

South Australia

Fines Enforcement and Debt Recovery Act 2017

An Act to provide for the recovery of expiation fees, fines and other pecuniary sums; to allow for the recovery of civil debt owed to public authorities; to continue the office of Fines Enforcement and Recovery Officer as the Chief Recovery Officer; to set out the functions and powers of the Chief Recovery Officer; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Fines Enforcement and Debt Recovery Act 2017*.

3—Interpretation

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

approved treatment program means a treatment program of a prescribed kind that has been approved by the Minister for the purposes of this definition;

approved treatment program manager means a person who has general oversight of approved treatment programs and coordinates the implementation of relevant court orders and relevant determinations of the Chief Recovery Officer (and includes a delegate of such a person);

authorised officer means—

- (a) the Sheriff; or
- (b) the Chief Recovery Officer; or
- (c) a Registrar of the Magistrates Court; or
- (d) the Registrar of the Youth Court; or
- (e) a person appointed under section 67 as an authorised officer;

bond means an agreement (not being a bail agreement) entered into pursuant to the sentence of a court under which the defendant undertakes to the Crown to comply with the conditions of the agreement;

case manager means a person responsible for supervision of a person's participation in an approved treatment program;

council means a council constituted under the *Local Government Act 1999*;

court means a court of criminal jurisdiction;

Court means—

- (a) in relation to a debtor who is a youth or 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 debtor or expiation notice—the Magistrates Court;

debtor means (other than in Part 8) the person by whom a pecuniary sum is payable;

driver's licence means a licence under the *Motor Vehicles Act 1959*;

expiation notice means an expiation notice under the *Expiation of Offences Act 1996*;

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);

issuing authority, in relation to an expiation notice, means—

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

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

pecuniary sum means an amount payable pursuant to an order or direction of a court in proceedings relating to an offence, and includes—

- (a) a fine; and
- (b) compensation; and
- (c) costs; and
- (d) a sum payable pursuant to a bond or to a guarantee ancillary to a bond; and
- (e) a VIC levy imposed on a person on conviction of an offence;

personal details, in relation to a person, means—

- (a) the person's full name; and
- (b) any former name of the person (including, if relevant, the person's maiden name); and
- (c) any alias of the person; and
- (d) the person's date of birth; and
- (e) the address of where the person is living; and
- (f) the address of where the person usually lives; and
- (g) any former residential address of the person in the previous 5 years; and
- (h) the person's business address; and
- (i) the name and address of the person's employer;

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*;

VIC levy means a levy imposed under the *Victims of Crime Act 2001* or a corresponding previous law.

- (2) For the purposes of this Act—
- (a) **enforcement action** includes a penalty enforcement order made under the *Criminal Law (Sentencing) Act 1988* 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) a reference in this Act to a pecuniary sum includes a reference to—
 - (i) 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
 - (ii) any fees, charges or other amounts which are, in accordance with this Act, added to and form part of such a sum; and
 - (b) a reference in this Act to an amount due under an expiation notice includes a reference to—
 - (i) the amount outstanding under the notice or, if a number of amounts have been aggregated, the amount outstanding of the aggregated amounts; and
 - (ii) any fees, charges or other amounts which are, in accordance with this Act, added to and form part of such amount.
- (4) 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 or the *Expiation of Offences Act 1996*.

Part 2—Chief Recovery Officer

4—Chief Recovery Officer

- (1) The office of *Fines Enforcement and Recovery Officer* continues as the office of the *Chief Recovery Officer*.
- (2) The Chief Recovery Officer will be a person employed in the Public Service of the State.
- (3) The Chief 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 Chief Recovery Officer by or under any other Act or law or by the Minister.
- (4) If the Chief Recovery Officer carries out functions under an Act on behalf of a public sector agency, Local Government agency or other person or body, the Chief Recovery Officer may charge the agency, person or body a fee of such amount as may be agreed between the Chief Recovery Officer and the agency, person or body.

5—Delegation

- (1) The Chief 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.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) The person to whom a power or function is delegated under this section may be a body corporate.
- (4) 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
 - (c) is revocable at will.

6—Certain determinations may be made by automated process

- (1) The Chief Recovery Officer may determine that a class of determinations required to be made by the Chief Recovery Officer under this Act is of such a nature that they could appropriately be made by means of an automated process in accordance with this section.
- (2) If the Chief Recovery Officer makes a determination under subsection (1), the Chief Recovery Officer must—
 - (a) determine the policies to be applied for the purpose of making the relevant class of determinations by means of an automated process; and
 - (b) approve the automated process to be used.
- (3) For the purpose of any proceedings—
 - (a) a certificate apparently signed by the Chief Recovery Officer and certifying as to any determination or approval given by the Chief Recovery Officer under this section is conclusive proof of the matters so certified; and
 - (b) a determination made by an automated process in accordance with this section will be taken to be a determination of the Chief Recovery Officer under this Act.

7—Annual report

- (1) The Chief Executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of this Act must, not later than 30 September in each year, submit to the Minister a report on the work of the Chief Recovery Officer for the financial year ending on the preceding 30 June.
- (2) The report must include information prescribed by the regulations or required by the Minister.

- (3) The Minister must, as soon as practicable after receipt of a report submitted under this section, cause a copy of the report to be laid before each House of Parliament.

Part 3—Enforcement of pecuniary sums

Division 1—Preliminary

8—Pecuniary sum is debt

- (1) A pecuniary sum due and payable is to be taken for the purposes of this Act to be a debt due to the Crown and is recoverable by the Chief Recovery Officer by action in any court of competent jurisdiction or as otherwise set out in this Act.
- (2) Subsection (1) does not limit the ability of a person to take action to recover a sum due and payable to the person.

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

- (1) Subject to this section, the Chief 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 section 22.
- (2) If the debtor requests the making of the aggregation determination but no enforcement determination has been made under section 22 in relation to the expiation amount, the Chief 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 20(21) or section 22); and
 - (c) any enforcement determination made in relation to the expiation amount is suspended.
- (4) For the purposes of section 14, 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 11 is taken to have ended on the day on which the expiation period ended.
- (5) If—
 - (a) an amount due under an expiation notice is included in an aggregation determination; and

- (b) the expiation notice is withdrawn under section 16 of the *Expiation of Offences Act 1996*,

the expiation amount under the withdrawn notice is to be deducted from the amount due under the aggregation determination.

- (6) The Chief Recovery Officer may revoke an aggregation determination at any time by notice in writing given to the debtor.
- (7) A revocation takes effect 7 days from (and including) the day on which the notice referred to in subsection (6) was given to the debtor.
- (8) On the revocation of an aggregation determination under subsection (6)—
- (a) the remaining expiation amount must be determined by the Chief Recovery Officer, taking into account—
 - (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 14 since the making of the determination; and
 - (b) the remaining expiation amount so determined will no longer be taken to be part of the pecuniary sum; and
 - (c) —
 - (i) if an enforcement determination had been made prior to the making of the aggregation determination—the enforcement determination comes back into force (and this Act applies to the remaining expiation amount as if the aggregation determination had not been made); or
 - (ii) in any other case—the Chief Recovery Officer may make an enforcement determination in relation to the remaining expiation amount under section 22 (and any procedural or other requirements relating to the making of such determinations will be taken to have been complied with).

10—Enforcement against youths

This Act 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 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).

Division 2—Payment of pecuniary sums

11—Pecuniary sum is payable within 28 days

Subject to any arrangement under section 15, a pecuniary sum is payable within 28 days from (and including)—

- (a) in the case of a pecuniary sum imposed by order of a court—the day on which the order was made; and
- (b) in the case of a VIC levy imposed on a person on conviction of an offence—the day on which the person was sentenced for the offence.

12—Payment of pecuniary sum to Chief Recovery Officer

- (1) A pecuniary sum is payable (despite the fact that the order is in favour of some person)—
 - (a) to the Chief Recovery Officer; or
 - (b) to an agent appointed by the Chief Recovery Officer for the purpose.
- (2) On receipt of the whole or part of a pecuniary sum, the Chief Recovery Officer must pay the amount received as follows:
 - (a) firstly, 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;
 - (b) secondly, if a VIC levy is payable by the defendant, then into the Victims of Crime Fund in satisfaction of that levy;
 - (c) thirdly, if any costs are payable to a party to the proceedings, then in satisfaction of those costs;
 - (d) fourthly, if any other money is payable under the order of the court to the informant, then to the informant;
 - (e) fifthly, according to the directions of any other Act or, if no other Act contains directions as to payment, then to Treasury.
- (3) Unless the Chief Recovery Officer determines otherwise, if more than 1 pecuniary sum is payable by a debtor, an amount paid in accordance with subsection (2) is to be taken to have been deducted from the pecuniary sum that the debtor was first ordered to pay and then, if necessary, from the pecuniary sum that the debtor was next ordered to pay, and so on so that deductions are taken to be made from each successive pecuniary sum in chronological order.

13—Payment by credit card etc

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.

14—Amounts unpaid or unrecovered for more than certain period

- (1) Subject to subsection (2), if a part of a pecuniary sum imposed by order of a court remains—
 - (a) unpaid by the debtor under this Division; or

(b) unrecovered from the debtor under Part 7,

on the expiration of the 28 day period referred to in section 11, the following provisions apply:

- (c) the prescribed amount is added to, and forms part of, the pecuniary sum payable by the debtor;
- (d) if a part of the pecuniary sum remains unpaid or unrecovered on the expiration of the 30 day period commencing immediately after that 28 day period, a further prescribed amount is added to, and forms part of, the pecuniary sum payable by the debtor.

(2) The Chief Recovery Officer may, in such circumstances as the Chief Recovery Officer thinks just, waive payment of the whole or any part of an amount payable by a debtor in accordance with this section.

(3) In this section—

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

15—Arrangements as to manner and time of payment

(1) Subject to this section, a debtor who pays, or who agrees to pay, to the Chief Recovery Officer the prescribed fee—

- (a) may, at any time during the 28 day period referred to in section 11, enter into an arrangement with the Chief Recovery Officer for payment of a pecuniary sum by instalments over a period determined by the Chief Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into); or
- (b) if the Chief Recovery Officer agrees, may enter into some other kind of arrangement with the Chief Recovery Officer in relation to a pecuniary sum in accordance with subsection (5).

(2) Subject to subsection (3), if the fee prescribed under subsection (1) is not paid by the debtor before the debtor enters into the arrangement, the fee is to be added to, and forms part of, the pecuniary sum payable by the debtor.

(3) The Chief Recovery Officer may, in such circumstances as the Chief Recovery Officer thinks just, waive payment of the fee prescribed under subsection (1).

(4) An arrangement for payment by instalments referred to in subsection (1)(a) must provide for instalments to be paid to the Chief Recovery Officer by direct debits by or through some other person or agency (eg deductions from an ADI account or wages).

