

South Australia

Expiation of Offences Act 1996

An Act to provide for the expiation of minor offences.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Expiation of Offences Act 1996*.

3—Application of Act

- (1) This Act applies only in relation to an expiation notice issued after the commencement of this Act.
- (2) The provisions of this Act relating to trifling offences do not apply to offences of a class prescribed by regulation.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

Chief Recovery Officer means the Chief Recovery Officer under the *Fines Enforcement and Debt Recovery Act 2017*;

child, in relation to an offence, means a person who was under the age of 16 years at the time the offence is alleged to have been committed;

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;

council means a council established under the *Local Government Act 1934* and includes a controlling authority established under that Act;

Court means—

- (a) in relation to an expiation notice issued to a person who was under the age of 18 years at the time of the alleged offence—the Youth Court;
- (b) in relation to any other expiation notice—the Magistrates Court;

expiation period means the period specified in an expiation notice for payment of the expiation fee (in the absence of an arrangement under section 20 of the *Fines Enforcement and Debt Recovery Act 2017*);

issuing authority means—

- (a) if an expiation notice is given by a member of the police force—the Commissioner of Police;
- (b) in any other case—the Minister, statutory authority or council on whose behalf an expiation notice is given.

- (2) An alleged offence will, for the purposes of this Act, be regarded as trifling if, and only if, the circumstances surrounding the commission of the offence were such that the alleged offender ought to be excused from being given an expiation notice on the ground that—

- (a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the offence; or
- (b) the alleged offender could not, in all the circumstances, reasonably have averted committing the offence; or
- (c) the conduct allegedly constituting the offence was merely a technical, trivial or petty instance of a breach of the relevant enactment.

- (3) Subject to this Act and the *Fines Enforcement and Debt Recovery Act 2017*, 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 or the *Fines Enforcement and Debt Recovery Act 2017*.

- (4) For the purposes of this and any other Act—
- (a) an offence expiated, or taken to have been expiated, under the *Fines Enforcement and Debt Recovery Act 2017* will be taken to have been expiated in accordance with this Act; and
 - (b) an expiation fee paid under the *Fines Enforcement and Debt Recovery Act 2017* will be taken to have been paid under this Act.

5—Certain offences may be expiated

- (1) If an expiation fee is fixed by or under an Act, regulation or by-law in respect of an offence, an expiation notice may be given under this Act to a person alleged to have committed the offence and the alleged offence may accordingly be expiated in accordance with this Act.
- (2) Subsection (1) applies in relation to offences committed before or after the commencement of this Act.
- (3) Subject to subsection (4), a power under an Act to impose a penalty for the contravention of a regulation or by-law will be taken to include the power—
 - (a) to provide that an alleged offence against the regulation or by-law may be expiated in accordance with this Act; and
 - (b) to fix for that purpose an expiation fee not exceeding—
 - (i) if the maximum fine prescribed for the offence is expressed as a divisional fine—a divisional expiation fee of the same division; or
 - (ii) in any other case—
 - (A) \$315; or
 - (B) 25% of the maximum fine prescribed for the offence,whichever is the lesser.
- (4) An offence against a regulation or by-law that is an offence involving violence is not and cannot be, despite subsection (3) or the provisions of any other Act, an expiable offence.

Notes—

- Various other Acts (eg the *Controlled Substances Act 1984*) provide that certain offences may be expiated in accordance with this Act.
- Section 28A of the *Acts Interpretation Act 1915* sets out a scale of divisional expiation fees for use when an expiation fee is expressed as a divisional fee (ie not in dollars).

6—Expiation notices

- (1) An expiation notice—
 - (a) may relate to up to 3 alleged offences arising out of the same incident (ie if they are committed contemporaneously, or in succession, one following immediately upon another); and
 - (b) must be in the prescribed form; and

- (c) must specify that the expiation fee is to be paid within 28 days from (and including) the date of the notice unless an arrangement is entered into under section 20 of the *Fines Enforcement and Debt Recovery Act 2017*; and
- (d) must specify to whom the expiation fee is payable; and
- (e) cannot be given after the expiry of the period of 6 months from the date on which the offence was, or offences were, alleged to have been committed; and
- (f) cannot be given to a person if a prosecution has been commenced against the person for the alleged offence or offences; and
- (g) cannot (except where some other Act provides otherwise) be given to a child; and
- (h) cannot, if the regulations or some other Act so provides in relation to a particular offence, be given to a person under the age of 18 years; and
- (ha) should not be issued in respect of a trifling offence; and
- (i) if a vehicle is involved in the commission of the alleged offence or offences and is found unattended—may be addressed to the owner or driver of the vehicle without naming or otherwise identifying him or her; and
- (j) may be given—
 - (i) personally or by service on an employee or agent of the alleged offender; or
 - (ii) by post addressed to the alleged offender's last known place of business or residence; or
 - (iii) if a vehicle is involved in the commission of the alleged offence or offences and is found unattended—by affixing or placing the notice on that vehicle; and
- (k) must be accompanied by a notice in the prescribed form by which the alleged offender may elect to be prosecuted for the offence or any of the offences to which the expiation notice relates.

