



Queensland

State Penalties Enforcement Act 1999

Current as at [Not applicable]

Indicative reprint note

This is an **unofficial** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Revenue and Other Legislation Amendment Bill 2018. This indicative reprint has been prepared for information only—**it is not an authorised reprint of the Act**.

Some enacted but uncommenced amendments included in the *State Penalties Enforcement Amendment Act 2017* No. 13 have also been incorporated in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Revenue and Other Legislation Amendment Bill 2018—22 August 2018.

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State Penalties Enforcement Act 1999

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State Penalties Enforcement Act 1999

An Act about the issue and enforcement of infringement notices, the enforcement of court ordered fines and certain court ordered debts, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *State Penalties Enforcement Act 1999*.

Editor's notes—

Uncommenced amendments to the following provisions have been included in this indicative reprint—

- sections 14A, 15, 22–24, 26–28, 30, 38–39, 41, 42, 51–52, 54B, 61, 62A–62D, 63, 63A, 73D, 75, 105–107, 108F, 108H, 110, 113, 119, 119A, 150B, 151, 153, 155, 157, 188–192
- parts 3A, 4 and 9
- sch 2.

See 2017 Act No. 13 ss 11, 12, 14–16, 18–19, 20(2), 22–23, 25, 26(1)–(2), 27, 29(1)–(2), 30 (to the extent it om s 42), 31–33, 35–41, 43, 44(3), 49–51, 55(1), 64–65, 69–70, 75, 81(2)–(3), 82(1), 83(2), (4), 88 (to the extent it ins ss 188, 189, 190, 191, 192), 89(2) (to the extent it oms defs *civil enforcement fee*, *default certificate*, *enforcement debtor*, *instalment payment notice*, *registration fee*, *threshold amount*), (4) (to the extent it ins defs *court debt payment notice*, *decision maker*, *early referral*, *early referral notice enforceable amount* (example), *enforcement debtor*, *enforcement fee*, *infringement notice default*, *payment plan*, *relevant offence*, *unpaid court debt*).

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

4 Objects

The objects of this Act include—

- (a) maintaining the integrity of fines as a viable sentencing or punitive option for offenders; and
- (b) maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced; and
- (c) reducing the cost to the State of enforcing fines and other money penalties.

5 Act has limited application to children

- (1) Subject to subsections (2) and (3), this Act does not apply to a child other than to the extent it allows a child to pay a fine stated in an infringement notice for an offence in full or by instalments to an administering authority instead of being prosecuted for the offence.
- (2) If a child aged at least 17 years is served with an infringement notice for a transport demerit points offence, this Act applies to the child in relation to the offence in the same way it applies to an adult.
- (3) An enforcement order, fine collection notice or warrant may not be issued under this Act against a child except as allowed under subsection (2).
- (4) A reference in this Act to a Magistrates Court includes, in relation to a matter involving a child, a reference to the Childrens Court.

- (5) In this section—

transport demerit points offence means an offence for which a number of demerit points may be allocated against the offender's traffic history under a regulation under the *Transport Operations (Road Use Management) Act 1995*.

6 Act binds State, Commonwealth and other States

- (1) This Act binds the State and, as far as the legislative authority of the Parliament permits, the Commonwealth and the other States.
- (2) However, an entity mentioned in subsection (1) can not be prosecuted for an offence against this Act.

Part 2 The State Penalties Enforcement Registry

7 The State Penalties Enforcement Registry

A State Penalties Enforcement Registry (*SPER*) is established.

8 Functions of SPER

- (1) SPER has the functions conferred or imposed on it under this or another Act.
- (2) In particular, SPER has the following functions—
 - (a) collecting amounts payable to SPER under this or another Act;
 - (b) administering the making of enforcement orders;
 - (c) taking enforcement action under this Act.
- (3) The functions must be performed in accordance with the SPER charter.

9 The SPER charter

The SPER charter includes the following—

- (a) maximising the collection, for victims of offences, of amounts ordered to be paid under the *Penalties and Sentences Act 1992* by way of restitution or compensation;
- (b) maximising the amount of fines and other money penalties paid before enforcement action is taken;
- (c) promoting a philosophy that non-monetary satisfaction of SPER debts is for the needy in the community and not an alternative to payment of a fine for those who can afford to pay the fine;
- (d) reducing the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms;
- (e) promoting public education about the obligations of offenders and the consequences of not satisfying the obligations.

10 Staff and contractors

- (1) There is to be a registrar of SPER.
- (2) The registrar and other staff of the registry are to be employed under the *Public Service Act 2008*.
- (3) Also, for the administration and enforcement of this Act, the registrar may engage under a contract—
 - (a) debt collectors as enforcement officers; and
 - (b) other persons for other purposes.
- (4) Persons engaged under subsection (3) are engaged under this Act and not the *Public Service Act 2008*.

10A Service contractors

- (1) This section applies if, under section 10(3)(b), the registrar engages an entity (the *service contractor*) under a contract

(the **service contract**) to provide services to assist the registrar in the administration and enforcement of this Act.

(2) The service contract may—

- (a) state the services (each, an **authorised service**) the service contractor is required to provide; and
- (b) impose a condition on the provision of an authorised service by the service contractor; and

Example for paragraph (b)—

a condition requiring the service contractor to obtain the registrar's approval before providing a particular authorised service

- (c) include a delegation by the registrar under section 10C(1) or (3); and
- (d) authorise the service contractor to subcontract the provision of an authorised service; and
- (e) impose a condition on the service contractor's authority to subcontract.

Example for paragraph (e)—

a condition requiring the service contractor to subcontract only with subcontractors approved by the registrar

(3) When providing an authorised service in accordance with the service contract, the service contractor may—

- (a) use the name of SPER; and
- (b) do anything necessary for, or incidental to, the provision of the authorised service.

(4) In the performance of an authorised service by the service contractor in accordance with the service contract—

- (a) laws applying to the registrar, other than a law prescribed by regulation, apply to the service contractor as if the service contractor were the registrar; and
- (b) laws applying to SPER, other than a law prescribed by regulation, apply to the service contractor as if the service contractor were SPER.

- (5) Anything done—
 - (a) by the service contractor in accordance with the service contract; or
 - (b) in relation to the service contractor in relation to an authorised service;is taken to have been done by or in relation to the registrar or SPER, as the case requires.
- (6) However, the engagement of the service contractor under the service contract does not relieve the registrar of the registrar's obligations in relation to the proper administration and enforcement of this Act.

10B Service subcontractors

- (1) This section applies if, in accordance with a service contract, the service contractor subcontracts with another entity (the *service subcontractor*) for the provision of an authorised service.
- (2) The contract (the *service subcontract*) between the service contractor and the service subcontractor must comply with any condition imposed by the service contract in relation to subcontracting an authorised service.
- (3) The service subcontract—
 - (a) must state the authorised service the service subcontractor is required to provide; and
 - (b) may impose a condition on the service subcontractor's provision of the authorised service.
- (4) If the service contract includes a delegation under section 10C(1), the service subcontract may include a delegation of the prescribed function to the service subcontractor that complies with the delegation in the service contract.
- (5) If the service contract includes a delegation under section 10C(3), the service subcontract may include a subdelegation of the prescribed function to the service

subcontractor that complies with the delegation in the service contract.

- (6) When providing an authorised service in accordance with the service subcontract, the service subcontractor may—
 - (a) use the name of SPER; and
 - (b) do anything necessary for, or incidental to, the provision of the authorised service.
- (7) In the performance of an authorised service by the service subcontractor in accordance with the service subcontract—
 - (a) laws applying to the registrar, other than a law prescribed by regulation, apply to the service subcontractor as if the service subcontractor were the registrar; and
 - (b) laws applying to SPER, other than a law prescribed by regulation, apply to the service subcontractor as if the service subcontractor were SPER.
- (8) Anything done—
 - (a) by the service subcontractor in compliance with the service subcontract; or
 - (b) in relation to the service subcontractor in relation to an authorised service;is taken to have been done by or in relation to the registrar or SPER, as the case requires.
- (9) However, the engagement of the service subcontractor under the service subcontract does not relieve—
 - (a) the registrar of the registrar's obligations in relation to the proper administration and enforcement of this Act; or
 - (b) the service contractor of the service contractor's obligations under the service contract.
- (10) In this section—
prescribed function see section 10C(6).

10C Delegation of prescribed functions

- (1) The registrar may delegate the registrar's power to delegate a prescribed function to a service contractor.

Note—

For the registrar's power to delegate, see section 161.

- (2) A delegation under subsection (1) can not permit the subdelegation of the delegated power.
- (3) Also, the registrar may delegate a prescribed function to a service contractor.
- (4) A delegation under subsection (3) may permit the subdelegation of the prescribed function by the service contractor.
- (5) However, the service contractor must not delegate or subdelegate a prescribed function to anyone other than—
 - (a) an appropriately qualified agent, employee or executive officer of the service contractor; or
 - (b) an appropriately qualified subcontractor engaged by the service contractor; or
 - (c) an appropriately qualified agent, employee or executive officer of a service subcontractor mentioned in paragraph (b).
- (6) In this section—

prescribed function means a function or power of the registrar, or of SPER, under this Act that is prescribed by regulation for this section.