(5) Other kinds of arrangements under this section may consist of or include—

- (a) payment by instalments (including instalments paid over a period exceeding 12 months); and
- (b) an extension of time to pay; and
- (c) the taking of a charge over land; and
- (d) the surrender of property to the Chief Recovery Officer; and

- (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); and
 - (f) subject to subsection (6)—requirements for the performance of community service by the debtor (in accordance with a scheme prescribed by the regulations); and
 - (g) subject to subsection (7)—an arrangement for the debtor to complete an approved treatment program; and
 - (h) any other form of arrangement agreed by the Chief Recovery Officer and the debtor.
- (6) The Chief Recovery Officer may only agree to an arrangement requiring the performance of community service if the Chief Recovery Officer is satisfied that the debtor does not have, and is not likely within a reasonable time to have, the means to pay the pecuniary sum without the debtor or the debtor's dependants suffering hardship.
- (7) The Chief Recovery Officer must not enter into an arrangement requiring a debtor to complete an approved treatment program unless the Officer is satisfied that—
- (a) the debtor does not have, and is not likely within a reasonable time to have, the means to pay the pecuniary sum without the debtor or the debtor's dependants suffering hardship; and
 - (b) the debtor is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and
 - (c) the services are available for the debtor at a suitable time and place.
- (8) If—
- (a) a debtor has previously been subject to enforcement action under—
 - (i) this Part (whether in relation to the same, or a different, pecuniary sum); or
 - (ii) Part 4; or
 - (iii) Part 8; or
 - (iv) Part 9 Division 3 of the repealed *Criminal Law (Sentencing) Act 1988*; or
 - (v) the *Expiation of Offences Act 1996*; 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
 - (c) a debtor is of a class prescribed by the regulations,
- the Chief 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
 - (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

- (f) require the debtor to provide security or obtain guarantees (as the Chief Recovery Officer thinks fit).
- (9) An arrangement under this section may be varied by agreement between the debtor and the Chief Recovery Officer.
- (10) If the Chief Recovery Officer is satisfied that a debtor who has entered into an arrangement under this section has the capacity to pay any outstanding amount of the pecuniary sum without the debtor or the debtor's dependants suffering hardship, the Officer may, by notice in writing given to the debtor, terminate the arrangement.
- (11) For the purposes of entering into, or varying, an arrangement, any number of pecuniary sums payable by the debtor may be aggregated.
- (12) If a debtor complies with an arrangement under this section requiring the performance of community service, the amount of the pecuniary sum outstanding is to be reduced in accordance with the method prescribed by regulation for the purposes of this subsection.
- (13) If the Chief Recovery Officer is satisfied that a debtor has completed, or substantially completed, an approved treatment program pursuant to an arrangement under this section, the Officer must waive payment of the whole or part of the amount payable by the debtor in accordance with the arrangement.
- (14) If an arrangement is entered into or varied under this section, the Chief Recovery Officer must give notice of the arrangement or varied arrangement (as the case requires) to the debtor.
- (15) If a debtor fails to comply with an arrangement under this section and the failure has endured for 28 days, the arrangement terminates.
- (16) However, an arrangement that has terminated under subsection (15) may, not more than 14 days after the day on which it terminated, be reinstated by the Chief Recovery Officer.
- (17) If an arrangement is reinstated by the Chief Recovery Officer—
- (a) the arrangement as reinstated commences on a day specified by the Officer; and
 - (b) the provisions of this section apply to the reinstated arrangement as if it had not terminated.

16—Arrangement or waiver for debtor who has persistently driven unlicensed

- (1) Subject to subsection (2), if the Chief Recovery Officer is satisfied, on application by a debtor, that—
- (a) the pecuniary sum payable by the debtor is attributable, at least in part, to the debtor having been found guilty of an offence against section 74 of the *Motor Vehicles Act 1959*; and
 - (b) the debtor has been found guilty of, or has expiated, an offence against that section on more than 2 occasions; and
 - (c) the debtor has not, since the commission of the offence, been charged with, or been alleged to have committed, a further offence against that section; and

- (d) the debtor has, since the commission of the offence, obtained a driver's licence,
- the Chief Recovery Officer may determine to—
- (e) enter into an arrangement with the debtor of a kind set out in section 15; or
 - (f) waive payment of the pecuniary sum or any part of the pecuniary sum.
- (2) The Chief Recovery Officer may not make a determination under this section in relation to a debtor if a determination has previously been made under this section or section 21 in relation to the debtor.
 - (3) This Division applies to an arrangement entered into under subsection (1)(e) as if the arrangement were an arrangement under section 15.

17—Publication of names of debtors who cannot be found

- (1) If the whereabouts of a debtor cannot, after reasonable enquiries, be ascertained, the Chief Recovery Officer may cause a notice to be published on a website determined by the Chief Recovery Officer, and in such other manner (if any) as the Chief Recovery Officer thinks fit, seeking information as to the debtor's whereabouts.
- (2) A notice under subsection (1)—
 - (a) must be in a form determined by the Chief Recovery Officer; and
 - (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—
 - (a) a youth; or
 - (b) subject to a suppression order; or
 - (c) a protected person.

18—Reminder notice

- (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 Division in respect of the sum, the Chief Recovery Officer must cause a reminder notice to be given to the debtor.
- (2) A reminder notice must—
 - (a) be in a form determined by the Chief Recovery Officer; and
 - (b) contain information as to the enforcement action that can be taken against the debtor in the event of continued default.
- (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.

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- (4) The Chief Recovery Officer may, in such circumstances as the Chief Recovery Officer thinks just, waive payment of a reminder notice fee.

19—Enforcement action

- (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—
- (c) determine, at any time, in the Officer's absolute discretion, to do any of the following:
 - (i) enter into an arrangement, or further arrangement, with the debtor under section 15(1)(b);
 - (ii) exercise any 1 or more of the powers under Part 7;
 - (iii) waive payment of the pecuniary sum or any part of the pecuniary sum; or
 - (d) write off the pecuniary sum—
 - (i) if the Officer has no reasonable prospect of recovering the sum; or
 - (ii) if the costs of recovery are likely to equal or exceed the amount to be recovered.
- (2) If the Chief Recovery Officer determines to waive payment of any part of a pecuniary sum that includes an amount of compensation, the Chief 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.
- (3) The writing off of a pecuniary sum does not affect the liability of the debtor to pay the sum or the power of the Chief Recovery Officer to recover it.

Part 4—Payment of expiation fees

20—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 Chief Recovery Officer the prescribed fee—
- (a) may, at any time during the expiation period, enter into an arrangement with the Chief Recovery Officer for payment of the amount due under the notice by direct debit instalments in accordance with subsection (5); or
 - (b) if the Chief Recovery Officer agrees, may enter into some other kind of arrangement with the Chief Recovery Officer in relation to the amount due under the notice in accordance with subsection (6).
- (2) Subject to subsection (3), if the fee prescribed under subsection (1) is not paid by the alleged offender before the alleged offender enters into the arrangement, the fee is to be added to, and forms part of, the unpaid expiation fee.

- (3) The Chief Recovery Officer may, in such circumstances as the Chief Recovery Officer thinks just, waive payment of the fee prescribed under subsection (1).
- (4) The Chief Recovery Officer must give the issuing authority notice (in a manner agreed between the Chief Recovery Officer and the issuing authority) of any arrangement entered into under this section.
- (5) 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 22 in respect of the expiation notice; and
 - (b) must provide for instalments to be paid to the Chief 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 Chief Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into).
- (6) 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); and
 - (b) an extension of time to pay; and
 - (c) the taking of a charge over land; and
 - (d) the surrender of property to the Chief Recovery Officer; and
 - (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); and
 - (f) subject to subsection (7)—requirements for the performance of community service by the alleged offender (in accordance with a scheme prescribed by the regulations); and
 - (g) subject to subsection (8)—an arrangement for the alleged offender to complete an approved treatment program; and
 - (h) any other form of arrangement agreed by the Chief Recovery Officer and the alleged offender.
- (7) The Chief Recovery Officer may only agree to an arrangement requiring the performance of community service if—
 - (a) the Chief 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 the alleged offender's dependants suffering hardship; and
 - (b) an enforcement determination has been made by the Chief Recovery Officer under section 22 in relation to the expiation notice.

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- (8) The Chief Recovery Officer must not enter into an arrangement requiring an alleged offender to complete an approved treatment program unless the Officer is satisfied that—
- (a) 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 the alleged offender's dependants suffering hardship; and
 - (b) the alleged offender is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and
 - (c) the services are available for the alleged offender at a suitable time and place.
- (9) If—
- (a) an alleged offender has previously been subject to enforcement action under—
 - (i) this Part (whether in relation to the same, or a different, expiation notice); or
 - (ii) Part 3; or
 - (iii) Part 8; or
 - (iv) the *Expiation of Offences Act 1996*; or
 - (v) Part 9 Division 3 Subdivision 4 of the repealed *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
 - (c) an alleged offender is of a class prescribed by the regulations,
- the Chief Recovery Officer may—
- (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
 - (f) require the alleged offender to provide security or obtain guarantees (as the Chief Recovery Officer thinks fit).
- (10) An arrangement under this section may be varied by agreement between the alleged offender and the Chief Recovery Officer.
- (11) If an arrangement is entered into or varied under this section, the Chief Recovery Officer must give notice of the arrangement or varied arrangement (as the case requires) to the alleged offender.
- (12) 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.

- (13) If an alleged offender complies with an arrangement under this section requiring the performance of community service, the amount outstanding is to be reduced in accordance with the method prescribed by regulation for the purposes of this subsection.
- (14) If the Chief Recovery Officer is satisfied that an alleged offender has completed, or substantially completed, an approved treatment program pursuant to an arrangement under this section, the Officer must waive payment of the whole or part of the amount outstanding in accordance with the arrangement.
- (15) If an alleged offender fails to comply with an arrangement under this section and the failure has endured for 28 days, the arrangement terminates.
- (16) However, an arrangement that has terminated under subsection (15) may, not more than 14 days after the day on which it terminated, be reinstated by the Chief Recovery Officer.
- (17) If the Chief Recovery Officer is satisfied that an alleged offender who has entered into an arrangement under this section has the means to satisfy an enforcement amount without the alleged offender or the alleged offender's dependants suffering hardship, the Officer may, by notice in writing given to the alleged offender, terminate the arrangement.
- (18) If an arrangement terminates under subsection (15) or (17), the Chief Recovery Officer must give the issuing authority notice (in a manner agreed between the Chief 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).
- (19) If an arrangement is reinstated by the Chief Recovery Officer—
 - (a) the arrangement as reinstated commences on a day specified by the Officer; and
 - (b) the provisions of this section apply to the reinstated arrangement as if it had not terminated; and
 - (c) notice of the reinstated arrangement must be given by the Officer to the issuing authority.
- (20) If an alleged offender complies with an arrangement under this section or pays to the Chief Recovery Officer, at any time, the amount then outstanding, the arrangement is discharged.
- (21) 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 9 or 22) regardless of whether the arrangement is subsequently discharged or terminates before being discharged.

21—Arrangement or waiver for alleged offender who has persistently driven unlicensed

- (1) Subject to subsection (2), if the Chief Recovery Officer is satisfied, on application by an alleged offender, that—
 - (a) the amount due under an expiation notice given to the alleged offender is attributable, at least in part, to the alleged offender having been alleged to have committed an offence against section 74 of the *Motor Vehicles Act 1959*; and
 - (b) the alleged offender has been found guilty of, or has expiated, an offence against that section on more than 2 occasions; and
 - (c) the alleged offender has not, since the commission of the alleged offence, been charged with, or been alleged to have committed, a further offence against that section; and
 - (d) the alleged offender has, since the commission of the alleged offence, obtained a driver's licence,the Chief Recovery Officer may determine to—
 - (e) enter into an arrangement with the alleged offender of a kind set out in section 20; or
 - (f) waive payment of the amount due or any part of the amount due.
- (2) The Chief Recovery Officer may not make a determination under this section in relation to an alleged offender if a determination has previously been made under this section or section 16 in relation to the alleged offender.
- (3) This Part applies to an arrangement entered into under subsection (1)(e) as if the arrangement were an arrangement under section 20.