Note—

Certain other Acts (eg the *Local Government Act 1934* section 789D and the *Road Traffic Act 1961* section 174A) require that an expiation notice given to the registered owner of a motor vehicle must be accompanied by a notice relating to the question of whether the owner was the driver at the time of the alleged offence.

- (2) If an expiation notice is served on an employee or agent of the alleged offender, the employee or agent must, as soon as is reasonably practicable after receiving the notice, give the notice to his or her employer or principal.

Maximum penalty: \$50.

- (3) An expiation notice may only be given by—
 - (a) a member of the police force; or
 - (b) a person who is authorised in writing by—
 - (i) the Minister responsible for the administration of the Act against which the offence is alleged to have been committed; or

- (ii) the statutory authority or council responsible for the enforcement of the provision against which the offence is alleged to have been committed,
to give expiation notices for the alleged offence; or
 - (c) a person who is authorised to give expiation notices for the alleged offence by or under the Act against which the offence is alleged to have been committed.
- (4) If an officer or employee of a council is authorised by or under an Act to exercise powers as an inspector (or other authorised person) for the purposes of the enforcement of a provision of that Act, the officer or employee—
 - (a) is authorised to give an expiation notice for an alleged offence against that provision; and
 - (b) in giving such a notice, will be taken to be doing so on behalf of the council.
- (5) Subject to subsection (6), if an expiation notice is given to an alleged offender, no further expiation notice can be given to that person in respect of any other alleged expiable offence arising out of the same incident.
- (6) If the expiation notice already given to the alleged offender relates to an offence, or offences, against the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959*, a further expiation notice may be given to him or her in respect of an alleged offence against section 74, 75A, 81, 81A or 81AB of the *Motor Vehicles Act 1959*.

7—Payment by card

Any amount payable under an expiation notice 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.

8—Alleged offender may elect to be prosecuted etc

- (1) An alleged offender may, by notice in the prescribed form given personally or by post to the issuing authority, elect to be prosecuted for the offence or any of the offences to which the expiation notice relates.
- (2) An election to be prosecuted for an offence cannot be made after—
 - (a) if the alleged offender enters into an arrangement under section 20 of the *Fines Enforcement and Debt Recovery Act 2017*—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 22 of the *Fines Enforcement and Debt Recovery Act 2017* in relation to the expiation notice.
- (2a) However, if an enforcement determination made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* is revoked on the ground that the alleged offender had not had a reasonable opportunity to elect under this section to be prosecuted for an offence to which the expiation notice relates, an election to be prosecuted for the offence may be made within 14 days of the alleged offender being notified of the revocation.
- (3) If an election is made under this section, the expiation notice will be taken to have been withdrawn in respect of the offence to which the election relates.

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

- (1) A person who has been given an expiation notice issued after the commencement of this section may apply to the issuing authority for a review of the notice on the ground that an offence to which the notice relates is trifling.
- (2) The issuing authority is not obliged to conduct an inquiry on the application but may require the applicant to provide further information.
- (3) An issuing authority may require information contained in, or supporting, an application for review to be verified by statutory declaration.
- (4) An application made under this section must be determined by the issuing authority before it can provide the Chief Recovery Officer with relevant particulars under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* in respect of the offence to which the application relates.
- (5) If the issuing authority is satisfied that the offence is trifling, the authority must, by notice in writing given personally or by post to the alleged offender, withdraw the notice in respect of that offence.
- (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 20 of the *Fines Enforcement and Debt Recovery Act 2017*; or
 - (c) an enforcement determination has been made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* in relation to the expiation notice.
- (6a) However, if an enforcement determination made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* is revoked on the ground that the alleged offender had not had a reasonable opportunity to apply for review of the notice under this section, and the alleged offender makes an application under this section within 14 days of being notified of the revocation, the expiation notice may be withdrawn under this section.
- (7) If an expiation notice is withdrawn under this section in respect of an offence, no further expiation notice may be issued in respect of that offence.

11—Expiation reminder notices

- (1) If, by the end of the expiation period, an alleged offender has neither paid the expiation fee nor entered into an arrangement under section 20 of the *Fines Enforcement and Debt Recovery Act 2017* and the issuing authority has not received a nomination, statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice, the issuing authority must, before it takes any action under this Act or the *Fines Enforcement and Debt Recovery Act 2017* to enforce the expiation notice, give an expiation reminder notice, in the prescribed form, to the alleged offender.
- (1a) An expiation reminder notice—
 - (a) must specify the amount of the expiation fee and to whom the expiation fee is payable; and
 - (b) must be accompanied by—

- (i) a notice in the prescribed form by which the alleged offender may elect to be prosecuted for the offence or any of the offences to which the notice relates; and
- (ii) if the notice is issued to the owner of a motor vehicle involved in the alleged offence and the expiation reminder notice is required to be accompanied by a notice relating to the owner sending the issuing authority a nomination, statutory declaration or other document—a form suitable for use as the nomination, statutory declaration or other document (as the case may require).

