be notified to the Chief Recovery Officer under subsection (1) despite any other Act or law relevant to recovery of the debt (and the existence of any such Act or law does not derogate from the operation of this Part in relation to recovery of the debt).
- (2) Section 49(2)(a)—delete "an invoice for" and substitute:

a written request for payment of
- (3) Section 49—after subsection (4) insert:
  - (5) The Chief Recovery Officer may, by notice in writing to the public authority and the debtor, vary, revoke or suspend a civil debt determination.
  - (6) If the Chief Recovery Officer becomes aware that a debt to which a civil debt determination applies is subject to review by, or appeal to, a court or tribunal (other than under this Act), the Chief Recovery Officer must, by notice in writing to the public authority and the debtor, suspend the determination for the period of the review or appeal.
  - (7) If a court or tribunal makes a decision in relation to a debt that is the subject of a civil debt determination (other than under this Act), the Chief Recovery Officer must, as soon as possible after receiving notification of the decision—
    - (a) review the determination having regard to the decision; and
    - (b) confirm, vary or revoke the determination; and
    - (c) by notice in writing, inform the debtor of the outcome of the review.
  - (8) If a civil debt determination is revoked—
    - (a) no interest accrues on the debt in accordance with section 56 from the date of the revocation; and
    - (b) any arrangements under section 57 are revoked from the date of the revocation; and
    - (c) the Chief Recovery Officer may waive payment of—
      - (i) any instalments under an arrangement under section 57; or
      - (ii) any interest, costs, fees or other amounts (being amounts in addition to the debt),that became payable under this Part before the date of the revocation but that remain unpaid at the date of the revocation; and

- 5
- (d) the Chief Recovery Officer must take any action necessary to ensure that powers under Division 5 are not exercised in relation to the debt after the date of the revocation (but the revocation does not affect the validity of any exercise of power under Division 5 before the date of the revocation); and
- 10
- (e) if, after the date of the revocation, costs are incurred in respect of the exercise of powers or functions under Division 5, those costs are not recoverable from the debtor under section 66B; and
- (f) the Chief Recovery Officer—
- 15
- (i) must notify the relevant public authority of the revocation and the reasons for the revocation; and
- (ii) may recommend to the relevant public authority that the debt be written off.
- (9) If a civil debt determination is suspended—
- (a) no interest accrues on the debt in accordance with section 56 during the period of the suspension; and
- 20
- (b) any arrangements under section 57 are also suspended during the period of the suspension; and
- (c) the Chief Recovery Officer must take any action necessary to ensure that powers under Division 5 are not exercised in relation to the debt during the period of the suspension; and
- 25
- (d) if, during the period of the suspension, costs are incurred in respect of the exercise powers or functions under Division 5, those costs are not recoverable from the debtor under section 66B; and
- 30
- (e) the period of the suspension comes to an end when the Chief Recovery Officer gives notice in writing to the debtor and the relevant public authority that the civil debt determination is no longer suspended.

### **30—Insertion of section 49A**

After section 49 insert:

#### **49A—This Part prevails over other Acts**

- 35
- (1) If—
- (a) a civil debt determination is in force in relation to a debt; and
- (b) the Act under which the debt arises (the *debt creating Act*) makes provision for recovery of the debt,
- 40
- then, subject to subsection (3)—
- (c) this Part applies to recovery of the debt; and

(d) action for recovery of the debt may not be taken under the debt creating Act; and

(e) if there is an inconsistency between any applicable provisions of the debt creating Act and this Part, this Part prevails to the extent of the inconsistency.

(2) For the purposes of this section, a civil debt determination will be taken to be in force during any period during which the determination is suspended.

(3) Despite subsection (1)—

(a) if a security is held by a public authority for the purposes of enforcing a debt in relation to which a civil debt determination has been made, the determination does not affect the operation of any law that applies in respect of the security; and

(b) rights of appeal or review in respect of a debt arising under a debt creating Act are not affected by a civil debt determination.

### **31—Amendment of section 50—Application to Court in relation to debt**

(1) Section 50(1)—delete subsection (1) and substitute:

(1) A debtor who—

(a) disputes the existence, or the amount, of a debt the subject of a civil debt determination; or

(b) has been notified by the Chief Recovery Officer that a civil debt determination has been confirmed or varied,

may, within 28 days after receiving notice of the determination, confirmation or variation, apply to the Court for revocation or variation of the determination.

(2) Section 50—after subsection (3) insert:

(3a) In proceedings under this section, the Court is bound by any previous decision made by a tribunal in relation to the debt.

(3) Section 50—after subsection (6) insert:

(7) This section does not affect any right of review of a debt that exists by virtue of any other Act or law.