22—Enforcement determinations

- (1) An expiation notice may be enforced against the alleged offender by the issuing authority providing to the Chief Recovery Officer the particulars determined by the Chief Recovery Officer relating to—
 - (a) the alleged offender; and
 - (b) the offence or offences that remain unexpiated; and
 - (c) the amount due under the notice; and
 - (d) compliance by the authority with the requirements of this Act and any other Act.
- (2) The prescribed fee is payable by an issuing authority that provides particulars to the Chief Recovery Officer under subsection (1).
- (3) The Chief Recovery Officer may make an enforcement determination in relation to an expiation notice given to a person—
 - (a) if the Chief Recovery Officer has, within the relevant period, received particulars under subsection (1) and—

- (i) 14 clear days have elapsed from the date on which a reminder notice relating to the expiation notice was given in accordance with section 11 of the *Expiation of Offences Act 1996*; or
 - (ii) 14 clear days have elapsed from the date on which an expiation enforcement warning notice relating to the expiation notice was given in accordance with section 11A of the *Expiation of Offences Act 1996*; or
 - (b) if an arrangement under section 20 relating to the notice has terminated in accordance with that section and the Chief Recovery Officer has, within the relevant period, received particulars under subsection (1) following that termination.
- (4) 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 or 20(21)).
- (5) The Chief Recovery Officer may—
 - (a) vary an enforcement determination at any time; and
 - (b) revoke an enforcement determination—
 - (i) 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; or
 - (ii) on the Chief Recovery Officer's own initiative.
- (6) Subject to subsection (7), an application under subsection (5)(b)(i) must be accompanied by the prescribed fee.
- (7) The Chief Recovery Officer may, in such circumstances as the Chief Recovery Officer thinks just, waive payment of the application fee.
- (8) The Chief Recovery Officer may entertain an application under subsection (5)(b)(i) made out of time if the Chief Recovery Officer thinks good reason exists for doing so.
- (9) The Chief Recovery Officer may refuse to entertain an application under subsection (5)(b)(i) if the Chief Recovery Officer considers that the application is frivolous or vexatious or is not made in good faith.
- (10) An application under subsection (5)(b)(i) 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 (other than because the alleged offender did not commit, or has a defence against, the alleged offence); or
 - (b) the alleged offender did not have a reasonable opportunity to elect under section 8 of the *Expiation of Offences Act 1996* to be prosecuted for any offence to which the expiation notice relates (other than because the alleged offender did not receive an expiation notice or an expiation reminder notice as required under that Act); or

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- (c) the alleged offender did not have a reasonable opportunity to apply for review of the expiation notice to which the determination relates under section 8A of the *Expiation of Offences Act 1996* (other than because the alleged offender did not receive an expiation notice or an expiation reminder notice as required under that Act); or
 - (d) the procedural requirements of this Act or any other Act were not complied with; or
 - (e) the applicant failed to receive an expiation notice and an expiation reminder notice as required by the *Expiation of Offences Act 1996*; or
 - (f) 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 nomination, 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
 - (g) the applicant has expiated the offence, or offences, under the notice.
- (11) The Chief Recovery Officer may only revoke an enforcement determination on a ground referred to in subsection (10)(b) or (c) if satisfied that there are exceptional circumstances that justify the alleged offender's failure to make an election, or to apply for a review, under the *Expiation of Offences Act 1996*.
- (12) If the Chief Recovery Officer revokes an enforcement determination—
- (a) the determination will be taken to be void and of no effect (and subsection (4) is taken never to have applied in relation to the determination); and
 - (b) any enforcement action taken under section 25 in relation to the determination will be taken to have been revoked; and
 - (c) the Chief Recovery Officer may, if the Chief Recovery Officer thinks fit, refund the fee (if any) paid in accordance with subsection (6).
- (13) If the Chief Recovery Officer revokes an enforcement determination on the ground referred to in subsection (10)(b), a prosecution can be commenced for the alleged offence or offences within 6 months of the day on which the determination was revoked despite the fact that the time for the commencement of the prosecution may have already otherwise expired.
- (14) If—
- (a) the Chief Recovery Officer revokes an enforcement determination on a ground referred to in subsection (10)(b) or (c); and
 - (b) —
 - (i) the alleged offender does not, within 14 days of being informed of the revocation—
 - (A) elect under section 8 of the *Expiation of Offences Act 1996* to be prosecuted for the offence; or

(B) apply under section 8A of the *Expiation of Offences Act 1996* for review of the expiation notice to which the determination relates on the ground that the offence is trifling; or

(ii) the alleged offender applies under section 8A of the *Expiation of Offences Act 1996* for review of the expiation notice to which the determination relates but the issuing authority determines not to withdraw the expiation notice,

the Chief Recovery Officer may make a further enforcement determination in relation to the expiation notice.

(15) Despite any other provision of this Act, if the Chief Recovery Officer revokes an enforcement determination on a ground referred to in subsection (10)(d), (e) or (f), the following provisions apply:

(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

(b) the expiation notice will also be taken to have been issued on that day; and

(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).

(16) Subject to subsection (17), on an enforcement determination being made, varied or revoked, the Chief Recovery Officer must cause a written notice of the determination, variation or revocation containing the particulars (if any) prescribed by the regulations—

(a) to be—

(i) given to the alleged offender; or

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

(b) to be given to the issuing authority.

(17) If—

(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,

the Chief Recovery Officer may not publish the written notice in accordance with subsection (16)(a)(ii) but may, if 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.

(18) The Chief Recovery Officer is not required to conduct a hearing for the purposes of making, varying or revoking an enforcement determination.

(19) In this section—

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

- (a) for the purposes of subsection (3)(a)—
 - (i) the period ending 90 days after the end of the expiation period; or
 - (ii) such longer period as the Chief Recovery Officer may allow (provided that the Chief Recovery Officer may not extend the period so as to allow particulars to be received after the time for commencement of a prosecution against the person for the unexpiated offence or offences to which the particulars relate has expired); and
- (b) for the purposes of subsection (3)(b)—the period of 30 days after the day on which the arrangement terminated.

23—Review by Court of refusal to revoke enforcement determination

(1) Subject to this section, if—

- (a) an enforcement determination has been made by the Chief Recovery Officer under section 22 in relation to an expiation notice; and
- (b) an application by the alleged offender under section 22(5)(b)(i) for revocation of the determination on a ground specified in section 22(10)(b) or (c) has been refused by the Chief Recovery Officer,

the alleged offender may apply to the Court for review of the decision to refuse the application within 30 days of notice of the decision being given to the alleged offender.

- (2) The Court may entertain an application made out of time if it thinks good reason exists for doing so.
- (3) The issuing authority is a party to an application under this section.
- (4) On an application under this section, the Court may—
 - (a) confirm or reverse the decision of the Chief Recovery Officer; and
 - (b) make any consequential or ancillary order that the Court considers necessary or expedient.
- (4a) If the Court reverses a decision of the Chief Recovery Officer to refuse an application made by an alleged offender under section 22(5)(b)(i) on the ground referred to in section 22(10)(b), a prosecution can be commenced for the alleged offence or offences within 6 months of the day on which the Court's decision is made despite the fact that the time for commencement of the prosecution may have already otherwise expired.

- (5) If the Court reverses a decision of the Chief Recovery Officer to refuse an application by an alleged offender under section 22(5)(b)(i), the following provisions apply:
- (a) the enforcement determination will be taken to be void and of no effect (and section 22(4) is taken never to have applied in relation to the determination);
 - (b) any subsequent enforcement action taken under section 25 will be taken to have been revoked;
 - (c) if the alleged offender does not, within 14 days of being informed of the Court's determination—
 - (i) elect under section 8 of the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
 - (ii) apply under section 8A of the *Expiation of Offences Act 1996* for review of the expiation notice to which the determination relates on the ground that the offence is trifling,the Chief Recovery Officer may make a further enforcement determination in relation to the expiation notice.
- (6) A decision of the Court made on an application under this section is not subject to further appeal by the alleged offender.

24—Expiation fee is debt

- (1) An amount due under an expiation notice in relation to which an enforcement determination has been made by the Chief Recovery Officer under section 22 is, if the enforcement determination has not been revoked, to be taken for the purposes of this Act to be a debt due to the Crown and is recoverable by the Chief Recovery Officer by action in any court of competent jurisdiction or as otherwise set out in this Act.
- (2) Subsection (1) does not affect the operation of section 17(2) or (3) of the *Expiation of Offences Act 1996*.

25—Enforcement actions by Chief Recovery Officer

- (1) If an enforcement determination has been made by the Chief Recovery Officer under section 22 in relation to an expiation notice (and has not been revoked), the Chief Recovery Officer may take enforcement action against the alleged offender to secure payment of the amount due under the notice.
- (2) The Chief Recovery Officer may take enforcement action against a person by doing any of the following:
- (a) entering into an arrangement, or further arrangement, with the person under section 20(1)(b);
 - (b) registering a charge on an interest in land under Part 6;
 - (c) exercising a power under Part 7;
 - (d) waiving payment of the amount due or any part of the amount due.
- (3) If 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.

26—Amounts unpaid or unrecovered for more than certain period

- (1) Subject to subsection (2)—
 - (a) if the Chief Recovery Officer makes an enforcement determination in relation to an expiation notice, an amount prescribed by, or calculated in accordance with, the regulations is added to, and forms part of, the amount due under the notice; and
 - (b) if any part of the amount due under the notice (including the amount added under paragraph (a)), remains unpaid by, or unrecovered from, the alleged offender at the end of the 30 day period commencing on the day on which the enforcement determination is made, 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.
- (2) The Chief Recovery Officer may, in such circumstances as the Officer thinks just, waive payment of the whole or part of an amount payable by an alleged offender in accordance with this section.

27—Writing off bad debts

- (1) The Chief Recovery Officer may write off an amount payable under an expiation notice—
 - (a) if the Officer has no reasonable prospect of recovering the amount; or
 - (b) if the costs of recovery are likely to equal or exceed the amount to be recovered.
- (2) The writing off of an amount payable under an expiation notice does not affect the liability of the alleged offender to pay the amount or the power of the Chief Recovery Officer to recover it.