Note—

Certain other Acts and regulations (eg the *Local Government Act 1934* section 789D and the *Road Traffic Act 1961* section 174A) require that the expiation reminder notice sent to the registered owner of a motor vehicle must be accompanied by a notice relating to the question of whether the owner was the driver at the time of the alleged offence.

- (3) If a reminder notice is given to an alleged offender, the prescribed reminder notice fee will be added to the unpaid expiation fee and, for the purposes of this Act and the *Fines Enforcement and Debt Recovery Act 2017*, forms part of that fee.

11A—Expiation enforcement warning notices

- (1) If the issuing authority has received a nomination, statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice, the issuing authority must, before taking action under this Act or the *Fines Enforcement and Debt Recovery Act 2017* to enforce the expiation notice, give an expiation enforcement warning notice, in the prescribed form, to the alleged offender.
- (2) The expiation enforcement warning notice—
 - (a) must contain a statement that the nomination, statutory declaration or other document is not accepted by the authority as a defence to the alleged offence or offences; and
 - (b) must specify the amount of the expiation fee and to whom the expiation fee is payable; and
 - (c) must be accompanied by a notice in the prescribed form by which the alleged offender may elect to be prosecuted for the offence or any of the offences to which the expiation notice relates.
- (4) If an expiation enforcement warning notice is given to an alleged offender, the prescribed warning notice fee will be added to the unpaid expiation fee and, for the purposes of this Act and the *Fines Enforcement and Debt Recovery Act 2017*, forms part of that fee.
- (6) An expiation enforcement warning notice is not to be regarded as an expiation reminder notice for the purposes of any other law.

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 22 of the *Fines Enforcement and Debt Recovery Act 2017*.

15—Effect of expiation

- (1) Subject to this Act, if the offence, or offences, to which an expiation notice relates are expiated in accordance with this Act, the alleged offender is not liable to prosecution for that offence or those offences or any other expiable offence arising out of the same incident.
- (2) Subject to this Act, if an expiation notice is given in respect of an offence, or offences, arising out of the use of a motor vehicle and that offence, or those offences, are expiated in accordance with this Act, no person is liable to prosecution for that offence, or those offences, or any other expiable offence arising out of the same incident except for an offence that is the subject of another expiation notice.
- (3) If—
 - (a) an expiation notice relates to more than one offence; and
 - (b) the alleged offender expiates one or more of those offences but not all of them,the alleged offender is liable to prosecution for any offence that is not expiated.
- (4) The expiation of an offence under this Act (or the entry into an arrangement under this Act or the *Fines Enforcement and Debt Recovery Act 2017*)—
 - (a) does not constitute an admission of guilt or of any civil liability; and
 - (b) will not be regarded as evidence tending to establish guilt or any civil liability; and
 - (c) cannot be referred to in any report furnished to a court for the purposes of determining sentence for any offence.
- (5) However, if anything seized under an Act in connection with the alleged offence would be liable to forfeiture in the event of a conviction or finding of guilt, that thing is, on expiation of the alleged offence under this Act, forfeited to the Crown.

16—Withdrawal of expiation notices

- (1) The issuing authority may withdraw an expiation notice with respect to all or any of the alleged offences to which the notice relates if—
 - (a) the authority is of the opinion that the alleged offender did not commit the offence, or offences, or that the notice should not have been given with respect to the offence, or offences; or
 - (ab) the authority receives a nomination, statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
 - (ac) the notice is defective; or
 - (ad) the authority is of the opinion that the alleged offender is suffering from a cognitive impairment that excuses the alleged offending; or
 - (b) the authority decides that the alleged offender should be prosecuted for the offence, or offences.

- (2) An expiation notice may be withdrawn under subsection (1) despite payment of an expiation fee or an instalment, but in that event the amount paid must be refunded.
- (3) However, an expiation notice cannot be withdrawn for the purposes of prosecuting the alleged offender for an offence if—
 - (a) an enforcement determination has been made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* in relation to the expiation notice; or
 - (b) the period of 60 days from the date of the notice has expired.
- (5) If an expiation notice is withdrawn under subsection (1), a prosecution for an offence to which the notice related may be commenced, but the fact that the defendant paid an expiation fee or entered into arrangement under section 20 of the *Fines Enforcement and Debt Recovery Act 2017* is not admissible in those proceedings as evidence against the defendant.
- (6) Subject to subsection (7), the issuing authority must withdraw an expiation notice if it becomes apparent that the alleged offender did not receive the notice until after the expiation period, or has never received it, as a result of error on the part of the authority or failure of the postal system or failure in the transmission of an email.
- (7) An expiation notice cannot be withdrawn under subsection (6) if the alleged offender has paid the expiation fee or any instalment or other amount due under the notice.
- (9) The withdrawal of an expiation notice under this section is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.
- (10) The notice of withdrawal must specify the reason for withdrawal.
- (11) If an expiation notice is withdrawn under this section and the notice of withdrawal does not specify that the notice is withdrawn for the purposes of prosecuting the alleged offender—
 - (a) the issuing authority must, if an enforcement determination has been made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017*, inform the Chief Recovery Officer of the withdrawal of the notice; and
 - (b) any aggregation determination under section 9 of the *Fines Enforcement and Debt Recovery Act 2017* in relation to the notice will be taken to have been revoked; and
 - (ba) any enforcement determination made under the *Fines Enforcement and Debt Recovery Act 2017* in respect of the notice will be taken to have been revoked (and any subsequent enforcement action is discontinued or rescinded); and
 - (c) the issuing authority cannot prosecute the alleged offender for an alleged offence to which the withdrawal related unless the alleged offender has been given a fresh expiation notice and allowed the opportunity to expiate the offence.
- (11a) If an expiation notice is withdrawn—
 - (a) after an arrangement has been entered into under section 20 of the *Fines Enforcement and Debt Recovery Act 2017* in relation to the notice—section 20(21) of that Act is taken never to have applied in relation to that arrangement; or