### **32—Amendment of section 51—Enforcement action**

(1) Section 51(2)(a)(i)—delete "1 month of receiving" and substitute:

28 days of receiving notice of

(2) Section 51(2)(a)(ii)—after "section 50" insert

after receiving notice of the determination

**33—Amendment of section 52—Internal review of decision to take enforcement action**

Section 52(2)—delete "30 days" and substitute:

28 days

5 **34—Repeal of section 55**

Section 55—delete the section

**35—Amendment of section 56—Interest on debts**

(1) Section 56(1)—delete subsection (1) and substitute:

10 (1) If a debt becomes the subject of a civil debt determination under this Part, any provisions of another Act under which interest accrues on the debt will cease to apply from the day following the day on which the determination is made.

15 (1a) However, the debt will, if the public authority to which the debt is owed requests it, bear interest at the prescribed rate from the date of the civil debt determination or from such later time, or during such later period, as the public authority may request (and any such interest is to be added to, and forms part of, the debt).

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

subsection (1a)

20 **36—Amendment of section 57—Voluntary arrangement as to time and manner of payment**

(1) Section 57(1)(a)—delete "(being not more than 12 months from the date on which the arrangement is entered into)"

(2) Section 57(5)—delete subsection (5) and substitute:

25 (5) An arrangement under this section may be varied—

(a) by agreement between the debtor and the Chief Recovery Officer; or

(b) by the Chief Recovery Officer in accordance with subsection (7a).

30 (3) Section 57—after subsection (7) insert:

(7a) The Chief Recovery Officer may, on the Chief Recovery Officer's own initiative, vary an arrangement by extending it to apply to another debt payable by the debtor to the Chief Recovery Officer.

35 (7b) For the avoidance of doubt, the prescribed fee under subsection (1) will not be payable by the debtor in respect of the extension of an arrangement to another debt in accordance with subsection (7a).

(4) Section 57—after subsection (8) insert:

(8a) If an arrangement is varied under subsection (7a)—

(a) the debtor may, within the period of 14 days after the day on which the debtor was given notice of the variation under subsection (8), apply (in a manner specified in the notice) for rescission of the variation; and

(b) on receipt of such an application, the Chief Recovery Officer must rescind the variation (and the arrangement will apply to the debtor as if the variation had never been made).

### **37—Amendment of section 58—Investigation of debtor's financial position**

(1) Section 58(1)—delete "The" and substitute:

Subject to subsection (3a), the

(2) Section 58(2)—after "Officer may" insert:

, subject to subsection (3a),

(3) Section 58(3)—delete "The" and substitute:

Subject to subsection (3a), the

(4) Section 58—after subsection (3) insert:

(3a) The Chief Recovery Officer may not give written notice to a person under this section during any period during which the liability for, or the amount of, the debt to which the notice relates is subject to review by a court or tribunal (other than under this Act).

### **38—Amendment of section 59—Power to require information**

Section 59(1)—delete "the contact" and substitute:

personal

### **39—Amendment of section 61—Requirement for payment of instalments etc**

Section 61(7) to (10) (inclusive)—delete subsections (7) to (10) (inclusive)

### **40—Amendment of section 63—Seizure and sale of assets**

(1) Section 63(1)—delete "the land or personal property of a debtor" and substitute:

land or personal property owned (whether solely or as co-owner) by the debtor

(2) Section 63(3)—after paragraph (c) insert:

(ca) 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

(3) Section 63(6)—delete "Crown" and substitute:

relevant public authority



(4) Section 63—after subsection (13) insert:

- (14) If the Chief 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.

5 **41—Insertion of Part 8 Division 5 Subdivisions 4 and 5**

Part 8 Division 5—after Subdivision 3 insert:

**Subdivision 4—Failure of enforcement process**

**66A—Monetary penalty**

- 10 (1) If a debtor fails to comply with a determination under section 61(1), the Court may, on application by the Chief Recovery Officer, issue a summons (which must be served personally) to require the debtor to appear for examination before the Court.
- 15 (2) If a debtor fails to appear as required by the summons, the Court may issue a warrant to have the debtor arrested and brought before the Court for examination.
- (3) If, after examination of a debtor conducted in accordance with procedures prescribed by rules of the Court, the Court is satisfied that—
- 20 (a) the debtor has, without proper excuse, failed to comply with a determination under section 61(1); and
- (b) at least 2 instalments are in arrears; and
- (c) the debtor has the means to pay the instalments that are in arrears without the debtor, or the dependants of the debtor, suffering hardship,
- 25 the Court may order that the debtor pay a monetary penalty of an amount determined by the Court (which will be payable in addition to the monetary amount owed by the debtor).

**Subdivision 5—Costs**

**66B—Costs**

- 30 Any costs incurred by the Chief Recovery Officer in relation to the exercise of powers and functions under this Division may be added to, and will then form part of, the debt owed by the debtor.