11 Management of office

- (1) The registrar may make or issue an enforcement order, fine collection notice or warrant under this Act.
- (2) The registrar has, for making or issuing an order or warrant under this Act, the same immunities and protection as officers of a court.

- (3) Anything done by the registrar in the name of or for SPER is taken to have been done by SPER.

11A Identity cards

- (1) The registrar must issue an identity card to each enforcement officer.
- (2) The identity card must—
 - (a) contain a recent photograph of the enforcement officer; and
 - (b) contain a copy of the enforcement officer's signature; and
 - (c) identify the person as an enforcement officer appointed under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

11B Return of identity card

If the office of a person as an enforcement officer ends, the person must return the person's identity card to the registrar within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

12 Protection from liability

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence, when acting as an official.
- (2) If subsection (1) prevents a civil liability attaching to an official, liability attaches instead to the State.
- (3) In this section—

official means—

- (a) the registrar; or
- (b) another member of the staff of SPER; or
- (c) an enforcement officer.

Part 3 Infringement notices

Division 1 Service of infringement notices

13 Service of infringement notices—generally

- (1) If an authorised person reasonably believes a person has committed an infringement notice offence, the authorised person may serve an infringement notice on the person for the offence.
- (2) If the infringement notice offence involves a vehicle, the infringement notice may be served under section 14.
- (3) Section 14 does not limit the ways an infringement notice may be served on a person.
- (4) An infringement notice for an offence must not be served on a person after the end of the period within which an administering authority may start a prosecution for the offence and, if served, must be withdrawn.
- (5) Section 28(2) to (4) applies to the withdrawal of an infringement notice under subsection (4).

14 Service of infringement notices for infringement notice offences involving vehicles

- (1) An infringement notice for an infringement notice offence involving a vehicle may be served—
 - (a) on the owner of the vehicle; or

- (b) on the person named in a known user declaration as the person who was in charge of the vehicle at the relevant time; or
 - (c) on the person named in a sold vehicle declaration as the person to whom the vehicle had been sold or otherwise disposed of before the relevant time.
- (2) If the infringement notice is to be served by post, the notice may be addressed to the person—
 - (a) for the owner of the vehicle—at the address of the owner in the register of vehicles kept under a registration Act; or
 - (b) for the person named in a known user declaration—at the person's address stated in the declaration or another address for the person in the register of vehicles kept under a registration Act; or
 - (c) for the person named in a sold vehicle declaration—at the person's address stated in the declaration or another address for the person in the register of vehicles kept under a registration Act.
- (3) Also, the infringement notice may be served by securely placing or attaching the notice, addressed to the owner, without further description, on or to the vehicle in a conspicuous position.
- (4) If the infringement notice is served under subsection (3), it is taken to have been served on the owner on the day it is placed on or attached to the vehicle.
- (5) A person must not interfere with an infringement notice placed on or attached to a vehicle unless the person is the owner or the person in charge of the vehicle at the relevant time.

Maximum penalty for subsection (5)—40 penalty units.

14A *Recovery of vehicle identification costs*

- (1) *This section applies if, in relation to an infringement notice for an infringement notice offence involving a vehicle, an administering authority reasonably incurs a cost in establishing ownership of the vehicle (a **verification cost**).*
- (2) *The fine for the offence is increased by the amount of the verification cost.*

15 *Infringement notices*

- (1) An infringement notice must be in the form approved by the administering authority.
- (2) The notice must state the following—
 - (a) a unique number for the notice;
 - (b) the date of the notice;
 - (c) in relation to the alleged offender, unless the notice is served under section 14(3)—
 - (i) the alleged offender's full name, or surname and any initial, and address; or
 - (ii) the particulars that are, under a regulation, identifying particulars for the alleged offender;
 - (d) in relation to the offence, particulars that are enough to show clearly the nature of the offence, including the following—
 - (i) if the offence is one prescribed under a regulation for this paragraph—the identifying particulars prescribed under the regulation for the offence;
 - (ii) if the offence took place over a period and did not involve a vehicle—the period over which the offence was committed;
 - (iii) the place the offence was committed and, subject to subparagraph (ii), the time and date of the offence;

- (iv) if the offence involves a vehicle—the identifying particulars prescribed under a regulation for the vehicle;
- (v) if the offence involves an animal—the identifying particulars prescribed under a regulation for the animal;
- (e) the fine for the offence and how and where the fine may be paid;
- (f) *the ways the alleged offender may respond to the notice under section 22;*
- (g) *that the notice may be withdrawn at any time before the fine is satisfied in full;*
- (h) *if the offence involves a vehicle, the general effect of section 17;*
- (i) *if the amount of the fine is increased under section 14A because the administering authority incurred a verification cost—the amount of the verification cost;*
- (j) *that if the alleged offender defaults—*
 - (i) *the fine may be registered with SPER as an infringement notice default; and*
 - (ii) *additional fees may be payable; and*
 - (iii) *enforcement action may be taken to recover the amount of the fine.*

16 Effect of this part on prosecution

- (1) The fact that an infringement notice has been, or could be, served on a person for an offence, does not affect the starting or continuation of a proceeding against the person or anyone else in a court for the offence.
- (2) This part does not—
 - (a) require the serving of an infringement notice on a person for an offence, as opposed to proceeding against the person in another way; or

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- (b) limit or otherwise affect the penalty that may be imposed by a court for an offence.

Division 2 Liability for infringement notice offences involving vehicles

17 Liability for infringement notice offences involving vehicles

- (1) If—
 - (a) an infringement notice offence involving a vehicle happens; and
 - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the time of the offence;

the owner is taken to have committed the offence even though the actual offender may have been someone else.
- (2) If the actual offender is someone else, subsection (1) does not affect the liability of the actual offender, but—
 - (a) the owner and the actual offender can not both be punished for the offence; and
 - (b) if a fine is paid or a penalty is imposed on one of them for the offence, a further penalty must not be imposed on or recovered from the other person for the offence.
- (3) However, the owner must not be taken under subsection (1) to have committed the offence if, within 28 days after the date of an infringement notice or service of a summons for the offence, the owner makes and gives to the administering authority an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration for the vehicle for the offence.
- (4) The declaration must be made by—
 - (a) if the owner is an individual—the owner; or

- (b) if the owner is a corporation—an executive officer of the corporation or the responsible operator.

18 Effect of illegal user declaration

- (1) This section applies if—
 - (a) an infringement notice offence involving a vehicle happens; and
 - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
 - (c) the person makes and gives to the administering authority an illegal user declaration for the vehicle.
- (2) In a proceeding for the offence against the owner, a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the vehicle was stolen or illegally taken at the relevant time.

19 Effect of known user declaration

- (1) This section applies if—
 - (a) an infringement notice offence involving a vehicle happens; and
 - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
 - (c) the person makes and gives to the administering authority a known user declaration for the vehicle.
- (2) This section and section 17 apply as if the person named in the declaration as the person in charge of the vehicle at the relevant time (the *user*) were the owner of the vehicle at that time.
- (3) A proceeding for the offence may be started against the user only if a copy of the declaration has been served on the user.

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- (4) In a proceeding for the offence against the user, the declaration is evidence that the user was in charge of the vehicle at the relevant time.
- (5) In a proceeding for the offence against the owner mentioned in subsection (1)(b), a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the owner was not in charge of the vehicle at the relevant time.

20 Effect of sold vehicle declaration

- (1) This section applies if—
 - (a) an infringement notice offence involving a vehicle happens; and
 - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
 - (c) the person makes and gives to the administering authority a sold vehicle declaration for the vehicle.
- (2) This section and section 17 apply as if the person named in the declaration as the person to whom the vehicle was sold or otherwise disposed of (the **buyer**) were the owner of the vehicle from the time of the sale or disposal.
- (3) A proceeding for the offence may be started against the buyer only if a copy of the declaration has been served on the buyer.
- (4) In a proceeding for the offence against the buyer, the declaration is evidence that the buyer was the owner of the vehicle at the relevant time.
- (5) In a proceeding for the offence against the owner mentioned in subsection (1)(b), a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the owner had sold or disposed of the vehicle before the relevant time and was not in charge of the vehicle at that time.

21 Effect of unknown user declaration

- (1) This section applies if—
 - (a) an infringement notice offence involving a vehicle happens; and
 - (b) an infringement notice for the offence is served on the person who is the owner of the vehicle at the relevant time; and
 - (c) the owner makes and gives to the administering authority an unknown user declaration for the vehicle.
- (2) In a proceeding for the offence against the owner, a court must not find the owner guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise—
 - (a) that—
 - (i) if the owner is an individual—the owner was not in charge of the vehicle at the relevant time; or
 - (ii) if the owner is a corporation—the vehicle was not being used for the purposes of the corporation at the relevant time; and
 - (b) that the inquiries made to find out the name and address of the person who was in charge of the vehicle at the relevant time—
 - (i) were reasonable in the circumstances; and
 - (ii) were carried out with appropriate diligence.