- (b) after an enforcement determination has been made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* in relation to the notice—section 22(4) of that Act is taken never to have applied in relation to that determination.
- (12) If an expiation notice for an offence against section 79B of the *Road Traffic Act 1961* is withdrawn and the notice of withdrawal specifies that the notice is withdrawn under subsection (1)(ab), the period within which—
 - (a) a fresh expiation notice may be given to the alleged offender in respect of the offence; or
 - (b) an expiation notice may be given in respect of the prescribed offence (within the meaning of that section) that gave rise to the offence,is extended to 1 year from the date of commission of the alleged offence.
- (13) If an expiation notice is withdrawn and the notice of withdrawal specifies that the notice is withdrawn under subsection (6), the period within which a fresh expiation notice may be given to the alleged offender in respect of the offence or offences to which the withdrawal related is extended to 1 year from the date of commission of the alleged offence or offences.
- (14) In this section—

cognitive impairment includes the following:

 - (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
 - (b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);
 - (c) a mental illness.

17—Application of payments

- (1) Unless a contrary intention is indicated in a particular Act and subject to subsection (2), money received by way of amounts due under expiation notices (other than any part of such amounts attributable to the levy under the *Victims of Crime Act 2001*) will be paid into the Consolidated Account.
- (2) Subject to subsection (3), a statutory authority or council is entitled to any expiation fee paid under this Act pursuant to an expiation notice, or recovered on enforcement of an expiation notice, that was issued by or on behalf of the authority or council.
- (3) If an expiation notice is issued by or on behalf of a statutory authority or council as a result of the reporting of an offence by a member of the police force or other officer of the Crown, half of the amount of any expiation fee paid pursuant to the notice or recovered on enforcement of the notice must be paid into the Consolidated Account.

18—Provision of information

- (1) Each issuing authority must enter into an agreement with the Chief Recovery Officer in relation to—
 - (a) the manner in which the Chief Recovery Officer is to provide information to the issuing authority in relation to action taken by the Chief Recovery Officer in respect of an expiation notice issued by the issuing authority; and

- (b) the manner in which the issuing authority is to provide information to the Chief 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.

- (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

- (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;
 - (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—
 - (i) in relation to an alleged offender, or a class of alleged offenders; and
 - (ii) to the extent,
specified in the notice; and
 - (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.

19—Non-derogation

This Act does not derogate from the provisions of any other Act that relate to the expiation of offences.

19A—Service

Subject to this Act, a notice, determination or other document required or authorised to be given or served under this Act may be given or served personally, by post or by transmitting it by email to an email address provided by the intended recipient (in which case the notice, determination or document will be taken to have been given or served at the time of transmission).

20—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (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;

- (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
 - (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
 - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Chief Recovery Officer or another prescribed person.
- (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).