28—Enforcement of expiation notices in other jurisdictions

- (1) The Minister may enter into an agreement (a *multi-jurisdictional agreement*) with 1 or more other Australian jurisdictions to establish and implement processes and procedures for—
 - (a) the enforcement in other jurisdictions of expiation notices given in this State; and
 - (b) the enforcement in this State of expiation notices given in other jurisdictions.
- (2) A multi-jurisdictional agreement may, for example—
 - (a) provide for collection of amounts payable under expiation notices by a participating jurisdiction on behalf of another participating jurisdiction and for distribution of money so collected; or
 - (b) authorise the performance or exercise of any functions or powers under this Act or the *Expiation of Offences Act 1996* by a specified authority of a participating jurisdiction; or
 - (c) authorise the performance or exercise of any functions or powers under a specified law of another jurisdiction by the Chief Recovery Officer (subject to any law of that jurisdiction and any limitations specified in the agreement); or

- (d) make provision for other measures or matters that the parties consider necessary or expedient for facilitating the enforcement of expiation notices or their equivalent in this State and other jurisdictions and for implementing processes established by the agreement for that purpose.
- (3) A multi-jurisdictional agreement will operate for such period, and be able to be varied or terminated in such a manner, as the participating jurisdictions agree.
- (4) The Chief Recovery Officer must take such action as is necessary or expedient for giving effect to a multi-jurisdictional agreement.
- (5) Any power that the Chief Recovery Officer may exercise under this Act in relation to an expiation notice of this jurisdiction may be exercised by the Chief Recovery Officer in relation to an expiation notice of another jurisdiction if the exercise of the power is authorised under a multi-jurisdictional agreement.
- (6) If an authority of a participating jurisdiction is authorised under a multi-jurisdictional agreement to exercise or perform functions or powers under this Act or the *Expiation of Offences Act 1996*, the authority will be taken to be the Chief Recovery Officer, and to have the functions and powers of the Chief Recovery Officer, when acting under the agreement.
- (7) In this section—
expiation notice includes an equivalent notice (however described) of a prescribed kind issued under the law of another Australian jurisdiction.

Part 5—Investigation powers

29—Personal details and investigation of financial position

- (1) The Chief Recovery Officer may, at any time, give written notice to a debtor or alleged offender requiring the debtor or alleged offender to provide the Chief Recovery Officer with the personal details of the debtor or alleged offender.
- (2) If the Chief Recovery Officer has reasonable cause to believe that a person has knowledge of personal details of a debtor or alleged offender, the Chief Recovery Officer may give written notice to the person requiring the person to provide the Chief Recovery Officer with such personal details of the debtor or alleged offender as are known to the person.
- (3) The Chief Recovery Officer may, at any time, investigate a debtor's means of satisfying a pecuniary sum, or an alleged offender's means of satisfying an amount due under an expiation notice, and may give a written notice to a person requiring the person to produce to the Chief Recovery Officer, within a period stated in the notice, documents or other material relevant to the investigation.
- (4) 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.

30—Power to require information

- (1) If a public sector agency or a credit reporting body (within the meaning of the *Privacy Act 1988* of the Commonwealth) is in possession of the personal details of a debtor or alleged offender, the agency or body must, on request from the Chief Recovery Officer, provide those details to the Chief Recovery Officer.
- (2) A public sector agency must, in accordance with the written request of the Chief Recovery Officer, produce to the Officer—
 - (a) documents or other material in the possession of the agency relevant to an investigation of a debtor's means, or an alleged offender's means, of satisfying a pecuniary sum; and
 - (b) information that would assist the Officer to identify or recognise a debtor or alleged offender.
- (3) This section does not apply to a public sector agency excluded from the application of this section by the regulations.

31—Power to require identification

- (1) An authorised officer may require a person who the officer has reasonable cause to suspect may be a debtor or alleged offender 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.

32—Disclosure of information to prescribed interstate authority

The Chief Recovery Officer may disclose prescribed particulars of a debtor or alleged offender to a prescribed interstate authority.

Part 6—Charge on land

33—Charge on land

- (1) The Chief Recovery Officer may, at any time, apply to the Registrar-General in the form determined by the Registrar-General to register a charge over the interest of a debtor in land owned (whether solely or as a co-owner) by the debtor for the amount of the pecuniary sum outstanding from time to time.
- (2) The Chief Recovery Officer may, if an enforcement determination has been made under section 22 in relation to an expiation notice (and has not been revoked), apply to the Registrar-General in the form determined by the Registrar-General to register a charge over the interest of the alleged offender in land owned (whether solely or as a co-owner) by the alleged offender for the amount due from time to time.
- (3) Any number of pecuniary sums or amounts due under expiation notices may be aggregated for the purposes of exercising powers under this section.
- (4) On receipt of an application under subsection (1) or (2), the Registrar-General must enter an appropriate note in the Register Book or the Register of Crown Leases and, when that entry is made, a charge is created over the interest of the debtor or alleged offender in the land in favour of the Crown.

- (5) The effect of the charge is as follows:
- (a) the Registrar-General must not, after entry of the note under subsection (4), register an instrument affecting the interest of the debtor or alleged offender in 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 or transfer that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made;
 - (b) the Chief Recovery Officer (on behalf of the Crown) has the same powers in respect of the interest of the debtor or alleged offender in 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 (and sections 132 to 135 (inclusive) and 136 of that Act apply accordingly as if the Officer were the mortgagee and the debtor or alleged offender were the mortgagor).
- (6) An instrument registered under subsection (5)(a)(i) or (ii) has effect, in relation to the charge, as if it had been registered before the entry was made.
- (7) If an instrument registered under subsection (5)(a) has the effect of conveying or transferring the interest of the debtor or alleged offender in the land to another person, 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.
- (8) The Chief 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 or amount due under the expiation notice being fully satisfied; or
 - (b) if the Chief 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).
- (9) Any fees incurred in relation to registration (or cancellation of registration) under this section are added to and form part of the pecuniary sum or amount due.

- (10) A person must, in accordance with the written request of the Chief Recovery Officer, produce to the Officer documents or other material in the possession of the person relating to the title of a debtor or alleged offender to real property owned by the debtor or alleged offender.

Maximum penalty: \$10 000.

Part 7—Enforcement

Division 1—Enforcement action

34—Interpretation

In this Part—

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 41(1);

drive includes ride;

monetary amount means a pecuniary sum or an amount due under an expiation notice;

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;

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*.

35—Aggregation of monetary amounts for the purposes of enforcement

Any number of monetary amounts owed by a debtor may be aggregated for the purposes of exercising powers under this Part.

36—Seizure and sale of assets

- (1) The Chief Recovery Officer may, by written determination, determine to sell the land or personal property of a debtor or alleged offender to satisfy the monetary amount owed by the debtor or alleged offender.
- (2) A determination under this section authorises the Chief Recovery Officer to—
 - (a) enter any land (using such force as may be necessary) on which the Chief Recovery Officer reasonably suspects personal property of the debtor or alleged offender 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 or alleged offender; and
 - (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
 - (d) seize and remove any documents evidencing the title of the debtor or alleged offender 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 personal property owned (whether solely or as a co-owner) by the debtor or alleged offender; and
 - (g) sell the interest of the debtor or alleged offender in real property owned (whether solely or as co-owner) by the debtor or alleged offender.
- (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
 - (b) this section does not authorise the sale of land unless the monetary amount exceeds \$10 000; and
 - (c) any amount realised from the sale of the personal property of the debtor or alleged offender in excess of the monetary amount owed by a debtor or alleged offender must be paid to the debtor or alleged offender by the Chief Recovery Officer; and
 - (d) the Chief Recovery Officer (on behalf of the Crown) has the same powers in respect of an interest of a debtor or alleged offender in land the Officer determines to sell under this section 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 (and sections 132 to 135 (inclusive) and 136 of that Act apply accordingly as if the Officer were the mortgagee and the debtor or alleged offender were the mortgagor).
- (4) If the Chief Recovery Officer determines under this section to sell an interest in real property of the debtor or alleged offender—
- (a) the Officer must provide the Registrar-General with written notification of the determination; and
 - (b) the Registrar-General must note the determination in the Register Book or the Register of Crown Leases; and
 - (c) the determination will be taken to be a mortgage registered under the *Real Property Act 1886* on the day that it is provided to the Registrar-General.
- (5) If the Chief Recovery Officer determines under this section to sell personal property of the debtor or alleged offender, the Officer may give the debtor or alleged offender written notice in the prescribed form requiring the debtor or alleged offender to produce specified items of property at a time and place specified in the notice.

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- (6) A person must not, without reasonable excuse (proof of which lies on the person), refuse or fail to comply with a notice under subsection (5).
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (7) The Chief Recovery Officer may exercise powers under this section in the absence of, and without prior notice to, the debtor or alleged offender.
- (8) When property is seized or removed from land, notice of the written determination under this section and a notice listing the property seized—
- (a) must be given personally to the debtor or alleged offender 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 attached to a conspicuous place on the land.
- (9) The Chief Recovery Officer may, if the Chief Recovery Officer thinks fit, leave a debtor or alleged offender in possession of property until it is sold pursuant to the order for sale.
- (10) If property that has been seized is left in the possession of the debtor or alleged offender pending sale, the debtor or alleged offender must not, except with the written approval of the Chief Recovery Officer, cause, permit or allow the property to be removed from the possession of the debtor or alleged offender or to be sold or offered for sale.
Maximum penalty: \$2 500.
- (11) If a vehicle has been seized but left in the possession of the debtor or alleged offender pending sale, the debtor or alleged offender must not, except with the written approval of the Chief Recovery Officer, drive the vehicle on a road.
Maximum penalty:
- (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.
- (12) If a vehicle that has been seized is not left in the possession of the debtor or alleged offender, a person must not, without reasonable excuse, interfere with the vehicle in any way.
Maximum penalty: \$2 500.
- (13) A person must not interfere in any way—
- (a) with any written determination attached by the Chief Recovery Officer to seized property left in the possession of a debtor or alleged offender signifying that the property has been seized; or
 - (b) with a vehicle that has been immobilised, seized or removed, or the means by which a vehicle has been immobilised, pursuant to this section.
- Maximum penalty: \$2 500.
- (14) Property seized under this section cannot be sold until 14 days have elapsed from (and including) the day on which it was seized.

- (15) If—
- (a) the debtor or alleged offender 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 or alleged offender) claims an interest in property seized under this section,
- the Court may, if satisfied, on application by the debtor, alleged offender 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.
- (16) A sale of an interest in land or tangible property under this section is to be conducted in a manner determined by the Chief Recovery Officer.
- (17) If any part of the property of a debtor or alleged offender consists of intangible property, the Chief Recovery Officer may sign any transfer or do anything else necessary to convert that property into money as if the Chief Recovery Officer were the debtor or alleged offender.
- (18) If the proceeds from a sale of personal property under this section exceed the amount necessary to satisfy the monetary amount owed by the debtor or the alleged offender, the amount remaining after deduction of the monetary amount from the proceeds must be returned to the debtor or alleged offender.
- (19) 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 alleged offender or left at the land from which it was seized.
- (20) In this section—
- driver's licence* includes a learner's permit.

37—Garnishment

- (1) The Chief Recovery Officer may, by written determination, provide that—
- (a) money owing or accruing to a debtor or alleged offender from a third person; or
 - (b) money of the debtor or alleged offender in the hands of a third person (including money in an ADI account),
- be attached to satisfy a monetary amount owed by the debtor or alleged offender.
- (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.
- (3) The Chief Recovery Officer must cause notice of a written determination under this section to be given to the debtor or alleged offender and the garnishee.
- (4) A garnishee must comply with a determination under this section.
- Maximum penalty: \$10 000.

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- (5) If the garnishee does not comply with a determination under this section, the garnishee becomes personally liable for payment to the Chief Recovery Officer of the amount subject to attachment.
 - (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.
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.