## 42—Insertion of section 69A

Before section 70 insert:

### 69A—Dealing with overpayments

(1) If—

5 (a) a debtor or alleged offender pays an amount of money to the Chief Recovery Officer towards the amount outstanding in respect of a particular pecuniary sum, amount payable under an expiation notice or debt (as the case may be); and

(b) the amount paid exceeds the amount outstanding,

10 the Chief Recovery Officer may apply the excess amount towards any other pecuniary sum, amount payable under an expiation notice or debt owed by the debtor that is payable to the Chief Recovery Officer if—

15 (c) the Chief Recovery Officer has given the debtor or alleged offender notice in writing—

(i) advising the debtor or alleged offender of the excess amount; and

20 (ii) inviting the debtor or alleged offender to apply (in a manner specified in the notice) for return of the excess amount within 14 days of the notice; and

25 (iii) advising the debtor or alleged offender that if no such application is made, the excess amount will be applied towards a specified pecuniary sum, amount payable under an expiation notice or debt owed by the debtor; and

(d) no such application has been made by the debtor or alleged offender.

(2) In this section—

30 *debtor* includes a person who is a debtor within the meaning of Part 8.

## 43—Amendment of section 76—Regulations and fee notices

(1) Section 76(2)(a)—delete ", fees"

(2) Section 76(2)(b)—delete "so prescribed" and substitute:  
prescribed under this Act

35 (3) Section 76—after subsection (2) insert:

(2a) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

(2b) A fee notice may provide for the waiver, reduction or remission of fees.

(4) Section 76(4)—after "provisions of this Act" first occurring insert:  
or the amendment of this Act by another Act

(5) Section 76—after subsection (4) insert:

(5) A provision made by a regulation under subsection (4) that is consequent on the amendment of this Act by another Act—

- (a) may be in addition to any provision of a saving or transitional nature made by the Act that makes the amendment; and
- (b) may, if the regulations so provide, take effect from the commencement of the amendment or from a later day.

(6) To the extent to which a provision takes effect under subsection (5)(b) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—

- (a) decreasing the person's rights; or
- (b) imposing liabilities on the person.

## **Schedule 1—Related amendments and transitional provisions**

### **Part 1—Amendment of *Enforcement of Judgments Act 1991***

#### **1—Amendment of section 5—Order for payment of instalments**

Section 5(5) to (8) (inclusive)—delete subsections (5) to (8) (inclusive)

#### **2—Insertion of section 5A**

After section 5 insert:

##### **5A—Monetary penalty**

- (1) If a judgment debtor fails to comply with an order under section 5(1), the court may, on application by the judgment creditor, issue a summons (which must be served personally) to require the judgment debtor to appear for examination before the court.
- (2) If a judgment debtor fails to appear as required by the summons, the court may issue a warrant to have the judgment debtor arrested and brought before the court for examination.
- (3) If, after examination of a judgment debtor conducted in accordance with procedures prescribed by rules of the court, the court is satisfied that—
  - (a) the judgment debtor has, without proper excuse, failed to comply with an order under section 5(1); and
  - (b) if the order is an order to pay instalments towards the satisfaction of the judgment debt—
    - (i) at least 2 instalments are in arrears; and

- (ii) the judgment debtor has the means to pay the instalments that are in arrears without the judgment debtor, or the dependants of the judgment debtor, suffering hardship,

5 the court may order that the judgment debtor pay a monetary penalty of an amount determined by the court (which will be payable in addition to the monetary amount owed by the judgment debtor).

## Part 2—Transitional provisions

### 3—Transitional provisions—*Fines Enforcement and Debt Recovery Act 2017*

- 10 (1) Subject to this clause, an amendment to the principal Act made by this Act applies in relation to a monetary amount or a debt irrespective of whether the amount or debt became payable before or after the commencement of the amendment.
- 15 (2) Sections 14 and 18 of the principal Act, as in force immediately before the commencement of section 8 of this Act, continue to apply in relation to a pecuniary sum in respect of which the debtor received a reminder notice before that commencement.
- 20 (3) Section 26 of the principal Act, as in force immediately before the commencement of section 14 of this Act, continues to apply in relation to an amount due under an expiation notice in respect of which an enforcement determination was made before that commencement.
- 25 (4) If an amendment to a provision of the principal Act has the effect of changing a time limit that applies under that provision in relation to action that may be taken in connection with a civil debt determination or an enforcement notice under Part 8, the time limit that applied before the commencement of the amendment continues to apply in relation to the action if the relevant determination was made, or enforcement notice given, before that commencement.
- (5) Terms used in this clause that are defined in the principal Act have the same respective meanings as in that Act.
- 30 (6) In this clause—  
*debt* has the same meaning as in Part 8 of the principal Act;  
*monetary amount* has the same meaning as in Part 7 of the principal Act;  
*principal Act* means the *Fines Enforcement and Debt Recovery Act 2017*.

### 4—Transitional provisions—*Enforcement of Judgments Act 1991*

- 35 (1) The *Enforcement of Judgments Act 1991* (the *Act*) as in force following the commencement of Part 1 of this Schedule applies in relation to proceedings on an application under section 5 of the Act irrespective of whether those proceedings commenced before or after that commencement.
- 40 (2) However, the Act as in force immediately before the commencement of Part 1 of this Schedule continues to apply in relation to any order made under section 5(7) of the Act before that commencement.