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|-------------|-----------|--|------------------|--|
| 1996 | 27 | <i>Expiation of Offences Act 1996</i> | 2.5.1996 | 3.2.1997 (<i>Gazette</i> 19.12.1996 p1922) |
| 1998 | 60 | <i>Statutes Amendment (Fine Enforcement) Act 1998</i> | 3.9.1998 | Pt 6 (ss 31—38)—6.3.2000 (<i>Gazette</i> 18.11.1999 p2358) |
| 1999 | 52 | <i>Motor Vehicles (Miscellaneous) Amendment Act 1999</i> | 12.8.1999 | s 95—17.6.2001 (<i>Gazette</i> 7.6.2001 p2144) |
| 2000 | 57 | <i>Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000</i> | 20.7.2000 | Pt 12 (ss 26 and 27)—1.10.2000 (<i>Gazette</i> 28.9.2000 p2221) |
| 2001 | 11 | <i>Expiation of Offences (Trifling Offences) Amendment Act 2001</i> | 12.4.2001 | 29.10.2001 (<i>Gazette</i> 25.10.2001 p4686) |
| 2001 | 58 | <i>Victims of Crime Act 2001</i> | 15.11.2001 | Sch 2 (cl 5)—1.1.2003 (<i>Gazette</i> 19.12.2002 p4736) |
| 2002 | 33 | <i>Statutes Amendment (Attorney-General's Portfolio) Act 2002</i> | 28.11.2002 | Pt 7 (s 11)—3.3.2003 (<i>Gazette</i> 27.2.2003 p807) |
| 2003 | 53 | <i>Statutes Amendment (Expiation of Offences) Act 2003</i> | 4.12.2003 | Pt 2—18.12.2003 (<i>Gazette</i> 18.12.2003 p4527) except ss 5 & 6—4.12.2005 (s 7(5) <i>Acts Interpretation Act 1915</i>) |
| 2013 | 31 | <i>Statutes Amendment (Fines Enforcement and Recovery) Act 2013</i> | 1.8.2013 | Pt 6 (ss 18—32)—3.2.2014 (<i>Gazette</i> 30.1.2014 p422) |
| 2017 | 71 | <i>Fines Enforcement and Debt Recovery Act 2017</i> | 12.12.2017 | Sch 1 (cl 36)—12.12.2017; Sch 1 (c11 to 24) & (cl 35)—30.4.2018 (<i>Gazette</i> 6.2.2018 p609) |
| 2021 | 17 | <i>Statutes Amendment (Transport Portfolio) Act 2021</i> | 20.5.2021 | Pt 3 (ss 5 to 7)—11.5.2023 (<i>Gazette</i> 11.5.2023 p929) |

Provisions amended

New entries appear in bold.

| Provision | How varied | Commencement |
|---|--|-------------------|
| <i>s 2</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>18.12.2003</i> |
| s 3 | | |
| s 3(1) | s 3 redesignated as s 3(1) by 11/2001 s 3 | 29.10.2001 |
| s 3(2) | inserted by 11/2001 s 3 | 29.10.2001 |
| s 4 | | |
| s 4(1) | s 4 redesignated as s 4(1) by 11/2001 s 4 | 29.10.2001 |
| Chief Recovery Officer | inserted by 71/2017 Sch 1 cl 11(1) | 30.4.2018 |
| community corrections officer | inserted by 31/2013 s 18(1) | 3.2.2014 |
| expiation period | amended by 31/2013 s 18(2) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 11(2) | 30.4.2018 |
| <i>Fines Enforcement and Recovery Officer</i> | <i>inserted by 31/2013 s 18(3)</i> | <i>3.2.2014</i> |
| | <i>deleted by 71/2017 Sch 1 cl 11(3)</i> | <i>30.4.2018</i> |
| <i>the Manager, Penalty Management</i> | <i>inserted by 60/1998 s 31</i> | <i>6.3.2000</i> |
| | <i>deleted by 31/2013 s 18(4)</i> | <i>3.2.2014</i> |
| <i>protected person</i> | <i>inserted by 31/2013 s 18(4)</i> | <i>3.2.2014</i> |
| | <i>deleted by 71/2017 Sch 1 cl 11(4)</i> | <i>30.4.2018</i> |
| <i>Registrar</i> | <i>deleted by 31/2013 s 18(4)</i> | <i>3.2.2014</i> |
| s 4(2) | inserted by 11/2001 s 4 | 29.10.2001 |
| s 4(3) | inserted by 31/2013 s 18(5) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 11(5), (6) | 30.4.2018 |
| s 4(4) | inserted by 71/2017 Sch 1 cl 11(7) | 30.4.2018 |
| s 6 | | |
| s 6(1) | amended by 60/1998 s 32 | 6.3.2000 |
| | amended by 11/2001 s 5 | 29.10.2001 |
| | amended by 31/2013 s 19 | 3.2.2014 |
| s 6(5) | amended by 52/1999 s 95 | 17.6.2001 |
| | amended by 53/2003 s 4(1), (2) | 18.12.2003 |
| s 6(6) | s 6(5) dot point designated as s 6(6) by 53/2003 s 4(3) | 18.12.2003 |
| s 7 | | |
| | amended by 60/1998 s 33 | 6.3.2000 |
| | amended by 31/2013 s 20 | 3.2.2014 |
| s 8 | | |
| s 8(2) | substituted by 31/2013 s 21 | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 12(1), (2) | 30.4.2018 |