Division 3 Obligations and options under infringement notices

22 *Ways alleged offender may respond to an infringement notice*

- (1) If an infringement notice is served on an alleged offender for an offence, the alleged offender must, within 28 days after the date of the infringement notice—
 - (a) pay the fine in full to the administering authority; or
 - (b) make to the administering authority an election to have the matter of the offence decided in a Magistrates Court; or
 - (c) *apply to the administering authority under section 23 for the immediate registration of the fine for the purpose of paying the fine under a payment plan with SPER; or*
 - (d) *if relevant, give to the administering authority an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration for the vehicle for the offence; or*
 - (e) *if the administering authority offers the alleged offender a payment plan administered by the authority—accept the payment plan.*
- (2) *An election to have the matter of the offence decided in a Magistrates Court must be made in the way acceptable to the administering authority.*

23 *Application for early referral of fine to SPER*

- (1) *This section applies if—*
 - (a) *an infringement notice is served on a person for an offence; and*
 - (b) *the fine for the offence is at least the amount prescribed by regulation.*

- (2) *For the purpose of paying the fine under a payment plan with SPER, the person may apply to the administering authority for the immediate registration of the unpaid amount of the fine under section 34(1)(a).*

Note—

See part 3A for payment plans with SPER.

- (3) *The application—*
- (a) *may only be made within 28 days after the date of the infringement notice; and*
 - (b) *may only be made in the approved form or another way acceptable to the administering authority; and*
 - (c) *must be accompanied by an amount (the **upfront payment**), of at least the amount prescribed by regulation, to be paid towards the amount of the fine.*
- (4) *However, the application need not be accompanied by the upfront payment if—*
- (a) *the administering authority accepts payment of an upfront payment by direct debit from an account held with a financial institution; and*
 - (b) *the person authorises payment of the upfront payment by direct debit from an account held with a financial institution.*
- (5) *If the application complies with subsection (3), the administering authority must register the unpaid amount of the fine with SPER under section 34 as soon as practicable after receiving the application.*
- (6) *Nothing in this section prevents an administering authority from offering the alleged offender a payment plan that is administered by the authority.*

25 Alleged offender who pays can not be prosecuted

- (1) This section applies if—

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- (a) an infringement notice is served on an alleged offender for an offence; and
 - (b) the alleged offender pays the fine for the offence as required by the infringement notice or the alleged offender begins to otherwise discharge the fine.
- (2) The alleged offender must not be prosecuted in a court for the offence.
- (3) Subsection (2) applies even though more than 1 infringement notice has been served on the alleged offender for the offence.

26 *When alleged offender can not elect to have offence decided by court*

A person served with an infringement notice for an offence may not elect to have the matter decided by a Magistrates Court if—

- (a) *the person pays the fine for the offence as required by the infringement notice; or*
- (b) *after applying for early referral of the fine for the offence to SPER under section 23, the person enters into a payment plan for the fine.*

27 *When infringement notice offence is to be decided by court*

- (1) If, within 28 days after the date of an infringement notice, an alleged offender—
 - (a) elects under section 22(1)(b) to have the matter of the offence decided by a Magistrates Court; or
 - (b) takes no action under section 22;a proceeding for the offence may be started under the *Justices Act 1886*.
- (2) *Subsection (1)(b) does not prevent the administering authority registering an infringement notice default under section 34*

instead of starting a proceeding for the offence under the Justices Act 1886.

Division 4 Withdrawal and re-issue of infringement notice

28 Administering authority may withdraw infringement notice

- (1) An administering authority may withdraw an infringement notice at any time before the fine is satisfied in full.
- (2) For the withdrawal to be effective, the administering authority must—
 - (a) serve on the alleged offender a withdrawal notice in the approved form; and
 - (b) repay to the alleged offender any amount paid to the administering authority for the offence; and
 - (c) *if an infringement notice default was registered under section 34(1)(a) because of the infringement notice, give SPER a copy of the withdrawal notice.*
- (3) On complying with subsection (2)—
 - (a) this Act, other than this part, stops applying to the infringement notice offence; and
 - (b) a proceeding for the offence may be taken against any person (including the alleged offender) as if the notice had not been served on the alleged offender.
- (4) No compensation is payable to a person because of the administering authority's refusal to withdraw an infringement notice.

29 Cancellation of registration on withdrawal of infringement notice

- (1) If an administering authority gives SPER a copy of a withdrawal notice under section 28(2)(c), the registrar must, as soon as practicable after receiving the notice—
 - (a) cancel the registration of the relevant infringement notice default; and
 - (b) cancel any enforcement order issued because of the registration of the relevant infringement notice default; and
 - (c) refund any amount paid to SPER because of the registration of the infringement notice default.
- (2) If a person is subject to a work and development order for an enforcement order made because of the relevant infringement notice default—
 - (a) the registrar must revoke the work and development order or, if the work and development order is for more than the amount of the enforcement order, vary the work and development order to the lesser amount; and
 - (b) the person is not entitled to compensation for performing an activity under the work and development order, other than unpaid work; and
 - (c) if the person performed unpaid work under the work and development order, the administering authority must compensate the person for the unpaid work.
- (3) For subsection (2)(c), the registrar may, having regard to the amounts prescribed for unpaid work under section 165(11)(c), decide the amount of the compensation.
- (4) If the registrar revokes or varies a work and development order under subsection (2)(a), the registrar must give the person written notice of the revocation or variation.

30 Application to cancel infringement notice for mistake of fact

- (1) *This section applies to an infringement notice if an administering authority has registered an infringement notice default under section 34 in relation to the notice.*
- (2) If the registrar is satisfied—
- (a) a person has been incorrectly named in the infringement notice as the alleged offender for the relevant infringement notice offence because of a mistake of fact or the misuse of the name and other particulars of the person named in the infringement notice; and
 - (b) the administering authority has refused to withdraw the relevant infringement notice;
- the registrar may apply to a Magistrates Court for an order cancelling the infringement notice.
- (3) The court may cancel or refuse to cancel the infringement notice.
- (4) The court may decide an application under subsection (2) on written materials in the absence of a party if the court considers it appropriate.

31 Effect of cancellation of infringement notice

- (1) This section applies if an infringement notice is withdrawn under section 28 or cancelled under section 30.
- (2) If, because of the infringement notice, demerit points have been allocated against the alleged offender for an infringement notice offence under the *Nature Conservation Act 1992* or another law, prescribed under a regulation, that provides for the allocation of demerit points—
- (a) the demerit points for the offence are cancelled; and
 - (b) the relevant administering authority must make a note on any record it keeps in relation to the person clearly indicating that the demerit points allocated against the person have been cancelled.

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- (3) Without limiting subsection (2), if, because of the infringement notice, demerit points have been allocated against the alleged offender's traffic history for an infringement notice offence under the *Transport Operations (Road Use Management) Act 1995* or the Heavy Vehicle National Law (Queensland)—
 - (a) the demerit points for the offence are cancelled; and
 - (b) the chief executive of the department within which the *Transport Operations (Road Use Management) Act 1995* is administered must remove the record of the allocation of the demerit points from the alleged offender's traffic history.
- (4) Further, if, because of the infringement notice, a licence, permit or other authority has been suspended or cancelled, the suspension or cancellation stops having effect, unless the person's licence, permit or authority would still be suspended, cancelled or no longer in force for another reason.

32 Proceedings after cancellation of infringement notice

- (1) This section applies if an infringement notice is withdrawn under section 28 or cancelled under section 30.
- (2) If the infringement notice is withdrawn or cancelled and the name of the actual offender is known, nothing in this or any other Act prevents the administering authority issuing an infringement notice against the actual offender or starting a proceeding in a court for the offence against the actual offender.
- (3) However, the period of limitation within which a proceeding for the offence may be started against the actual offender starts on the day the infringement notice is withdrawn or cancelled.
- (4) Subsection (3) provides some other time limit for making complaint for the purposes of the *Justices Act 1886*, section 52.