38—Suspension of driver's licence

- (1) The Chief Recovery Officer may, by written determination, suspend a debtor's driver's licence, or an alleged offender's driver's licence, (and such a determination may be issued despite the fact that the debtor or alleged offender is currently disqualified from holding or obtaining a licence).
- (2) The Chief Recovery Officer must—
 - (a) cause notice of the written determination under subsection (1) to be given to the debtor or alleged offender; and
 - (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 or alleged offender; and
 - (b) may be cancelled by the Chief Recovery Officer by written determination (provided that the Chief Recovery Officer must make such a written determination if all monetary amounts owed by the debtor or alleged offender are paid in full).
- (4) If the Chief Recovery Officer makes a determination under subsection (3)(b)—
 - (a) the Chief 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.
- (5) If the Chief Recovery Officer makes a determination under this section, a fee of the prescribed amount is added to and forms part of the monetary amount owed by the debtor or alleged offender.
- (6) In this section—
driver's licence includes a learner's permit.

39—Restriction on transacting business with Registrar of Motor Vehicles

- (1) The Chief Recovery Officer may, by written determination, impose a prohibition on a debtor or alleged offender transacting any business with the Registrar of Motor Vehicles.
- (2) The Chief Recovery Officer must—
 - (a) cause notice of the written determination under subsection (1) to be given to the debtor or alleged offender; 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 Chief Recovery Officer by written determination (provided that the Chief Recovery Officer must make such a written determination if all monetary amounts owed by the debtor or alleged offender are paid in full).
- (4) If the Chief Recovery Officer makes a determination under subsection (3)(b)—
 - (a) the Chief 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) 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 or alleged offender, 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 or alleged offender is a registered owner—
 - (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.
- (7) If the Chief Recovery Officer makes a determination under this section, a fee of the prescribed amount is added to and forms part of the monetary amount owed by the debtor or alleged offender.

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

- (1) The Chief Recovery Officer may, by written determination, suspend the operation of section 97A of the *Motor Vehicles Act 1959* insofar as it applies to a debtor or alleged offender specified in the notice.
- (2) The Chief Recovery Officer must—
 - (a) cause notice of the written determination under subsection (1) to be given to the debtor or alleged offender; and
 - (b) notify the Registrar of Motor Vehicles and the Commissioner of Police of the determination.

- (3) Suspension of the operation of section 97A of the *Motor Vehicles Act 1959* under this section—
- (a) takes effect 14 days from (and including) the day on which notice of the determination under subsection (1) was given to the debtor or alleged offender; and
 - (b) may be cancelled by the Chief Recovery Officer by written determination (provided that the Chief Recovery Officer must make such a written determination if all monetary amounts owed by the debtor or alleged offender are paid in full).
- (4) If the Chief Recovery Officer makes a determination under subsection (3)(b)—
- (a) the Chief Recovery Officer must notify the Registrar of Motor Vehicles and the Commissioner of Police of the determination; and
 - (b) the suspension under this section continues in operation until the Registrar of Motor Vehicles is so notified.
- (5) If the Chief Recovery Officer makes a determination under this section, a fee of the prescribed amount is added to and forms part of the monetary amount owed by the debtor or alleged offender.
- (6) The Chief Recovery Officer must notify prescribed officers of other States and Territories of determinations made under this section.

41—Clamping or impounding of vehicle

- (1) The Chief Recovery Officer may, by written determination, determine to clamp or impound any vehicle that a debtor or alleged offender owns or is accustomed to drive, or that was used in the commission of an offence or alleged offence to which action under this Part relates, for a period specified in the determination or until the Chief Recovery Officer determines to end the clamping or impounding period under this section.
- (2) A determination under this section authorises the Chief Recovery Officer—
- (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.
- (3) The Chief Recovery Officer may exercise powers under this section in relation to a vehicle without notice to the debtor or alleged offender if—
- (a) the debtor or alleged offender is the only registered owner of the vehicle; or
 - (b) the Chief Recovery Officer has made reasonable attempts to notify each registered owner of the vehicle (other than the debtor or alleged offender) of the Officer's intention to exercise those powers.
- (4) When a vehicle is clamped or seized, notice of the written determination under this section—
- (a) must be given personally to the debtor or alleged offender and to each registered owner of the vehicle; and
 - (b) must be left in or attached to a conspicuous place on the vehicle or attached to a conspicuous place in the vicinity of the vehicle.

- (5) A person must not, without reasonable excuse, interfere in any way—
- (a) with a vehicle that has been clamped pursuant to this section; or
 - (b) with a written determination attached by the Chief Recovery Officer to a vehicle, or to a conspicuous place in the vicinity of a vehicle, pursuant to this section; or
 - (c) with the means by which a vehicle has been clamped pursuant to this section.

Maximum penalty: \$2 500.

- (6) If a determination has been made under this section in relation to a vehicle, the Chief 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:
- (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;
 - (b) entering any place, including a public place, (using such force as may be necessary) at which the Chief 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;
 - (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;
 - (g) moving the vehicle to a place determined by the Chief Recovery Officer and clamping or impounding the vehicle at that place (and, if the Chief 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.

- (7) 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 (6).

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (8) The Chief Recovery Officer—
- (a) must determine to end the clamping or impounding period if all monetary amounts owed by the debtor or alleged offender are paid in full; and
 - (b) may determine to end the clamping or impounding period at any other time in the Chief Recovery Officer's absolute discretion.
- (9) At the end of the clamping or impounding period, the Chief Recovery Officer may—
- (a) remove the clamps; or

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- (b) release the vehicle, including to a person who applies for release of the vehicle and satisfies the Chief Recovery Officer that the person is entitled to custody of the vehicle.
- (10) However, the Chief 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 Chief 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.
- (11) The Chief 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.
- (12) A person who—
- (a) refuses or fails, without reasonable excuse, to answer a question under subsection (11); or
- (b) in response to a question under subsection (11) 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.

42—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 41 applies to the Chief Recovery Officer for release of the vehicle within 28 days of the vehicle ceasing to be liable to be so clamped or impounded, the Chief 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 registered 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 Chief 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 Chief 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 Chief 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) 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 or alleged offender is the owner of the vehicle—the proceeds must be applied towards satisfaction of the monetary amount 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;
 - (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 registered owner, the debtor or the alleged offender) claims an interest in a vehicle that has been seized and clamped or impounded under section 41, the Court may, if satisfied, on application by the person, of the validity of the claim, direct—
- (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—
- (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.

43—Seizure of number plates of vehicle

- (1) The Chief Recovery Officer may, by written determination, determine to seize the number plates of any vehicle that a debtor or alleged offender owns or is accustomed to drive or that was used in the commission of an offence or alleged offence to which action under this Division relates.
- (2) The Chief Recovery Officer must cause notice of the written determination to seize the number plates of a vehicle to be given to the debtor or alleged offender and to each registered owner of the vehicle.
- (3) A determination under this section authorises the Chief Recovery Officer to seize the number plates of a vehicle referred to in subsection (1).
- (4) However, the Chief Recovery Officer may not seize the number plates of a vehicle if—
- (a) the vehicle is situated in a public place; or
 - (b) seizure of the number plates would cause undue inconvenience to a person other than the debtor or alleged offender.

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- (5) If a determination has been made under this section in relation to a vehicle, the Chief Recovery Officer may do anything reasonably necessary for the purposes of carrying out functions under this section, including entering any place, including a public place, (using such force as may be necessary) at which the Chief 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.
- (6) The Chief Recovery Officer—
- (a) must determine to return the vehicle's number plates to the registered owner if all monetary amounts owed by the debtor or alleged offender are paid in full within 28 days of the day on which the vehicle's number plates are seized; and
 - (b) may determine to return the vehicle's number plates to the registered owner at any other time in the Officer's absolute discretion.
- (7) If all monetary amounts owed by the debtor or alleged offender are not paid within 28 days of the day on which the vehicle's number plates are seized, the Chief Recovery Officer may, subject to this section, dispose of the vehicle's number plates by forwarding them to the Registrar of Motor Vehicles.
- (8) Number plates must not be disposed of by the Chief Recovery Officer under subsection (7) unless, not less than 14 days before the number plates are forwarded to the Registrar of Motor Vehicles, notice of the Chief Recovery Officer's intention to dispose of the number plates was sent by registered post to—
- (a) in the case of a registered vehicle—the registered address of each registered owner of the vehicle; or
 - (b) in any other case—the address of any owner of the vehicle of which the Chief Recovery Officer is aware.
- (9) The Chief 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 the number plates of a particular vehicle are liable to be seized under this section.
- (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.
- (11) In this section—
- public place** includes a road and a road-related area (both within the meaning of the *Motor Vehicles Act 1959*).

44—Publication of names of debtors and alleged offenders subject to enforcement action

- (1) The Chief Recovery Officer may cause a notice to be published on a website determined by the Chief Recovery Officer, and in such other manner (if any) as the Chief Recovery Officer thinks fit, identifying a debtor or alleged offender who is subject to enforcement action under this Act and specifying the monetary amount that is payable at the date of the notice.
- (2) A notice under subsection (1)—
 - (a) must be in a form determined by the Chief Recovery Officer; and
 - (b) must not include any identifying information relating to the debtor or alleged offender other than—
 - (i) the actual name and any assumed name; and
 - (ii) the date of birth,of the debtor or alleged offender.
- (3) However, a notice cannot be published under this section in relation to a debtor or alleged offender if the debtor or alleged offender is—
 - (a) a youth; or
 - (b) subject to a suppression order; or
 - (c) a protected person.
- (4) The Chief Recovery Officer must remove a notice published under subsection (1) from the website as soon as is reasonably practicable after the debtor or alleged offender has paid in full the monetary amount to which the notice relates.

45—Costs

Any costs incurred by the Chief Recovery Officer in relation to the exercise of powers and functions under this Part are added to and form part of the monetary amount owed by the debtor or alleged offender.

Division 2—Failure of enforcement process

46—Community service and approved treatment program orders

- (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 application by the Chief Recovery Officer, make either or both of the following orders in relation to the debtor or alleged offender:
 - (a) a community service order;
 - (b) an order requiring the debtor or alleged offender to complete an approved treatment program.