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| s 8(2a) | inserted by 71/2017 Sch 1 cl 12(3) | 30.4.2018 |
| s 8A | inserted by 11/2001 s 6 | 29.10.2001 |
| s 8A(4) | amended by 31/2013 s 22(1) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 13(1) | 30.4.2018 |
| s 8A(6) | substituted by 31/2013 s 22(2) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 13(2), (3) | 30.4.2018 |
| s 8A(6a) | inserted by 71/2017 Sch 1 cl 13(4) | 30.4.2018 |
| <i>s 9 before substitution by 31/2013</i> | | |
| s 9(4) | <i>amended by 60/1998 s 34(a)</i> | <i>6.3.2000</i> |
| s 9(6) | <i>substituted by 60/1998 s 34(b)</i> | <i>6.3.2000</i> |
| s 9(7) and (8) | <i>deleted by 60/1998 s 34(b)</i> | <i>6.3.2000</i> |
| s 9(9) | <i>amended by 60/1998 s 34(c)</i> | <i>6.3.2000</i> |
| s 9(16) | <i>deleted by 60/1998 s 34(d)</i> | <i>6.3.2000</i> |
| s 9(18) | <i>deleted by 60/1998 s 34(e)</i> | <i>6.3.2000</i> |
| s 9 | <i>substituted by 31/2013 s 23</i> | <i>3.2.2014</i> |
| | <i>deleted by 71/2017 Sch 1 cl 14</i> | <i>30.4.2018</i> |
| s 10 | <i>deleted by 31/2013 s 23</i> | <i>3.2.2014</i> |
| s 11 | | |
| s 11(1) | amended by 53/2003 s 5(1) | 4.12.2005 |
| | amended by 31/2013 s 24(1) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 15(1)—(4) | 30.4.2018 |
| | amended by 17/2021 s 5(1) | 11.5.2023 |
| s 11(1a) | inserted by 53/2003 s 5(2) | 4.12.2005 |
| | amended by 31/2013 s 24(2) | 3.2.2014 |
| | amended by 17/2021 s 5(2) | 11.5.2023 |
| s 11(2) | <i>deleted by 31/2013 s 24(3)</i> | <i>3.2.2014</i> |
| s 11(3) | amended by 71/2017 Sch 1 cl 15(5) | 30.4.2018 |
| s 11(4) | <i>deleted by 31/2013 s 24(4)</i> | <i>3.2.2014</i> |
| s 11A | inserted by 53/2003 s 6 | 4.12.2005 |
| s 11A(1) | amended by 71/2017 Sch 1 cl 16(1)—(3) | 30.4.2018 |
| | amended by 17/2021 s 6(1) | 11.5.2023 |
| s 11A(2) | amended by 31/2013 s 25(1) | 3.2.2014 |
| | amended by 17/2021 s 6(2) | 11.5.2023 |
| s 11A(3) | <i>deleted by 31/2013 s 25(2)</i> | <i>3.2.2014</i> |
| s 11A(4) | amended by 71/2017 Sch 1 cl 16(4) | 30.4.2018 |
| s 11A(5) | <i>deleted by 31/2013 s 25(3)</i> | <i>3.2.2014</i> |
| s 12 | amended by 58/2001 Sch 2 cl 5 | 1.1.2003 |
| | substituted by 31/2013 s 26 | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 17 | 30.4.2018 |
| <i>s 13 before substitution by 31/2013</i> | | |

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| <i>s 13(1)</i> | <i>amended by 60/1998 s 35(a)</i> | 6.3.2000 |
| <i>s 13(2)</i> | <i>amended by 60/1998 s 35(b)</i> | 6.3.2000 |
| <i>s 13(6)</i> | <i>amended by 60/1998 s 35(c)</i> | 6.3.2000 |
| | <i>amended by 53/2003 s 7</i> | 18.12.2003 |
| <i>s 13</i> | <i>substituted by 31/2013 s 26</i> | 3.2.2014 |
| | <i>deleted by 71/2017 Sch 1 cl 18</i> | 30.4.2018 |
| <i>s 14 before substitution by 31/2013</i> | | |
| <i>s 14(1)</i> | <i>amended by 33/2002 s 11(a)</i> | 3.3.2003 |
| <i>s 14(3)</i> | <i>amended by 60/1998 s 36</i> | 6.3.2000 |
| | <i>amended by 57/2000 s 26(a)</i> | 1.10.2000 |
| <i>s 14(5)</i> | <i>substituted by 57/2000 s 26(b)</i> | 1.10.2000 |
| <i>s 14(5a)</i> | <i>inserted by 57/2000 s 26(b)</i> | 1.10.2000 |
| | <i>amended by 53/2003 s 8</i> | 18.12.2003 |
| <i>s 14(6)</i> | <i>amended by 33/2002 s 11(b)</i> | 3.3.2003 |
| <i>s 14(7) and (8)</i> | <i>inserted by 33/2002 s 11(c)</i> | 3.3.2003 |
| <i>s 14</i> | <i>substituted by 31/2013 s 26</i> | 3.2.2014 |
| | <i>deleted by 71/2017 Sch 1 cl 18</i> | 30.4.2018 |
| <i>ss 14A and 14B</i> | <i>inserted by 31/2013 s 26</i> | 3.2.2014 |
| | <i>deleted by 71/2017 Sch 1 cl 18</i> | 30.4.2018 |
| <i>s 15</i> | | |
| <i>s 15(4)</i> | <i>amended by 31/2013 s 27(1)</i> | 3.2.2014 |
| | <i>amended by 71/2017 Sch 1 cl 19</i> | 30.4.2018 |
| <i>s 15(5)</i> | <i>amended by 31/2013 s 27(2)</i> | 3.2.2014 |
| <i>s 16</i> | | |
| <i>s 16(1)</i> | <i>amended by 53/2003 s 9(1), (2)</i> | 18.12.2003 |
| | <i>amended by 71/2017 Sch 1 cl 20(1)</i> | 30.4.2018 |
| | amended by 17/2021 s 7 | 11.5.2023 |
| <i>s 16(2)</i> | <i>amended by 57/2000 s 27(a)</i> | 1.10.2000 |
| <i>s 16(3)</i> | <i>substituted by 60/1998 s 37</i> | 6.3.2000 |
| | <i>amended by 31/2013 s 28(1), (2)</i> | 3.2.2014 |
| <i>s 16(4)</i> | <i>deleted by 57/2000 s 27(b)</i> | 1.10.2000 |
| <i>s 16(5)</i> | <i>amended by 57/2000 s 27(c)</i> | 1.10.2000 |
| | <i>amended by 31/2013 s 28(3)</i> | 3.2.2014 |
| <i>s 16(6)</i> | <i>inserted by 57/2000 s 27(d)</i> | 1.10.2000 |
| | <i>amended by 71/2017 Sch 1 cl 20(2)</i> | 30.4.2018 |
| <i>s 16(7)</i> | <i>inserted by 57/2000 s 27(d)</i> | 1.10.2000 |
| <i>s 16(8)</i> | <i>inserted by 57/2000 s 27(d)</i> | 1.10.2000 |
| | <i>deleted by 53/2003 s 9(3)</i> | 18.12.2003 |
| <i>s 16(9)</i> | <i>inserted by 57/2000 s 27(d)</i> | 1.10.2000 |
| <i>s 16(10)</i> | <i>inserted by 53/2003 s 9(4)</i> | 18.12.2003 |
| <i>s 16(11)</i> | <i>inserted by 53/2003 s 9(4)</i> | 18.12.2003 |