Part 3A **Payment plans**

32A Application to registrar for payment plan

- (1) *This section applies if—*
- (a) *a person is served with—*
 - (i) *an early referral notice; or*
 - (ii) *a court debt payment notice; or*
 - (iii) *an enforcement order; or*
 - (b) *a person is invited by the registrar to apply for a payment plan.*
- (2) *The person may, within the time limit, apply to the registrar to pay a proposed amount under a payment plan.*
- (3) *The application may only be made in the approved form or another way acceptable to the registrar.*

Examples of other ways an application may be made that may be acceptable to the registrar—

by telephone or by use of the internet

- (4) *In this section—*
- time limit*** *means—*
- (a) *for an early referral notice—28 days after the date of the notice; or*
 - (b) *for a court debt payment notice—the period stated in the notice; or*
 - (c) *for an enforcement order—28 days after the date of the order; or*
 - (d) *for an invitation—the period stated in the invitation.*

32B Offering payment plan

- (1) *This section applies if a person applies to the registrar to pay an amount under a payment plan under section 32A.*

- (2) *The registrar must decide to—*
 - (a) *offer the person a payment plan; or*
 - (b) *if the person is already subject to a payment plan when making the decision—offer a variation of the previous plan; or*
 - (c) *refuse to offer the person a payment plan.*
- (3) *Without limiting the reasons why the registrar may refuse to offer the person a payment plan, the registrar may refuse because—*
 - (a) *the person has previously failed to pay an amount to SPER; or*
 - (b) *the person failed to comply with another payment plan entered into by the person; or*
 - (c) *the registrar has previously taken enforcement action against the person; or*
 - (d) *the person failed to comply with a work and development order the person was subject to; or*
 - (e) *the person has not satisfied the registrar that the person can not pay the amount in full or pay the amount of the required instalments.*
- (4) *The registrar may—*
 - (a) *decide to only offer the person a payment plan that is for all or part of the person's SPER debt, regardless of the amount the person proposed in the application to pay under a payment plan; or*
 - (b) *offer the person a payment plan on the conditions the registrar is satisfied are required to ensure the person's compliance with the plan or cooperation with SPER.*
- (5) *The registrar may communicate the offer of a payment plan to the person in the way decided by the registrar.*
- (6) *If the registrar decides to refuse to offer the person a payment plan, the registrar must notify the person of the decision.*

32C Acceptance of payment plan

If a person accepts a payment plan offered by the registrar under section 32B—

- (a) the registrar must give the person written notice of the plan including information about any conditions of the plan and the consequences for failing to comply with the plan; and*
- (b) SPER is responsible for collecting, and may collect, the amount remaining to be paid under the plan.*

32D Amending payment plan

- (1) The registrar may, with the agreement of the person subject to a payment plan, amend the plan or the conditions of the plan.*
- (2) As soon as practicable after amending the payment plan, the registrar must give the person written notice of the amended payment plan, including information about any conditions of the plan and the consequences for failing to comply with the plan or its conditions.*

32E Cancelling payment plan

- (1) The registrar may immediately cancel a payment plan without prior notice being given to the person subject to the plan if—*
 - (a) the person fails to pay an instalment as required under the plan; or*
 - (b) the person fails to comply with a condition of the plan.*
- (2) Also, the registrar may immediately cancel a payment plan without prior notice being given to the person subject to the plan if—*
 - (a) the enforceable amount of the person's SPER debt increases; and*
 - (b) the person does not discharge the increase by 1 or a combination of the following ways within 14 days after the day the person's SPER debt increases—*

- (i) *paying an amount to SPER;*
 - (ii) *entering into a work and development order for an amount; and*
- (c) *if the registrar proposes to amend the plan under section 32D—the person does not agree to the amendment.*
- (3) *However, the registrar must not cancel the payment plan if—*
 - (a) *the registrar is satisfied the plan can be amended to cover the increase by 1 or both of the following—*
 - (i) *increasing the amount of the instalments to be made under the plan;*
 - (ii) *extending the duration of the plan; and*
 - (b) *the person agrees to the amendment.*
- (4) *As soon as practicable after cancelling a payment plan under this section, the registrar must give the person subject to the plan written notice of the cancellation.*

Part 3B Work and development orders

32F Definitions for part

In this part—

approved sponsor, for a work and development order, means a person or entity approved by the registrar for that type of work and development order.

eligibility assessment see section 32K(1).

WDO eligible amount, of a person's SPER debt—

- (a) *means any amount that is—*
 - (i) *if an enforcement order has been served on the person and the person has not taken any action under section 41(1), the amount stated in the order; or*

- (ii) *the enforceable amount of the person's SPER debt; but*
 - (b) *does not include an amount that a court has ordered the person pay to a specified person or entity.*
- work and development order** see section 32G(1).

32G Work and development orders

- (1) A **work and development order** is an order requiring a person to undertake any of the following to satisfy all or part of the WDO eligible amount of the person's SPER debt—
 - (a) unpaid work for, or on behalf of, an approved sponsor;
 - (b) medical or mental health treatment under an approved sponsor's treatment plan provided by a health practitioner;
 - (c) an educational, vocational or life skills course as decided by an approved sponsor;
 - (d) financial or other counselling as decided by an approved sponsor;
 - (e) drug or alcohol treatment as decided by an approved sponsor;
 - (f) if the person is under 25 years of age—a mentoring program as decided by an approved sponsor;
 - (g) if the person is an Aborigine or a Torres Strait Islander and lives in a remote area—a culturally appropriate program as decided by an approved sponsor.
- (2) A work and development order must be in the approved form and state—
 - (a) the amount of a person's SPER debt that is to be satisfied by complying with the order; and
 - (b) the activities that must be undertaken to comply with the order.
- (3) In this section—

health practitioner means—

- (a) a medical practitioner; or
- (b) a psychologist within the meaning of the Health Practitioner Regulation National Law; or
- (c) a registered health practitioner endorsed by the Nursing and Midwifery Board of Australia as a nurse practitioner under the Health Practitioner Regulation National Law.

registered health practitioner see the Health Practitioner Regulation National Law, section 5.

remote area means an area of the State prescribed by regulation.

32H Eligibility for work and development order

An individual is eligible for a work and development order if the individual is an enforcement debtor and is unable to pay the WDO eligible amount of the individual's SPER debt because the individual—

- (a) is experiencing financial hardship; or
- (b) has a mental illness within the meaning prescribed by regulation; or
- (c) has a cognitive or intellectual disability; or
- (d) is homeless; or
- (e) has a substance use disorder as prescribed by regulation; or
- (f) is experiencing domestic and family violence.

32I No work and development order for amount payable to specified person or entity

A work and development order can not be applied to satisfy that part of a person's SPER debt that a court has ordered the person pay to a specified person or entity.

Examples of court orders for the payment of part of a person's SPER debt to a specified person or entity—

- *an order for restitution or compensation under the Penalties and Sentences Act 1992, section 35(1)*
- *an order for damages under the Penalties and Sentences Act 1992, section 190*
- *an order to pay costs to a complainant under the Justices Act 1886, section 157*
- *an order to pay a fixed portion of a penalty to an individual*

32J Application for work and development order

- (1) *An approved sponsor may, with the agreement of an individual (the **subject applicant**), apply on behalf of the individual to the registrar for a work and development order to satisfy all or part of the WDO eligible amount of the individual's SPER debt if the individual is eligible for the order under section 32H.*
- (2) The application must—
 - (a) state the grounds on which the subject applicant is eligible for the order; and
 - (b) state the activities that are proposed to be carried out by the subject applicant under a work and development order and the time by which the activities are proposed to be completed.
- (3) An application for a work and development order to satisfy an amount mentioned in section 32I is of no effect.

32K Eligibility assessment by approved sponsor

- (1) Before making an application for a work and development order under section 32J, the approved sponsor must undertake an assessment (an ***eligibility assessment***) of the applicant's eligibility for a work and development order under section 32H.

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- (2) The registrar may require the sponsor to give the registrar evidence to support the eligibility assessment within a stated period of not less than 28 days.
- (3) If the approved sponsor fails to comply with the requirement within the stated period, the application is taken to have been withdrawn.

32L Decision on application

- (1) After receiving an application for a work and development order under section 32J, the registrar must—
 - (a) make the order as applied for; or
 - (b) refuse to make the order.
- (2) The registrar must refuse to make the work and development order if making the order would result in more than the maximum number, as prescribed by regulation, of work and development orders applying to the person proposed to be subject to the order.
- (3) If the registrar makes the work and development order as applied for—
 - (a) the registrar must give a copy of the order to the person to be subject to the order; and
 - (b) the order takes effect when the order is made or on the later date stated in the order.
- (4) If the registrar refuses to make the work and development order, the registrar must give the applicant a notice of the decision complying with the QCAT Act, section 157.

32M Unpaid work must be performed cumulatively

All unpaid work required to be undertaken by a person under a work and development order is to be undertaken cumulatively with any community service the person must perform under another Act.

32N Effect of this part on enforcement action

- (1) This section applies if a work and development order is made for an individual in relation to an amount.
- (2) No enforcement action may be taken against the individual in relation to the amount while the individual is complying with the order.
- (3) To remove any doubt, it is declared that nothing in subsection (2) prevents enforcement action being taken against the individual in relation to an amount that is not subject to the order.

32O Variation of work and development order

- (1) *An approved sponsor for a work and development order may, with the agreement of the individual subject to the order, apply to SPER on behalf of the individual for an increase in the order amount because an additional WDO eligible amount of the individual's SPER debt is proposed to become subject to the order.*
- (2) The individual subject to a work and development order may apply to SPER for a decrease in the order amount because the individual proposes to pay an amount to SPER or enter into a payment plan for an amount.
- (3) After considering an application made under subsection (1) or (2), the registrar must—
 - (a) vary the work and development order; or
 - (b) refuse to vary the work and development order.
- (4) If the registrar varies the work and development order, the registrar must—
 - (a) give the individual subject to the order a copy of the varied order in the approved form; and
 - (b) notify the approved sponsor that the order has been varied.

- (5) If the registrar refuses to vary the work and development order, the registrar must give the applicant a notice of the decision complying with the QCAT Act, section 157.
- (6) The registrar may, with the agreement of the individual subject to a work and development order, vary the order by giving the individual a copy of the varied order in the approved form.
- (7) In this section—
order amount, in relation to a work and development order, means the amount of an individual's SPER debt that would be satisfied under the order if the order were fully complied with.