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- (2) The Chief Recovery Officer may not make an application to the Court under subsection (1) in relation to a pecuniary sum that comprises or includes an amount of compensation unless the Chief Recovery Officer has given written notification of the Officer's intention to make the application to the person to whom the compensation is payable.
- (3) 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 or alleged offender is—
 - (i) if the monetary amount is equal to or less than the prescribed unit—7.5 hours; or
 - (ii) if the monetary amount exceeds the prescribed unit—7.5 hours for each prescribed unit of the monetary amount and for any fraction left after dividing the sum by that unit;
 - (b) the debtor or alleged offender 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 Chief Recovery Officer.
- (4) The Chief Recovery Officer must give the debtor or alleged offender a notice specifying—
- (a) the number of hours of community service to be performed in accordance with subsection (3)(a); and
 - (b) the requirement set out in subsection (3)(b); and
 - (c) any other matter prescribed by regulation.
- (5) The requirements specified in subsection (3) apply and are enforceable as if they were terms of the order under subsection (1).
- (6) A court may not make an order requiring a debtor or alleged offender to complete an approved treatment program unless the court is satisfied that—
- (a) the debtor or alleged offender is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and
 - (b) the services are available for the debtor or alleged offender at a suitable time and place.
- (7) Subject to this section, the following provisions of the *Sentencing Act 2017* apply to an order for community service under this section as if it were a sentence of community service:
- (a) section 104;
 - (b) section 105(1)(c) to (l) (inclusive) and (2);
 - (c) section 106;
 - (d) section 107;
 - (e) section 108;
 - (f) section 110;
 - (g) section 111;

- (h) section 112.
- (8) Part 6 of the *Young Offenders Act 1993* and sections 44 to 46 (inclusive) of the *Youth Justice Administration Act 2016* apply, 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 the *Young Offenders Act 1993*.
- (9) The monetary amount 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.
- (10) If, while a community service order is in force, part of the monetary amount 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.
- (11) However, if the Court, on application by the Chief Recovery Officer at any time, is satisfied that a person subject to an order under this section has the means to pay a monetary amount without the person or the person's dependants suffering hardship, the Court may—
- (a) revoke the order; and
 - (b) order the restoration of the monetary amount in respect of which the order was made (and for the purposes of taking enforcement action against the person, the monetary amount so restored is to be treated as having been imposed on the day on which the Court makes an order under this paragraph).
- (12) In restoring a monetary amount under subsection (11), the Court must take into account the number of hours of community service (if any) that the person performed, and the time spent by the person in an approved treatment program, under the revoked order.
- (13) If a debtor or alleged offender complies with an order under this section requiring the completion of an approved treatment program, then the monetary amount outstanding is to be reduced in accordance with the method prescribed by regulation for the purposes of this subsection.
- (14) The Court may make appropriate orders for assessment of a debtor or alleged offender to determine—
- (a) a form of approved treatment program that is appropriate for the debtor or alleged offender; and
 - (b) the eligibility of the debtor or alleged offender for the services included on the program.
- (15) A certificate apparently signed by—
- (a) an approved treatment program manager as to—
 - (i) whether the services to be included on an approved treatment program are available for a particular person and, if so, when and where they will be available; or
 - (ii) whether a particular person is eligible for the services to be included on the program; or
 - (b) a case manager as to whether a particular person has complied with conditions regulating the person's participation in an approved treatment program,

is admissible as evidence of the matter so certified.

47—Community service and approved treatment program orders may be enforced by imprisonment

- (1) Subject to this section, an order under section 46 requiring community service or the completion of an approved treatment program is enforceable by imprisonment in default of compliance.
- (2) The term of imprisonment to be served in default of compliance with an order requiring community service will be—
 - (a) a term calculated on the basis of 1 day for each 7.5 hours of community service remaining to be performed under the order; or
 - (b) 12 months,whichever is the lesser.
- (3) The term of imprisonment to be served in default of compliance with an order requiring the completion of an approved treatment program will be determined in accordance with the method set out in the regulations.
- (4) If it appears to the court, by evidence given on oath, that a person has failed to comply with an order requiring performance of community service or the completion of an approved treatment program, the court may—
 - (a) issue a notice requiring the person to appear before the court at the time and place specified in the notice to show cause why a warrant of commitment should not be issued against the person for the default; or
 - (b) issue a warrant for the person's arrest.
- (5) If a person fails to appear before the court as required by a notice issued under subsection (4), the court may issue a warrant for the person's arrest.
- (6) If the court is satisfied that the person has failed to comply with the order requiring performance of community service or the completion of an approved treatment program—
 - (a) the court may issue a warrant of commitment for the appropriate term of imprisonment fixed in accordance with subsection (2) or (3) (as appropriate); but
 - (b) if the person is a youth, the court may, instead of taking action under paragraph (a), make an order for home detention for a period fixed on the same basis.
- (7) The court may, on issuing a warrant under subsection (6), direct that the imprisonment to which the person becomes liable by virtue of the warrant be cumulative on any other term of imprisonment being served, or to be served, by the person.
- (8) Despite subsection (6), if the court is satisfied that the failure of a person to comply with an order requiring performance of community service or the completion of an approved treatment program was trivial or that there are proper grounds on which the failure should be excused, the court—
 - (a) may refrain from issuing a warrant of commitment; and
 - (b) may—

- (i) extend the term of the order by such period, not exceeding 6 months, as the court thinks necessary for the purpose of enabling the person to perform the remaining hours of community service (if any) or complete the approved treatment program; or
 - (ii) if the order has expired, impose a further order, for a term not exceeding 6 months, requiring the person to perform the number of hours of community service unperformed under the previous order or complete the approved treatment program; or
 - (iii) in the case of an order requiring performance of community service—cancel the whole or a number of the unperformed hours of community service under the order; or
 - (iv) in the case of an order requiring the completion of an approved treatment program—cancel the requirement for the person to complete any uncompleted part of the program.
- (9) However, if the court is satisfied that a person who has failed to comply with the order requiring performance of community service or the completion of an approved treatment program has the means to pay a fine without the person or the person's dependants suffering hardship, the court may—
 - (a) revoke the order; and
 - (b) impose a fine not exceeding the maximum fine that may be imposed for the offence in respect of which the order was made (or, if the order was made in respect of more than 1 offence—the total of the maximum fines that may be imposed for the offences).
- (10) In imposing a fine under subsection (9), the court must take into account (as appropriate)—
 - (a) the number of hours of community service (if any) that the person performed under the revoked order; or
 - (b) the extent (if any) to which the person has participated in the approved treatment program in accordance with the revoked order.

Part 8—Civil debt recovery

Division 1—Preliminary

48—Interpretation

- (1) In this Part—

civil debt determination—see section 49(3);

Court means the Magistrates Court;

debt means an amount of money owed to a public authority that is recoverable in a court of competent jurisdiction, but does not include a pecuniary sum or an amount payable under an expiation notice;

debtor—see section 49(1);

enforcement notice—see section 51;

public authority means—

- (a) an administrative unit or other agency or instrumentality of the Crown; or
- (b) any incorporated or unincorporated body—
 - (iii) established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown (whether or not established by or under an Act or an enactment); or
- (c) a person or body declared by the regulations to be a public authority for the purposes of this Part,

but does not include a prescribed public authority.

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

Division 2—Recovery of civil debt

49—Notification of debt

- (1) A public authority may notify the Chief Recovery Officer, in a form approved by the Chief Recovery Officer, of a debt owed to the authority by a person (the *debtor*).
- (2) A notification under subsection (1)—
 - (a) must not be given unless the public authority has provided the debtor with an invoice for, and given the debtor a reasonable opportunity to pay, the alleged debt; and
 - (b) must include advice to the Chief Recovery Officer as to whether the debtor is under a legal disability and, if so, the name of a person representing, or acting on behalf of, the debtor.
- (3) If the Chief Recovery Officer receives a notification under subsection (1) and is satisfied that the requirements of subsection (2)(a) have been met, the Chief Recovery Officer—
 - (a) may make a determination (a *civil debt determination*) that the debt is owed by the debtor to the public authority; and
 - (b) must, if a civil debt determination is made, by notice in writing—
 - (i) notify the debtor of the determination; and
 - (ii) inform the debtor of the Chief Recovery Officer's enforcement powers under Division 5; and
 - (iii) invite the debtor to contact the Chief Recovery Officer for the purpose of entering into an arrangement under section 57 for payment of the debt.

- (4) The Chief Recovery Officer may not make a determination under subsection (3) if the Court would not have the jurisdiction to hear and determine an action for a sum of money equal to the amount of the debt claimed by the public authority.

50—Application to Court in relation to debt

- (1) A debtor who disputes the existence, or the amount, of a debt the subject of a civil debt determination may, within 1 month after receiving notice of the determination, apply to the Court for revocation or variation of the determination.
- (2) The public authority to which the debt is owed is the respondent to an application under this section and bears the onus of proving, on the balance of probabilities, that the debt is owed by the debtor.
- (3) The Court may, on an application under this section, affirm, vary or revoke the civil debt determination.
- (4) The Court may, in the Court's discretion, extend the time for making an application under this section even if the time for making the application has ended.
- (5) A proceeding on an application made to the Court under this section is a minor statutory proceeding for the purposes of the *Magistrates Court Act 1991* unless the amount claimed to be owed by the debtor exceeds \$12 000.
- (6) No fee is payable on an application under this section.

51—Enforcement action

- (1) Subject to subsection (3), the Chief Recovery Officer may exercise a power under Division 5 in relation to a debtor who has been notified of a civil debt determination if—
- (a) the debtor is taken under subsection (2) to have admitted liability for the debt; or
 - (b) the determination has been confirmed or varied by the Court on an application under section 50.
- (2) A debtor will be taken to have admitted liability for a debt to which a civil debt determination relates if—
- (a) the debtor has not—
 - (i) within 1 month of receiving the determination—entered into an arrangement under section 57; or
 - (ii) within the time allowed under section 50—made application to the Court for the determination to be varied or revoked; or
 - (b) an arrangement entered into with the Chief Recovery Officer under section 57 has terminated.
- (3) The Chief Recovery Officer—
- (a) must, before exercising a power under Division 5 Subdivision 2—
 - (i) make a determination that the power is to be exercised; and
 - (ii) give the debtor written notice of the determination (an ***enforcement notice***); and

- (b) may not exercise the power if the determination is revoked under this Division.
- (4) An enforcement notice must include advice to the debtor of the debtors' right to request internal review of the determination under section 52

52—Internal review of decision to take enforcement action

- (1) A debtor who has received an enforcement notice and is aggrieved by the determination to which the notice relates may apply in a form approved by the Chief Recovery Officer for review of the determination (an *internal review*).
- (2) An application for internal review must be made within 30 days after the day on which the applicant received the enforcement notice, or within such further period (if any) as the Chief Recovery Officer, either before or after the end of that period, allows.
- (3) The Chief Recovery Officer must, on receiving an application, review the determination.
- (4) The Chief Recovery Officer may make a decision confirming, varying or revoking the determination.

53—Review of decision to take enforcement action

- (1) A debtor aggrieved by a decision of the Chief Recovery Officer on an internal review to confirm or vary a determination may apply to the Court for review of the decision.
- (2) In proceedings under this section, the Chief Recovery Officer bears the onus of proving the correctness of the decision.
- (3) If the Chief Recovery Officer did not give reasons in writing at the time of making the decision, the Chief Recovery Officer must do so on request made within 28 days of the making of the decision.
- (4) An application under subsection (1) must be made—
 - (a) within 28 days of the making of the decision; or
 - (b) if a request for reasons in writing is made under subsection (3)—within 28 days after receipt of the reasons in writing.
- (5) The Court may, in the Court's discretion, extend the time for making an application under this section even if the time for making the application has ended.
- (6) A proceeding on an application made to the Court under this section is a minor statutory proceeding for the purposes of the *Magistrates Court Act 1991* unless the amount of the debt to which the determination confirmed or varied by the Chief Recovery Officer relates exceeds \$12 000.
- (7) No fee is payable on an application under this section.

54—Effect of review proceedings on decision being reviewed

- (1) The commencement of an internal review of a determination under section 52 or proceedings for a review of a decision by the Court under section 53 does not affect the operation of the determination to which the review relates or prevent the taking of action to implement the determination unless an order is made under subsection (2).