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| | amended by 31/2013 s 28(4) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 20(3)—(5) | 30.4.2018 |
| s 16(11a) | inserted by 31/2013 s 28(5) | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 20(6)—(9) | 30.4.2018 |
| s 16(12) and (13) | inserted by 53/2003 s 9(4) | 18.12.2003 |
| s 16(14) | inserted by 71/2017 Sch 1 cl 20(10) | 30.4.2018 |
| s 17 | | |
| s 17(1) | amended by 31/2013 s 29 | 3.2.2014 |
| s 18 | substituted by 31/2013 s 30 | 3.2.2014 |
| s 18(1) | amended by 71/2017 Sch 1 cl 21(1), (2) | 30.4.2018 |
| s 18A | inserted by 60/1998 s 38 | 6.3.2000 |
| | substituted by 31/2013 s 30 | 3.2.2014 |
| s 18B | inserted by 11/2001 s 7 | 29.10.2001 |
| | substituted by 31/2013 s 30 | 3.2.2014 |
| | deleted by 71/2017 Sch 1 cl 22 | 30.4.2018 |
| ss 18C—18E | inserted by 31/2013 s 30 | 3.2.2014 |
| | deleted by 71/2017 Sch 1 cl 22 | 30.4.2018 |
| s 19A | inserted by 71/2017 Sch 1 cl 23 | 30.4.2018 |
| s 20 | | |
| s 20(1) | s 20 redesignated as s 20(1) by 31/2013 s 31 | 3.2.2014 |
| s 20(2) | inserted by 31/2013 s 31 | 3.2.2014 |
| s 20(3) | inserted by 31/2013 s 31 | 3.2.2014 |
| | amended by 71/2017 Sch 1 cl 24 | 30.4.2018 |
| s 20(4) | inserted by 31/2013 s 31 | 3.2.2014 |

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Fine Enforcement) Act 1998, Sch

10—Community service under repealed s 9(4)(b)

If an order for community service made under section 9(4)(b) of the principal Act in respect of a person was in force immediately before the commencement of this Act, the order continues in force and, for that purpose, the principal Act (as in force immediately before the commencement of this Act) continues to apply.

Statutes Amendment (Fines Enforcement and Recovery) Act 2013

32—Transitional provisions

- (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.

- (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).
- (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
 - (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)—
 - (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 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.

Fines Enforcement and Debt Recovery Act 2017, Sch 1 Pt 8—Transitional provisions etc

35—Transitional provisions

- (1) Subject to this clause and to any regulations made under section 76(4)—
 - (a) Part 7 applies in relation to enforcement of a pecuniary sum or expiation notice regardless of whether the liability to pay the pecuniary sum or expiation amount arose before or after the commencement day; and
 - (b) section 9 applies to an expiation amount regardless of whether the liability to pay the expiation amount arose before or after the commencement day; and
 - (c) this Act applies in relation to an expiation notice whether given before or after the commencement day.