32P Withdrawal of work and development order

- (1) The approved sponsor for a work and development order may apply to the registrar to withdraw the order because the approved sponsor is unable to continue as the approved sponsor.
- (2) The individual subject to a work and development order may apply to the registrar to withdraw the order because the individual believes the approved sponsor will be unable to continue as the approved sponsor.
- (3) After considering an application made under subsection (1) or (2), the registrar must—
 - (a) withdraw the work and development order; or
 - (b) refuse to withdraw the work and development order.
- (4) *The registrar must give written notice of the decision to—*
 - (a) the applicant; and
 - (b) if the applicant is not the individual subject to the work and development order—the individual.
- (5) If the registrar refuses to withdraw the work and development order, the notice given to an applicant under subsection (4) must comply with the QCAT Act, section 157.

- (6) To remove any doubt, it is declared that any amount not taken to be satisfied under the work and development order when it is withdrawn continues to be payable to SPER.
- (7) Subsection (8) applies if—
 - (a) a person is subject to a work and development order; and
 - (b) before the work and development order is due to end, the registrar becomes aware that the amount remaining to be satisfied under the order is nil.
- (8) As soon as practicable after becoming aware of the matter, the registrar must withdraw the work and development order and give the person notice of the withdrawal.

32Q Revocation of work and development order

- (1) The registrar may revoke a work and development order if—
 - (a) the registrar is satisfied that the individual subject to the order has failed, without reasonable excuse, to comply with the order; or
 - (b) the registrar believes that—
 - (i) information provided in, or in connection with, the application for the order is false or misleading in a material particular; or
 - (ii) information provided in, or in connection with, an eligibility assessment provided by an approved sponsor is false or misleading in a material particular; or
 - (iii) the individual subject to the order no longer meets the eligibility criteria stated in the person's application for the order; or
 - (iv) the approved sponsor supervising compliance with the order is unable to satisfactorily continue the supervision or is in breach of any obligation under this part; or

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- (v) the person or entity supervising compliance with the order is no longer an approved sponsor.
- (2) Before revoking the work and development order the registrar must, by written notice given to the person subject to the order, advise the person that—
 - (a) the registrar proposes to revoke the order and the reason for revoking the order; and
 - (b) the person may object to the registrar revoking the order by giving the registrar, within a stated period of at least 28 days, written reasons as to why the order should not be revoked.
- (3) After considering all objections, if any, made under subsection (2)(b), the registrar must decide to—
 - (a) take no further action in relation to the order; or
 - (b) vary the order; or
 - (c) revoke the order.
- (4) After making a decision under subsection (3) the registrar must give the person written notice of the decision.
- (5) Also, if the decision is to vary or revoke the order, the notice of the decision must comply with the QCAT Act, section 157.

32R Satisfaction of SPER debt

- (1) This section applies to a person subject to a work and development order.
- (2) If the person complies with the order, the amount stated in the order is taken to be satisfied.
- (3) If the person pays the amount stated in the order, the order is taken to have been complied with.
- (4) If a person complies with some, but not all, of the requirements of the order, the amount stated in the order is only satisfied to the extent of the value of the activities that have been undertaken at the rate or rates set out in the order.

32S External review of decisions under this part

- (1) This section applies to a person entitled to be given notice of any of the following decisions—
 - (a) a decision to refuse to make a work and development order under section 32L;
 - (b) a decision to refuse to vary a work and development order under section 32O;
 - (ba) *a decision to refuse to withdraw a work and development order under section 32P;*
 - (c) a decision to vary or revoke a work and development order under section 32Q.
- (2) The person may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

Part 4 Enforcement orders

Division 1 Preliminary

33 What is an infringement notice default

An ***infringement notice default*** occurs if a person is served with an infringement notice and—

- (a) *the person does not respond to the notice as provided under section 22; or*
- (b) *after accepting a payment plan offered by the administering authority, the person fails to pay an instalment under the plan.*

Note—

Section 22 provides for the ways a person served with an infringement notice must respond to the notice within 28 days after the date of the notice.

33A What is an unpaid court debt

- (1) A person's **unpaid court debt** is any part of the person's court debt that remains unpaid.
- (2) A person's **court debt** is an amount that the person is required to pay under any of the following—
 - (a) an order fining the person for an offence;
 - (b) an order under the Penalties and Sentences Act 1992, section 33B(1) that an amount be paid on the forfeiture of a recognisance;
 - (c) an order that the person pay to someone else an amount by way of restitution or compensation under the Penalties and Sentences Act 1992, section 35(1);
 - (d) an order that the person pay a penalty mentioned in the Penalties and Sentences Act 1992, section 182A or 185;
 - (e) an order under the Bail Act 1980, section 32(1) or 32A(1) that an amount be paid on the forfeiture of an undertaking;
 - (f) an order under the Justices Act 1886, section 161A(3);
 - (g) an order made before 27 November 2000 that the person pay an amount under the Crown Proceedings Act 1980, section 13 or 14;
 - (h) an order mentioned in the Industrial Relations Act 2016, section 380(1) or 406(1);
 - (i) another fine or order prescribed by regulation.

Note—

See also the Penalties and Sentences Act 1992, section 179F and the Police Powers and Responsibilities Act 2000, sections 115 and 781.

Editor's note—

Subsection (2), note includes an amendment to an uncommenced amendment in 2017 Act No. 13 s 26—see the Revenue and Other Legislation Amendment Bill 2018 s 77.

- (3) However, a **court debt** does not occur under subsection (2)(d) or (f) if, at the time the court makes the order, the court can

not order that payment of the unpaid amount can be satisfied by imprisoning the person for a period.

- (4) *A **court debt** also occurs if, on being sentenced for an offence, an offender becomes liable to pay the State the offender levy.*

Division 1A Registering unpaid amounts with SPER for collection

34 Registering unpaid amounts with SPER

- (1) *An administering authority—*
- (a) *may register with SPER an infringement notice default; and*
 - (b) *must register with SPER the unpaid amount of a fine the subject of an application complying with section 23(3) (an **early referral**).*
- (2) *However, the administering authority must not register a matter under subsection (1) if the period within which the authority may start a prosecution for the offence, to which the default relates, has expired.*
- (3) *A court may register with SPER an unpaid court debt.*
- (4) *A matter registered under subsections (1) or (3) must be registered together with the particulars prescribed by regulation.*

35 Lodgement fee for particular administering authorities

- (1) *This section applies to an administering authority if the authority is entitled under an Act to retain the amount of any fine paid to it.*
- (2) *The administering authority must pay SPER the fee prescribed by regulation each time the authority registers a matter under section 34(1).*

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- (3) *The registrar may refund the fee under the circumstances prescribed by regulation.*

36 Effect of registration on collection and prosecution

- (1) *This section applies if any of the following matters are registered with SPER—*
- (a) *an infringement notice default;*
 - (b) *an early referral;*
 - (c) *an unpaid court debt.*
- (2) *SPER is responsible for collecting any unpaid amount relating to the matter.*
- (3) *A proceeding against a person for an offence the subject of the infringement notice default or early referral may be started in a court only if authorised under this part.*

37 Amending matter registered with SPER

An administering authority or court may request SPER amend the particulars registered for an infringement notice default, early referral or unpaid court debt if an amendment is necessary because of error, the dishonour of a cheque, or for another reason.

Division 1B Early referral notices

37A Serving early referral notice

- (1) *This section applies if an administering authority registers an early referral with SPER.*
- (2) *The registrar must serve a written notice (an **early referral notice**) on the person in the approved form informing the person that the unpaid amount of a fine for the person has been registered with SPER and how the person must respond to the notice under section 37B.*

37B Ways person may respond to early referral notice

A person served with an early referral notice must, within 28 days after the date of the notice, either—

- (a) pay the amount stated in the notice to SPER in full; or*
- (b) apply, under part 3A, to the registrar to pay the amount stated in the notice under a payment plan.*

37C Cancelling early referral notice

The registrar may cancel an early referral notice if satisfied a person has been incorrectly named in the notice because of a mistake of fact or the misuse of the name and other particulars of the person named in the notice.

Division 1C Court debt payment notices

37D Serving court debt payment notice

- (1) This section applies if a court registers with SPER an unpaid court debt for a person.*
- (2) The registrar must serve a written notice (a **court debt payment notice**) on the person in the approved form informing the person that an unpaid court debt for the person has been registered with SPER and how the person must respond to the notice under section 37E.*

37E Ways person may respond to court debt payment notice

- (1) A person served with a court debt payment notice must, within the period stated in the notice, either—*
 - (a) pay the amount stated in the notice to SPER in full; or*
 - (b) apply, under part 3A, to the registrar to pay the amount stated in the notice under a payment plan.*
- (2) The period stated in the court debt payment notice must be—*

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- (a) *if the court ordered a period within which the debt must be paid—the period ordered by the court; or*
- (b) *otherwise—the period ending 28 days after the date of the notice.*

Editor's note—

Paragraph (b) includes an amendment to an uncommenced amendment in 2017 Act No. 13 s 26—see the Revenue and Other Legislation Amendment Bill 2018 s 77.