- (2) On or after the commencement of an internal review or proceedings for the review of a decision, the reviewer may, on application or on the reviewer's own initiative, make an order staying or varying the operation or the implementation of the whole or a part of the determination to which the review relates pending the determination of the matter, or until such time (whether before or after the determination of the matter) as the reviewer may specify, if the reviewer is satisfied that it is just and reasonable in the circumstances to make the order.
- (3) An order by a reviewer under this section—
 - (a) is subject to such conditions as are specified in the order; and
 - (b) may be varied or revoked by further order of the reviewer or, if the order was made on an internal review, by further order of the Court.
- (4) In this section—

reviewer means—

 - (a) in the case of an internal review—the person conducting the review; and
 - (b) in the case of a review conducted by the Court—the Court.

55—Costs

Any costs incurred by the Chief Recovery Officer in relation to the exercise of powers and functions under this Part are added to and form part of the debt owed by the debtor.

56—Interest on debts

- (1) A debt that is the subject of a civil debt determination under this Part bears interest at the prescribed rate from the date of the civil debt determination.
- (2) In subsection (1), the prescribed rate of interest is the rate prescribed under the rules of the Magistrates Court for the purposes of section 35(1) of the *Magistrates Court Act 1991*.

Division 3—Payment arrangements

57—Voluntary arrangement as to time and manner of payment

- (1) Subject to this section, a debtor who pays, or who agrees to pay, to the Chief Recovery Officer the prescribed fee may enter into an arrangement with the Chief Recovery Officer—
 - (a) for payment of the debt by instalments over a period determined by the Chief Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into); or
 - (b) for the taking of a charge over land; or
 - (c) for the surrender of property to the Chief Recovery Officer.
- (2) Subject to subsection (3), if the fee prescribed under subsection (1) is not paid by the debtor before the debtor enters into the arrangement, the fee is to be added to, and forms part of, the debt payable by the debtor.
- (3) The Chief Recovery Officer may, in such circumstances as the Chief Recovery Officer thinks just, waive payment of the fee prescribed under subsection (1).

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- (4) An arrangement for payment by instalments referred to in subsection (1) must provide for instalments to be paid to the Chief Recovery Officer by direct debits by or through some other person or agency (eg deductions from an ADI account or wages).
 - (5) An arrangement under this section may be varied by agreement between the debtor and the Chief Recovery Officer.
 - (6) If the Chief Recovery Officer is satisfied that a debtor who has entered into an arrangement under this section has the capacity to pay any outstanding amount of the debt without the debtor or the debtor's dependants suffering hardship, the Officer may, by notice in writing given to the debtor, terminate the arrangement.
 - (7) For the purposes of entering into, or varying, an arrangement, any number of debts owed by the debtor that are the subject of a civil debt determination may be aggregated.
 - (8) If an arrangement is entered into or varied under this section, the Chief Recovery Officer must give notice of the arrangement or varied arrangement (as the case requires) to the debtor.
 - (9) If a debtor fails to comply with an arrangement under this section and the failure has endured for 28 days, the arrangement terminates.
 - (10) However, an arrangement that has terminated under subsection (9) may, not more than 14 days after the day on which it terminated, be reinstated by the Chief Recovery Officer.
 - (11) If an arrangement is reinstated by the Chief Recovery Officer—
 - (a) the arrangement as reinstated commences on a day specified by the Officer; and
 - (b) the provisions of this section apply to the reinstated arrangement as if it had not terminated.

Division 4—Investigation powers

58—Investigation of debtor's financial position

- (1) The Chief Recovery Officer may, at any time, give written notice to a debtor requiring the debtor to provide the Chief Recovery Officer with the debtor's personal details.
- (2) If the Chief Recovery Officer has reasonable cause to believe that a person has knowledge of personal details of a debtor, the Chief Recovery Officer may give written notice to the person requiring the person to provide the Chief Recovery Officer with such personal details of the debtor as are known to the person.
- (3) The Chief Recovery Officer may, for the purposes of determining a debtor's means of satisfying the debt owed by the debtor, by notice in writing, require the debtor, or another person who may be able to assist with the investigation, to appear for examination before the Chief Recovery Officer or to produce documents relevant to the investigation to the Chief Recovery Officer.
- (4) 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.

59—Power to require information

- (1) If a public sector agency or a credit reporting body (within the meaning of the *Privacy Act 1988* of the Commonwealth) is in possession of the contact details of a debtor, the agency or body must, on request from the Chief Recovery Officer, provide those details to the Chief Recovery Officer.
- (2) A public sector agency must, in accordance with the written request of the Chief Recovery Officer, produce to the Officer—
 - (a) documents or other material in the possession of the agency relevant to an investigation of a debtor's means of satisfying a debt; and
 - (b) information that would assist the Officer to identify or recognise a debtor.
- (3) This section does not apply to a public sector agency excluded from the application of this section by the regulations.

Division 5—Enforcement action

Subdivision 1—Preliminary

60—Aggregation of debts for the purposes of enforcement

Any number of debts owed by a debtor that are the subject of a civil debt determination may be aggregated for the purposes of exercising powers under this Division.

Subdivision 2—Action requiring formal determination

61—Requirement for payment of instalments etc

- (1) The Chief Recovery Officer may determine that a debtor is to pay instalments towards the satisfaction of a debt owed by the debtor.
- (2) The amount and regularity of the instalments must be specified in the relevant enforcement notice.
- (3) A debtor who is a natural person can only be required to pay instalments towards the satisfaction of a debt if—
 - (a) the Chief Recovery Officer has conducted an investigation into the debtor's means of satisfying the debt; or
 - (b) the Chief Recovery Officer is satisfied that there are, in the circumstances of the case, proper reasons for dispensing with such an investigation.
- (4) In determining whether a debtor who is a natural person should be required to pay instalments towards the satisfaction of the debt, the Chief Recovery Officer should have due regard to evidence placed before the Officer as to—
 - (a) the debtor's means of satisfying the debt; and
 - (b) the necessary living expenses of the debtor and the debtor's dependants; and
 - (c) other liabilities of the debtor,

and where satisfactory evidence is placed before the Chief Recovery Officer on those subjects, the Officer should determine the amount and regularity of the instalments so as to ensure that unreasonable requirements are not imposed on the debtor.

- (5) The Chief Recovery Officer—
 - (a) may, on application by a debtor, rescind, suspend or vary a determination under subsection (1) if the Chief Recovery Officer is satisfied that there has been a relevant change in the debtor's circumstances; and
 - (b) must give the debtor written notice of the Chief Recovery Officer's decision on the application.
- (6) Written notice of a decision under subsection (5) is to be taken to be an enforcement notice for the purposes of this Part.
- (7) If a debtor fails to comply with a determination under subsection (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.
- (8) 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.
- (9) If, after examination of a debtor conducted in accordance with procedures prescribed by rules of the Court, the Court is satisfied that—
 - (a) the debtor has, without proper excuse, failed to comply with the determination under subsection (1); and
 - (b) at least 2 instalments are in arrears,the Court may commit the debtor to prison for not more than 40 days.
- (10) If payment of the debt or all arrears of instalments (as the case requires) is made—
 - (a) the Chief Recovery Officer must issue a certificate certifying that the payment has been made; and
 - (b) the debtor must be discharged from custody even though the period of imprisonment has not expired.

62—Garnishment

- (1) The Chief Recovery Officer may determine that—
 - (a) money owing or accruing to a debtor from a third person; or
 - (b) money of a debtor in the hands of a third person (including money in an ADI account),is to be attached to satisfy a debt owed by the debtor.
- (2) If the Chief Recovery Officer makes a determination under subsection (1)—
 - (a) the Chief Recovery Officer must, in addition to giving the debtor an enforcement notice in relation to the determination, give written notice of the determination to the garnishee; and
 - (b) the garnishee may apply in a form approved by the Chief Recovery Officer for review of the determination (an *internal review*) (and section 52 applies to the application as if it had been made under that section).

- (3) Notice to a garnishee under subsection (2)(a) must include advice to the garnishee of the garnishee's right to apply for internal review of the determination.
- (4) Despite section 51, a determination may come into force before an enforcement notice has been given to the debtor, and before the garnishee has been notified of the determination, but in that case the determination will operate to restrain the garnishee from dealing with money to which the determination relates until both the debtor and the garnishee have had an opportunity to apply for internal review of the determination.
- (5) In deciding whether to make, vary or confirm a determination under this section affecting money of a natural person, the Chief Recovery Officer should have due regard to any evidence placed before the Officer as to—
 - (a) the debtor's means of satisfying the debt; and
 - (b) the necessary living expenses of the debtor and the debtor's dependants; and
 - (c) other liabilities of the debtor.
- (6) 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.
- (7) A determination cannot be made under subsection (1) in respect of salary or wages unless the debtor consents to the making of the determination but, once that consent has been given, the extent to which the salary or wages are attached is in the discretion of the Chief Recovery Officer.
- (8) The Chief Recovery Officer—
 - (a) may, on application by a debtor, rescind, suspend or vary a determination under subsection (1) if the Chief Recovery Officer is satisfied that there has been a relevant change in the debtor's circumstances; and
 - (b) must give the debtor and the garnishee written notice of the Chief Recovery Officer's decision on the application.
- (9) Written notice of a decision under subsection (8) is to be taken to be an enforcement notice for the purposes of this Part.
- (10) If the Chief Recovery Officer decides under subsection (8) to vary a determination under subsection (1), the garnishee may apply for review of the decision (an *internal review*) (and section 52 applies to the application as if it had been made under that section).
- (11) Notice to a garnishee under subsection (8)(b) must include advice to the garnishee of the garnishee's right to apply for internal review of the determination.
- (12) A garnishee must comply with a determination under this section.
Maximum penalty: \$10 000.
- (13) If the garnishee does not comply with a determination under this section, the garnishee becomes personally liable for payment to the Chief Recovery Officer of the amount subject to attachment.
- (14) Subsections (12) and (13) do not apply to a garnishee if the garnishee has not been notified of the determination.

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- (15) 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.
Maximum penalty: \$10 000.
- (16) A reference in this section to a *third person* includes the Crown or any person or body holding money on behalf of the Crown.