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- (2) A request for the making of an aggregation determination made under section 61 of the *Criminal Law (Sentencing) Act 1988* before the commencement day will, if it has not been determined before that day, be taken to have been made under section 9 of this Act.
 - (3) If, immediately before the commencement day, a debtor is subject to, or taken to be subject to, an arrangement with the Fines Enforcement and Recovery Officer under section 70 of the *Criminal Law (Sentencing) Act 1988*, the arrangement continues as if it were an arrangement with the Chief Recovery Officer under section 15 of this Act (but such an arrangement is, despite the provisions of section 15, to have effect according to its terms).
 - (4) Proceedings in respect of an application commenced by the Fines Enforcement and Recovery Officer under section 70U of the *Criminal Law (Sentencing) Act 1988* that are not finally determined before the commencement day will continue from that day as if the application had been made by the Chief Recovery Officer under section 46 of this Act.
 - (5) A community service order made by the Court under section 70U of the *Criminal Law (Sentencing) Act 1988* that is in force immediately before the commencement day will continue to operate on and from the commencement day as if the order were a community service order made by the Court under section 46 of this Act.
 - (6) If, immediately before the commencement day, an alleged offender is subject to an arrangement with the Fines Enforcement and Recovery Officer under section 9 of the *Expiation of Offences Act 1996*, the arrangement continues as if it were an arrangement with the Chief Recovery Officer under section 20 of this Act (but such an arrangement is, despite the provisions of section 20, to have effect according to its terms).
 - (7) If, immediately before the commencement day, an enforcement determination is in force under section 13 of the *Expiation of Offences Act 1996* in relation to an expiation notice, the determination will continue to operate as if it were an enforcement determination made by the Chief Recovery Officer under section 22 of this Act.
 - (8) An application made under section 13(4)(b) of the *Expiation of Offences Act 1996* as in force immediately before the commencement day that has not been finally determined before that day will, if it was made within 30 days of notice of the enforcement determination to which it relates being given, sent or published, be taken to have been made under section 22(5)(b)(i) of this Act.
 - (9) A charge on land imposed under section 70G of the *Criminal Law (Sentencing) Act 1988* as in force before the commencement day continues as if it were a charge on land imposed under section 33 of this Act on or after the commencement day.
 - (10) If the Fines Enforcement and Recovery Officer has, before the commencement day, issued a notice, made a request or required a person to do something under a provision of the *Expiation of Offences Act 1996* or Part 9 Division 3 of the *Criminal Law (Sentencing) Act 1988*, and the notice, request or requirement has not been complied with before the commencement day, the notice will be taken to have been issued, or the request or requirement will be taken to have been made, under the corresponding provision of this Act.

- (11) If the Fines Enforcement and Recovery Officer has, before the commencement day, exercised a power under a provision of Part 9 Division 3 Subdivision 4 of the *Criminal Law (Sentencing) Act 1988* in connection with enforcement action against a debtor or alleged offender, and the enforcement action has not concluded before that day—
- (a) the power will be taken to have been exercised under the corresponding provision of Part 7 of this Act; and
 - (b) a written determination of the Fines Enforcement and Recovery Officer made under a provision of the *Criminal Law (Sentencing) Act 1988* in connection with the exercise of the power will be taken to be a determination made by the Chief Recovery Officer under the corresponding provision of this Act; and
 - (c) any other action taken by the Fines Enforcement and Recovery Officer under a provision of the *Criminal Law (Sentencing) Act 1988* in connection with the exercise of the power will be taken to have been done under the corresponding provision of this Act.
- (12) Without derogating from any powers or functions that may be exercised in accordance with subclause (1), a relevant order continues in operation after the commencement day.
- (13) Part 9 Division 3 of the *Criminal Law (Sentencing) Act 1988* as in force before the commencement of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013* (other than Subdivision 7) continues to apply in relation to a relevant order continued in operation under subclause (12) as if references in that Division to the Manager, the Registrar or an authorised officer were references to the Chief Recovery Officer.
- (14) However, the Chief Recovery Officer may, with the consent of the relevant debtor, revoke a relevant order continued in operation under subclause (12).
- (15) Despite section 26, 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 the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*.
- (16) A person who holds office as an authorised officer under section 56A of the *Criminal Law (Sentencing) Act 1988* immediately before the commencement day will be taken to have been appointed as an authorised officer under section 67 (and any conditions to which the appointment is subject under section 56A of the *Criminal Law (Sentencing) Act 1988* will, subject to section 67(3), continue to apply to the appointment).
- (17) In this clause—

commencement day means the day on which this clause comes into operation;

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 *Criminal Law (Sentencing) Act 1988* as in force before the commencement of Part 4 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*.

36—Validation provision

Any enforcement determination purportedly made by the Fines Enforcement and Recovery Officer under section 13 of the *Expiation of Offences Act 1996* before the day on which this clause comes into operation is declared to have been validly made notwithstanding that there was not compliance with the requirements of subsection (1) or (2) of that section.

Historical versions

Reprint No 1—6.3.2000

Reprint No 2—1.10.2000

Reprint No 3—17.6.2001

Reprint No 4—29.10.2001

Reprint No 5—1.1.2003

Reprint No 6—3.3.2003

18.12.2003

4.12.2005

3.2.2014

30.4.2018