37F C cancelling court debt payment notice

The registrar may cancel a court debt payment notice if satisfied a person has been incorrectly named in the notice because of a mistake of fact or the misuse of the name and other particulars of the person named in the notice.

37G Effect of appeal on court debt payment notice

- (1) *This section applies to a court debt payment notice for—*
 - (a) *a penalty imposed by a court for an offence; or*
 - (b) *an offender levy a person became liable to pay the State on being sentenced for an offence.*
- (2) *The court debt payment notice is suspended if, after a person is served with the notice, the person appeals against—*
 - (a) *for a penalty—the conviction or sentence for the offence; or*
 - (b) *for an offender levy—the conviction for the offence.*
- (3) *If the appeal is upheld, the registrar must refund to the person any amount paid to SPER in response to the court debt payment notice.*
- (4) *If the appeal is dismissed, the suspension of the court debt payment notice ends.*

Division 2 Enforcement orders

38 Issue of enforcement order

(1) *This section applies if—*

- (a) *an infringement notice default for a person is registered with SPER; or*
- (b) *the registrar serves an early referral notice on a person and the person does not do either of the following within 28 days after the date of the notice—*
 - (i) *pay SPER the amount stated in the notice;*
 - (ii) *enter into a payment plan for the amount stated in the notice; or*
- (c) *the registrar serves a court debt payment notice on a person and the person does not do either of the following within the period stated in the notice—*
 - (i) *pay SPER the amount stated in the notice;*
 - (ii) *enter into a payment plan for the amount stated in the notice; or*
- (d) *the scheme manager registers a debt under the Victims of Crime Assistance Act 2009, section 120.*

Editor's note—

Paragraph (d) is an amendment to an uncommenced amendment in 2017 Act No. 13 s 26—see the Revenue and Other Legislation Amendment Bill 2018 s 78.

- (2) The registrar must, in writing, order the person (**enforcement debtor**) to pay the amount stated in the order (**enforcement order**) to SPER within 28 days after the date of the order.
- (3) *The amount stated in the enforcement order must be the total of—*
 - (a) *the unpaid amount of—*
 - (i) *the infringement notice default; or*
 - (ii) *the early referral; or*

- (iii) *the amount stated in the court debt payment notice; and*
 - (b) *the amount of the enforcement fee the person must pay under section 39.*
- (4) The enforcement order may be made in the absence of, and without notice to, the enforcement debtor.
- (5) The enforcement order must be made in the approved form.
- (6) To remove any doubt, it is declared that a single enforcement order may relate to 1 or more infringement notice defaults.

39 *Enforcement fee imposed for enforcement order*

- (1) *This section applies if the registrar must make an enforcement order for an enforcement debtor under section 38(2).*
- (2) *The enforcement debtor must also pay SPER the enforcement fee prescribed by regulation for making the enforcement order.*
- (3) *The amount of the enforcement fee is added to the enforcement debtor's SPER debt.*

40 *Service of enforcement order*

The registrar may serve an enforcement order on a person by—

- (a) serving the order on the person personally; or
- (b) sending the order by ordinary post to the address for the person known to SPER; or
- (c) sending the order by electronic communication under section 158.

Division 3 Obligations and options under enforcement order

41 ***Ways enforcement debtor may respond to enforcement order***

(1) If an enforcement order is served on an enforcement debtor for an amount, the enforcement debtor must, within 28 days after the date of the enforcement order—

- (a) pay the amount stated in the order in full to SPER; or
- (b) *apply to SPER to pay the amount under a payment plan; or*

Note—

See part 3A for payment plans with SPER.

- (c) if the order relates to an infringement notice offence—make to SPER an election to have the matter of the offence decided in a Magistrates Court.

(2) Also, an approved sponsor may, with the agreement of the debtor, apply on behalf of the debtor under part 3B for—

- (a) a work and development order to satisfy the amount stated in the order; or
- (b) if the debtor is subject to a work and development order—a variation of the order.

51 ***When infringement notice offence is to be decided by court***

If, within 28 days after the date of an enforcement order made against an enforcement debtor for an infringement notice offence for which the fine is unpaid, the enforcement debtor—

- (a) *elects under section 41(c) to have the matter of the offence decided in a Magistrates Court; or*
- (b) *takes no action under section 41;*

a proceeding for the offence may be started under the *Justices Act 1886*.

51A Court election or proceeding for offence cancels enforcement order

- (1) *This section applies to an enforcement order that relates to an infringement notice offence.*
- (2) *The enforcement order is cancelled if—*
 - (a) *the enforcement debtor responds to the order by electing (a **court election**) under section 41 to have the matter of the infringement notice offence decided in a Magistrates Court; or*
 - (b) *a proceeding for the infringement notice offence is started under the Justices Act 1886.*
- (3) *The registrar must notify the administering authority of the effect of subsection (2) as soon as practicable after the enforcement debtor makes the court election.*
- (4) *The registrar must notify the enforcement debtor of the effect of subsection (2) as soon as practicable after either of the following happens—*
 - (a) *the debtor makes the court election;*
 - (b) *the registrar becomes aware a proceeding for the infringement notice offence has been started under the Justices Act 1886, other than because the debtor made the court election.*
- (5) *If an enforcement order is cancelled under subsection (2)—*
 - (a) *the order is cancelled on the day the enforcement debtor makes the court election or the proceedings are started; and*
 - (b) *any enforcement action already taken in relation to the order must, if practicable, be reversed; and*
 - (c) *fees and costs, imposed under this Act, are not payable for the issue of the order or any enforcement action taken in relation to the order; and*
 - (d) *any amount that has been paid under the order is repayable to the person by whom it was paid; and*

- (e) *the registrar must record in the State penalties enforcement register that the order is cancelled; and*
- (f) *section 31 applies as if the infringement notice to which the enforcement order relates was cancelled under section 30.*

Division 4 Default after enforcement order

52 Default after time to pay

- (1) *This section applies if an enforcement debtor fails to pay an amount stated in an enforcement order within 28 days after the date of the order.*
- (2) *The registrar may issue an enforcement warrant, a fine collection notice or an arrest and imprisonment warrant for the enforcement debtor for the balance of the unpaid amount stated in the enforcement order.*
- (3) *If the registrar decides to issue an arrest and imprisonment warrant, the warrant must be for the arrest and imprisonment of the enforcement debtor for the period stated in the warrant worked out for the unpaid amount under section 52A.*

52A Working out period of imprisonment for arrest and imprisonment warrant

- (1) The period of imprisonment that may be stated in an arrest and imprisonment warrant for an amount ordered to be paid by a court must be the period worked out by dividing the amount stated in the warrant, less any enforcement or administrative fees added by SPER, by the relevant cut-out rate for a court order rounded down to the nearest whole number and expressed as a number of days.
- (2) The period of imprisonment that may be stated in an arrest and imprisonment warrant for an infringement notice offence must be the period worked out by dividing the amount stated in the warrant, less any enforcement or administrative fees added by SPER, by the cut-out rate for an infringement notice

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offence, rounded down to the nearest whole number and expressed as a number of days.

- (3) However, the maximum period that may be stated in an arrest and imprisonment warrant for an amount a surety must pay under the *Bail Act 1980* or the *Penalties and Sentences Act 1992* must not be more than 2 years.

Division 5 Effect of appeal, rehearing or reopening of proceedings on enforcement order

54 Effect of appeal on enforcement order

- (1) This section applies if, after an enforcement order is made for a penalty imposed by a court for an offence, the enforcement debtor appeals against the conviction or sentence for the offence.
- (2) The appeal suspends the enforcement order.
- (3) If the appeal is upheld, the registrar must refund to the enforcement debtor any amount paid to SPER for the offence.
- (4) If the appeal is dismissed, the suspension of the enforcement order is lifted and the registrar may continue to enforce the order.
- (5) As soon as the registrar becomes aware of the appeal mentioned in subsection (1), the registrar must ensure that any steps taken under this Act to enforce the enforcement order are discontinued immediately and no further action is taken until the appeal is decided.

54A Effect of appeal on enforcement order for offender levy

- (1) This section applies if after an enforcement order is made for an offender levy, the enforcement debtor appeals against all of the convictions that resulted in the imposition of the offender levy.

- (2) The appeals suspend the enforcement order made for the offender levy.
- (3) If all convictions are quashed, the registrar must refund to the enforcement debtor any amount paid to SPER for the levy.
- (4) Otherwise, the suspension of the enforcement order is lifted and the registrar may continue to enforce the order.
- (5) As soon as the registrar becomes aware of the circumstances mentioned in subsection (1), the registrar must ensure that any steps taken under this Act to enforce the enforcement order are discontinued immediately and no further action is taken until all of the appeals are decided.