63—Seizure and sale of assets

- (1) The Chief Recovery Officer may determine to sell the land or personal property of a debtor to satisfy the debt owed by the debtor.
- (2) A determination may not be made under subsection (1) in relation to personal property that could not be taken in bankruptcy proceedings against the debtor.
- (3) The Chief Recovery Officer may, pursuant to a determination under this section—
 - (a) enter the land (using such force as may be necessary for the purpose) on which property to which the determination relates, or documents evidencing title to such property, are situated; and
 - (b) seize and remove any such property or documents; and
 - (c) place and keep any such property or documents in safe custody until completion of the sale; and
 - (d) sell any personal property to which the determination relates (whether or not the Chief Recovery Officer has first taken steps to obtain possession of the property); and
 - (e) sell an interest of the debtor in land to which the determination relates.
- (4) 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.
- (5) The Chief Recovery Officer may, in appropriate cases, leave a debtor in possession of property until it is sold in accordance with the determination.
- (6) The Chief Recovery Officer (on behalf of the Crown) has the same powers in respect of an interest of a debtor in land the Officer determines to sell under this section 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 (and sections 132 to 135 (inclusive) and 136 of that Act apply accordingly as if the Officer were the mortgagee and the debtor were the mortgagor).
- (7) If the Chief Recovery Officer determines under this section to sell an interest in real property of a debtor—
 - (a) the Officer must provide the Registrar-General with written notification of the determination; and

- (b) the Registrar-General must note the determination in the Register Book or the Register of Crown Leases; and
 - (c) the determination will be taken to be a mortgage registered under the *Real Property Act 1886*.
- (8) The sale of tangible personal property will be by public auction (but if no bid that the Chief Recovery Officer considers acceptable is made at auction, the Chief Recovery Officer may proceed to sell the property by private treaty for a price not less than the highest bid).
- (9) If there is a reasonable possibility of satisfying the debt out of personal property, the Chief Recovery Officer should sell personal property before proceeding to sell an interest in real property.
- (10) If any part of the debtor's property consists of intangible property, the Chief Recovery Officer may sign any transfer or do anything else necessary to convert that property into money.
- (11) If property of the debtor seized under the determination consists of a bank note or other money, the Chief Recovery Officer must, unless it has a value greater than its face value, retain it in full or partial satisfaction of the debt.
- (12) The purchaser of personal property sold by authority of the Chief Recovery Officer under this section acquires a good title to the property subject only to registered interests and interests of which public notice has been given pursuant to statute.
- (13) If, before the date of sale of property, a person claims to have an unregistered interest in the property, and gives notice of the claim to the Chief Recovery Officer, the Chief Recovery Officer must, if the claim is not disputed—
 - (a) pay the claimant out of the proceeds of the sale of the property a sum sufficient to satisfy the claim; or
 - (b) where appropriate to do so, withdraw the property from sale and give possession of it to that person.

64—Charge over land

- (1) The Chief Recovery Officer may determine that a debtor's interest in real property is to be charged with the debt owed by the debtor or part of the debt.
- (2) If the Chief Recovery Officer makes a determination under subsection (1), the Chief Recovery Officer may apply to the Registrar-General in the form determined by the Registrar-General to register a charge over the interest of a debtor in land owned (whether solely or as a co-owner) by the debtor for the amount of the debt or part of the debt.
- (3) On receipt of an application under subsection (2), the Registrar-General must enter an appropriate note in the Register Book or the Register of Crown Leases and, when that entry is made, a charge is created over the interest of the debtor in the land in favour of the Chief Recovery Officer on behalf of the public authority to whom the debt is owed by the debtor.

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- (4) The effect of the charge is as follows:
- (a) the Registrar-General must not, after entry of the note under subsection (3), register an instrument affecting the interest of the debtor in 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 or transfer that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made;
 - (b) the Chief Recovery Officer (on behalf of the relevant public authority) has the same powers in respect of the interest of the debtor in 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 (and sections 132 to 135 (inclusive) and 136 of that Act apply accordingly as if the Officer were the mortgagee and the debtor were the mortgagor).
- (5) An instrument registered under subsection (4)(a)(i) or (ii) has effect, in relation to the charge, as if it had been registered before the entry was made.
- (6) If an instrument registered under subsection (4)(a) has the effect of conveying or transferring the interest of the debtor in the land to another person, 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.
- (7) The Chief 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 debt owed by the debtor being fully satisfied; or
 - (b) if the Chief 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).
- (8) Any fees incurred in relation to registration (or cancellation of registration) under this section are added to and form part of the debt owed by the debtor.

- (9) A person must, in accordance with the written request of the Chief Recovery Officer, produce to the Officer documents or other material in the possession of the person relating to the title of a debtor to real property owned by the debtor.

Maximum penalty: \$10 000.

65—Charge over other property

- (1) The Chief Recovery Officer may determine that a debtor's interest in property is to be charged with the debt owed by the debtor or part of the debt.
- (2) If the Chief Recovery Officer determines under subsection (1) to charge a debtor's interest in property, the Chief Recovery Officer may—
- (a) do anything necessary to ensure that the charge is registered; or
 - (b) make any necessary consequential determination (which will have effect according to its terms) prohibiting or restricting dealings with the interest in the property subject to the charge; or
 - (c) take any other action authorised by regulations made for the purposes of this section.

Subdivision 3—Appointment of receiver

66—Appointment of receiver

- (1) The Court may, on application by the Chief Recovery Officer, appoint a receiver for the purpose of recovering a debt.
- (2) A receiver may be appointed even though no other proceedings have been taken for recovery of the debt.
- (3) If a receiver is appointed, the Court may make orders—
- (a) conferring on the receiver powers—
 - (i) to take charge of property of the debtor; or
 - (ii) to dispose of property of the debtor; or
 - (iii) to divert income (other than income from employment or a pension) towards satisfaction of the debt; or
 - (iv) to take charge of, and carry on, a business of the debtor and apply proceeds from the business towards satisfaction of the debt; or
 - (v) to do anything reasonably necessary for, incidental to, or consequential on, the above; or
 - (b) providing for accounts to be rendered by the receiver; or
 - (c) providing for the remuneration of the receiver; or
 - (d) relating to any other incidental or consequential matter.
- (4) A receiver's powers operate to the exclusion of the debtor's powers.

Part 9—Authorised officers

67—Authorised officers

- (1) The Minister may appoint persons (including members of the staff of the State Courts Administration Authority and persons appointed by the Sheriff to be deputy sheriffs or sheriff's officers) as authorised officers for the purposes of the enforcement of this Act.
- (2) An appointment under this section may be made subject to conditions limiting the powers exercisable by the authorised officer.
- (3) The Minister may, by notice in writing served on an authorised officer—
 - (a) vary or revoke a condition of the officer's appointment or impose a new condition; or
 - (b) revoke the appointment.

68—Identification of authorised officers

- (1) An authorised officer must be issued with an identity card in a form approved by the Minister—
 - (a) containing the person's name and photograph; and
 - (b) stating that the person is an authorised officer appointed under this Act.
- (2) If the powers of an authorised officer have been limited by conditions, the identity card must contain a statement of those limitations.
- (3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act or any other Act, produce the officer's identity card for inspection by the person.
- (4) A person appointed as an authorised officer by the Minister must, within 2 days after ceasing to be an authorised officer, return the identity card to the Minister.
Maximum penalty: \$250.

69—Hindering authorised officer or assistant

A person must not hinder an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act.

Maximum penalty: \$2 500 or 6 months imprisonment.

Part 10—Miscellaneous

70—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 Act;

- (b) costs, fees and other charges under Part 9 Division 3 of the repealed *Criminal Law (Sentencing) Act 1988* (including 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—
 - (a) must be declared by notice in the Gazette; and
 - (b) applies—
 - (i) in relation to a debtor or alleged offender, or a class of debtors or 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.

71—Power of delegation—approved treatment program manager

- (1) An approved treatment program manager may, by instrument in writing, delegate a power or function under this Act—
 - (a) to a particular person; or
 - (b) to the person for the time being occupying a particular position.
- (2) A power or function so 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 in a matter; and
 - (c) is revocable at will.

72—Liability

- (1) No civil liability is incurred by the Crown, the Chief 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 Act.
- (2) A person—
 - (a) to whom powers or functions under this Act are delegated by the Chief 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 (other than a liability owed to the Crown) in respect of the exercise, or purported exercise, in good faith of those powers or functions.

73—Chief Recovery Officer may be assisted by others

The Chief Recovery Officer or an authorised officer may, in the exercise of powers or functions under this Act, be assisted by such other persons (including a police officer) as the Chief Recovery Officer or authorised officer considers necessary in the circumstances.

74—Notice of determinations

If the Chief Recovery Officer is required under this Act to give notice of an arrangement or determination to a person, the notice must—

- (a) be in writing; and
- (b) specify the basis for the arrangement or determination.

75—Service of notices etc

- (1) 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 to the Chief Recovery Officer (in which case the notice, determination or document will be taken to have been given or served at the time of transmission).
- (2) If the Chief Recovery Officer—
 - (a) is required under a provision of this Act to give to or serve on a person a notice, determination or other document; and
 - (b) is satisfied that—
 - (i) reasonable steps have been taken to locate the person; and
 - (ii) the whereabouts of the person cannot be ascertained,

the following provisions apply:

- (c) subject to paragraph (d), the Chief Recovery Officer must instead publish details of the notice, determination or other document on a website determined by the Chief Recovery Officer (and on publishing such details the Chief Recovery Officer will, for the purposes of this Act, be taken to have given the person, or served the person with, the notice, determination or document);
- (d) if the person is a youth, is subject to a suppression order or is a protected person, the requirement to give the person, or serve the person with, the notice, determination or other document does not apply but—
 - (i) the Chief Recovery Officer may cause details of the notice, determination or other document to be provided to the person by any other means reasonably available that do not involve public disclosure of the name of the person; and
 - (ii) on providing such details the Chief Recovery Officer will, for the purposes of this Act, be taken to have given the person, or served the person with, the notice, determination or document.

76—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; or
 - (b) exempt any person or class of persons from the obligation to pay costs, fees or charges so prescribed; or
 - (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).

Schedule 1—Transitional provisions etc

Part 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.
- (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.

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- (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 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.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.

Legislation amended by principal Act

The *Fines Enforcement and Debt Recovery Act 2017* amended the following:

Cross-border Justice Act 2009

Expiation of Offences Act 1996

Magistrates Court Act 1991

Motor Vehicles Act 1959

Summary Procedure Act 1921

Victims of Crime Act 2001

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2017	71	<i>Fines Enforcement and Debt Recovery Act 2017</i>	12.12.2017	12.12.2017 except ss 3 to 47, 67 to 76 & Sch 1 (cll 1 to 35)—30.4.2018 (<i>Gazette 6.2.2018 p609</i>) and except ss 48 to 60, 61(1) to (6), 62 to 66—1.2.2019 (<i>Gazette 17.1.2019 p94</i>) and except s 61(7) to (10)—12.12.2019 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2018	29	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2018</i>	15.11.2018	Pt 2 (ss 4 & 5)—s 4 immediately after s 23 of 71/2017—30.4.2018: s 2(2); s 5 immediately after s 48 of 71/2017—1.2.2019: s 2(3)
2021	17	<i>Statutes Amendment (Transport Portfolio) Act 2021</i>	20.5.2021	Pt 4 (s 8)—11.5.2023 (<i>Gazette 11.5.2023 p929</i>)
2021	45	<i>Unclaimed Money Act 2021</i>	25.11.2021	Sch 1 (cl 5)—uncommenced

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	12.12.2019
Pt 2		
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	30.4.2018
Pt 4		
s 22		
s 22(10)	amended by 17/2021 s 8	11.5.2023
s 23		
s 23(4a)	inserted by 29/2018 s 4	30.4.2018
s 48		
s 48(1)		
public authority	(b)(i), (ii) deleted by 29/2018 s 5	1.2.2019
Pt 5		
s 42		
s 42(5)	amended by 45/2021 s 5(1), (2)	uncommenced—not incorporated
Sch 1		
Pts 1—7	<i>omitted under Legislation Revision and Publication Act 2002</i>	30.4.2018

Historical versions

30.4.2018

1.2.2019

12.12.2019