54B Effect of rehearing or reopening proceedings on enforcement order

- (1) *This section applies if, after an enforcement order is made for a penalty imposed by a court for an offence—*
 - (a) *the enforcement debtor is granted a rehearing of the complaint for the offence in a Magistrates Court under the Justices Act 1886, section 142; or*
 - (b) *a proceeding against the enforcement debtor for the offence is reopened under the Justices Act 1886, section 147A.*
- (2) *The enforcement order is cancelled on the day the enforcement debtor is granted the rehearing or the proceeding is reopened and—*
 - (a) *any enforcement action already taken in relation to the order must, if practicable, be reversed; and*
 - (b) *fees and costs, imposed under this Act, are not payable for the issue of the order or any enforcement action taken in relation to the order; and*
 - (c) *any amount that has been paid under the order is repayable to the person by whom it was paid; and*
 - (d) *the registrar must record in the State penalties enforcement register that the order is cancelled.*

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- (3) *The registrar must notify the enforcement debtor of the effect of subsection (2) as soon as practicable after the registrar becomes aware that the rehearing has been granted or the proceeding has been reopened.*

Division 6 Cancellation of enforcement orders relating to infringement notice defaults

55 Definitions for division

In this division—

decision maker, for an application, see section 56(4).

relevant offence, for an enforcement order, means the infringement notice offence relevant to the order.

56 Application for cancellation of all or part of enforcement order

- (1) *The enforcement debtor for an enforcement order relating to an infringement notice default may apply for the cancellation of all or part of the order for any of the following reasons—*
- (a) *the debtor did not receive the enforcement order or the infringement notice to which the order relates;*
 - (b) *the debtor received the enforcement order, or infringement notice to which the order relates, after the time allowed for responding to the order or notice;*

Notes—

- 1 *Under section 22 an alleged offender must respond to an infringement notice within 28 days after the date of the notice.*
 - 2 *Under section 41 an enforcement debtor must respond to an enforcement order within 28 days after the date of the order.*
- (c) *the debtor was prevented by accident, illness or a similar reason from responding to the enforcement order or the infringement notice to which the order relates;*

- (d) *the infringement notice to which the order relates should not have been registered with SPER as an infringement notice default because the person elected under section 22 to have the matter of the offence relevant to the notice decided in a Magistrates Court.*
- (2) *The application must be made—*
 - (a) *to—*
 - (i) *if the reason for making the application relates to an infringement notice—the administering authority for the infringement notice; or*
 - (ii) *otherwise—the registrar; and*
 - (b) *in the approved form or another way acceptable to the administering authority or registrar; and*
 - (c) *within the earlier of the following—*
 - (i) *14 days after the debtor becomes aware of the existence of the enforcement order;*
 - (ii) *6 months after the issue of the enforcement order.*
- (3) *However, an administering authority or the registrar may accept a late application if satisfied the enforcement debtor has reasonable grounds for the delay.*
- (4) *The entity that receives an application under subsection (1) is the **decision maker** for the application.*
- (5) *The enforcement debtor must not, without the approval of the decision maker, make more than 1 application in relation to the same enforcement order.*
- (6) *A single application may be made for the cancellation of 2 or more enforcement orders made against the enforcement debtor.*

56A Request for further information

- (1) *The decision maker may require the applicant to give the decision maker, within a stated reasonable time, any*

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prescribed information to help the decision maker decide the application.

(2) *The application is taken to be withdrawn if the applicant does not comply with the requirement.*

(3) *In this section—*

prescribed information means information prescribed by regulation.

56B Stay of enforcement action

(1) *The decision maker may stay enforcement action, taken under the enforcement order to which the application relates, on the conditions the decision maker considers appropriate.*

(2) *If, as decision maker, an administering authority acts under subsection (1), the authority must notify SPER as soon as practicable after granting the stay.*

57 Decision on application

(1) *After considering the application, and any information received under section 56A, the decision maker must cancel the enforcement order or refuse to cancel the order.*

(2) *However, the decision maker may cancel the enforcement order only if satisfied a reason for cancellation under section 56(1) applies.*

(3) *Also, subsection (4) applies if—*

(a) *the reason for the application is that the person did not receive an infringement notice or enforcement order; and*

(b) *the decision maker is satisfied the person did not receive the notice or order because the person failed to comply with a requirement under a law to inform a government body of a change of address.*

Example of a requirement to inform a government body of a change of address—

the Transport Operations (Road Use Management—Driver Licensing) Regulation 2010, section 133

- (4) *The decision maker may suspend the application until the person satisfies the decision maker that the person has corrected the failure mentioned in subsection (3)(b).*
- (5) *After making a decision under subsection (1), the decision maker must give the applicant notice of the decision in the approved form.*

57A Information sharing about cancellations

- (1) *If, as decision maker, an administering authority cancels an enforcement order under section 57(1), the authority must notify SPER of the cancellation as soon as practicable after cancelling the order.*
- (2) *If, as decision maker, the registrar cancels an enforcement order under section 57(1), the registrar must notify the affected administering authority of the decision as soon as practicable after making the decision.*
- (3) *In this section—*
affected administering authority, for an enforcement order, means the administering authority for the infringement notice offence to which the order relates.

58 Appeal against refusal to cancel enforcement order

- (1) *This section applies if a decision maker refuses to cancel an enforcement order under section 57(1).*
- (2) *The enforcement debtor may, within 14 days after the date of the refusal, apply in writing to a Magistrates Court in the Magistrates Court district in which the relevant offence is alleged to have been committed to have the original application decided by the court.*
- (3) *The application must be filed with the relevant court registrar.*

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- (4) *The court registrar must, as soon as practicable, refer the matter to the court and notify the applicant and the decision maker of when and where the application is to be decided.*
- (5) *On an application the court may stay enforcement action, taken under the enforcement order to which the application relates, on the conditions the court considers appropriate.*
- (6) *The court may make any decision about the application that the decision maker could have made.*
- (7) *The court may decide the application in the absence of the applicant if the court is satisfied the applicant is avoiding service of the notice or can not, after reasonable search and inquiry, be found.*
- (8) *Also, the court may decide the application if satisfied that no party to the application will be prejudiced by the non-service of, or any error or omission in, the notice of the decision under section 57(5).*

59 Effect of cancellation of enforcement order

If an enforcement order is cancelled under section 57 or 58—

- (a) *the order stops having effect on the day the order is cancelled; and*
- (b) *any enforcement action already taken in relation to the order must, if practicable, be reversed; and*
- (c) *fees and costs, imposed under this Act, are not payable for the issue of the order or any enforcement action taken in relation to the order; and*
- (d) *any amount that has been paid under the order is repayable to the person by whom it was paid; and*
- (e) *the registrar must record in the State penalties enforcement register that the order was cancelled.*

60 Proceedings after the cancellation of enforcement order

- (1) *This section applies if an enforcement order is cancelled under section 57 or 58 and the reason for cancelling the order is—*
- (a) *the debtor did not receive the relevant infringement notice; or*
 - (b) *the debtor received the relevant infringement notice after the time allowed for responding to the notice; or*
 - (c) *the debtor was prevented by accident or illness or for another similar reason from taking action in relation to the relevant infringement notice.*

Note—

If the enforcement order is cancelled for a reason relating to the receipt of, or response to, the order, part 4 continues to apply to the matter for which the order was issued and another enforcement order may be issued.

- (2) *If the administering authority withdraws the relevant infringement notice, the authority may—*
- (a) *start a proceeding against the applicant for the relevant offence; or*
 - (b) *issue a fresh infringement notice for the relevant offence.*
- (3) *For starting a proceeding against the applicant for the relevant offence, the limitation period for making a complaint under the Justices Act 1886, section 52 is extended until 1 year after the day the order is cancelled.*
- (4) *With the agreement of the applicant, the administering authority may—*
- (a) *accept payment of the fine in full as stated in the relevant infringement notice; or*
 - (b) *re-issue the relevant infringement notice with an amended date of the notice or the address for the applicant as an alleged offender.*

(5) *If an applicant pays the fine in full under subsection (4)(a), section 25 applies to the applicant as if the applicant were an alleged offender who paid the fine as required by the relevant infringement notice.*

(6) *In this section—*

applicant, for an enforcement order, means the person who applied under section 56 to cancel the order.

relevant infringement notice, for an enforcement order, means the infringement notice to which the order relates.

Part 4A Order of satisfaction

60A Order of satisfaction of amounts of SPER debt

(1) *This section applies if a person pays, under a payment plan or otherwise, all or part of the person's SPER debt.*

(2) *Subject to section 60B, the amount paid must be applied towards satisfying the person's SPER debt in the order stated in subsection (3).*

(3) *For subsection (2), the following is the order of satisfaction—*

- (a) *compensation;*
- (b) *restitution;*
- (c) *damages;*
- (d) *a fixed portion of a penalty;*
- (e) *an offender levy;*
- (f) *court fees;*
- (g) *witnesses' expenses payable under the decision;*
- (h) *professional costs;*
- (i) *any other fees or costs;*
- (j) *any other amount ordered to be paid, including a fine (other than an infringement notice fine);*

- (k) *any amount liable to be paid to the State under the Victims of Crime Assistance Act 2009, section 117(4);*
- (l) *any amount liable to be paid to the State under the Victims of Crime Assistance Act 2009, section 191(4);*
- (m) *an infringement notice fine.*

60B Order of satisfaction if more than 1 unpaid amount

If an amount is paid under section 60A and there is more than 1 unpaid amount to which the amount could be applied—

- (a) *the amount must first be applied to satisfy all unpaid amounts in the first relevant category in section 60A(3) in the order in which they became payable; and*
- (b) *after all amounts in the first relevant category are satisfied, any remaining amount must be applied to satisfy unpaid amounts in the next relevant category and then to each other relevant category in the same way until each relevant category is satisfied.*

60C Application of part to payment of any amount

This part applies to the payment of any amount of a person's SPER debt—

- (a) *despite any direction of the person to the contrary; and*
- (b) *despite the payment being made in response to a particular notice, order or warrant.*

Example—

A person responds to an early referral notice under section 37B by paying the amount stated in the notice to SPER in full. SPER must apply the amount paid towards satisfying the person's SPER debt in the order stated in sections 60A and 60B.

Part 5 Civil enforcement

Division 1 Preliminary

61 Application of pt 5

- (1) *This part applies to an enforcement debtor if, after being served with an enforcement order, the debtor—*
 - (a) *did not pay SPER the amount stated in the order within 28 days after the date of the order; and*
 - (b) *if the order relates to an infringement notice offence—did not elect to have the matter of the offence decided in a Magistrates Court as provided for under section 41; and*
 - (c) *is not otherwise discharging the amount stated in the order.*
- (2) *This part starts applying to an enforcement debtor otherwise discharging the amount stated in an enforcement order if—*
 - (a) *the debtor is satisfying all or part of the amount by the payment of instalments under a payment plan and the plan is cancelled; or*
 - (b) *the debtor is satisfying all or part of the amount by undertaking activities under a work and development order and the order is withdrawn or revoked.*
- (3) *This part also applies to a person served with an early referral notice or a court debt payment notice if, in response to the notice, the person successfully applied for a payment plan to pay the amount stated in the notice and the plan was cancelled.*

62 Part does not prevent issue of arrest and imprisonment warrant

Nothing in this part prevents the registrar, instead of acting under this part, issuing an arrest and imprisonment warrant for

an enforcement debtor who may be arrested under this or another Act because of the enforcement debtor's failure to pay an amount.

62A Definition for part

In this part—

enforcement debtor includes a person mentioned in section 61(3).

62B Applying part to particular persons

For the purpose of applying this part to a person mentioned in section 61(3) for whom a payment plan was cancelled, the amount still to be paid under the plan when the plan was cancelled is taken to be the amount stated in an enforcement order taken to be given to the person.

62C Enforcement fee imposed for defaults requiring enforcement action

- (1) *If the registrar takes enforcement action against an enforcement debtor under this part, the debtor must pay SPER the enforcement fee prescribed by regulation for the action.*
- (2) *The amount of the enforcement fee is added to the enforcement debtor's SPER debt.*

62D Invitation to apply for payment plan

- (1) *If the registrar takes enforcement action against an enforcement debtor under this part, the registrar may invite the person to apply to the registrar for a payment plan under part 3A.*
- (2) *Nothing in subsection (1)—*
 - (a) *requires the registrar to invite a person to apply for a payment plan before, or instead of, taking enforcement action; or*

- (b) *requires the registrar to stop taking enforcement action while the person is applying for a payment plan, or considering a payment plan offered by the registrar, under part 3A.*

Division 2 Enforcement warrants

63 Issue of enforcement warrant

- (1) *The registrar may issue a warrant (an **enforcement warrant**) to do either of the following to satisfy the enforceable amount of the enforcement debtor's SPER debt—*
 - (a) *seize and sell real and personal property, other than exempt property, in which the enforcement debtor has a legal or beneficial interest;*
 - (b) *impose a charge on stated property.*
- (2) *An enforcement warrant ends on the day that is—*
 - (a) *for an enforcement warrant to seize and sell property—1 year after the day the warrant is issued or the earlier date stated in the warrant; or*
 - (b) *for an enforcement warrant to impose a charge on stated property—6 months after the day the warrant is issued or the earlier date stated in the warrant.*
- (2A) *However, if an interest in land or any other property is recorded in any register about dealing with property that is kept under an Act because of an enforcement warrant to impose a charge on stated property, the warrant does not end until the interest is removed from the register.*
- (3) *An enforcement warrant must—*
 - (a) *be in the approved form; and*
 - (b) *be directed to all enforcement officers; and*
 - (c) *state the date and time of issue and the date, or circumstances under which, the warrant ends.*

- (4) *On the issue of the enforcement warrant, the enforcement debtor's SPER debt is increased by the enforcement fee prescribed by regulation for issuing the warrant.*
- (5) A copy of the enforcement warrant must be served on the enforcement debtor.
- (6) Nothing in this Act prevents the registrar from issuing an enforcement warrant to seize and sell a vehicle while it is subject to an immobilisation warrant.
- (7) However, an enforcement warrant can not be enforced while a vehicle is immobilised under an immobilisation warrant.
- (8) A charge imposed on personal property under an enforcement warrant—
 - (a) is declared to be a statutory interest to which section 73(2) of the PPS Act applies; and
 - (b) has priority over all security interests in relation to the personal property other than those registered on the PPS register before the charge is mentioned on the register.
- (9) Subsection (10) applies to the following fees, expenses and costs to the extent the fees, expenses and costs relate to personal property under an enforcement warrant—
 - (a) the enforcement officer's fees and expenses mentioned in section 73J(2);
 - (b) other enforcement costs mentioned in section 73J(3)(a).
- (10) The fees, expenses and costs mentioned in subsection (9)—
 - (a) are declared to be statutory interests to which section 73(2) of the PPS Act applies; and
 - (b) have priority over all security interests in relation to the personal property.
- (11) In this section—
 - exempt property* see the *Civil Proceedings Act 2011*, schedule 1.
 - personal property* see the PPS Act, section 10.

PPS Act means the *Personal Property Securities Act 2009* (Cwlth).

PPS register means the Personal Property Securities Register under the PPS Act.

security interest see the PPS Act, section 12.

63A Renewal of enforcement warrant

- (1) Before an enforcement warrant ends, the warrant may be renewed by the registrar for a period of—
 - (a) for an enforcement warrant to seize and sell property—
not more than 1 year at any one time, from the date the warrant ends; or
 - (b) *for an enforcement warrant to impose a charge on stated property—not more than 6 months at any one time, from the date the warrant ends.*
- (2) A renewed enforcement warrant must state the period for which the warrant has been renewed.
- (3) The priority of a renewed enforcement warrant is decided according to the date the warrant was originally issued.
- (4) A copy of the renewed enforcement warrant must be served on the enforcement debtor.

64 Registrar may cancel, suspend or vary enforcement warrant for seizure of property

- (1) A person claiming an interest in property that is or is about to be seized or sold under an enforcement warrant may apply to the registrar for the cancellation, suspension or variation of all or part of the warrant, including because of facts that arise or are discovered after the warrant was issued.
- (2) The application must state the facts relied on by the applicant.
- (3) The registrar may, by order, cancel, suspend or vary an enforcement warrant.

65 Enforcement warrant imposing a charge on property

- (1) An enforcement warrant imposing a charge on property may charge all or part of the enforcement debtor's interest in specified land, interests in managed investment schemes or securities.
- (2) The registrar may issue an enforcement warrant imposing a charge on property belonging to a partnership only if the registrar has given the partners—
 - (a) notice of intention to issue the warrant; and
 - (b) at least 10 days to give reasons the warrant should not be issued.
- (3) For this section, service on each partner who resides in the State is sufficient service on any partner who resides outside the State.

66 Effect of warrant imposing charge on property

- (1) An enforcement warrant imposing a charge on property entitles SPER to the same remedies as SPER would have had if the charge had been made in SPER's favour by the enforcement debtor.
- (2) However, SPER may not take proceedings to obtain a remedy in relation to particular charged property until—
 - (a) the enforcement warrant imposing the charge is served on the enforcement debtor and, for interests in managed investment schemes or securities, the person who issued or administers the interests or securities; and
 - (b) 21 days have passed since the later service.

67 Order to set aside or restrain sale, etc. of charged property

- (1) The registrar may apply to the Supreme Court for an order restraining the sale, transfer or other dealing with property under an enforcement warrant imposing a charge on property.

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- (2) The Supreme Court may restrain the sale, transfer or other dealing, unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.
- (3) Also, the Supreme Court may—
 - (a) order that property mentioned in the order must not be sold, transferred or otherwise dealt with; or
 - (b) order that property mentioned in the order be sold, transferred or otherwise dealt with only in a stated way or circumstance.
- (4) In addition, the Supreme Court may set aside any sale, transfer or other dealing with property charged under an enforcement warrant, unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.

68 Offence of dealing with charged or restrained property

- (1) An enforcement debtor who is served with a copy of an enforcement warrant imposing a charge on property or an order made under section 67, must not knowingly contravene the warrant or order by concealing, selling, transferring or otherwise dealing with the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (2) A person who is served with a copy of an enforcement warrant imposing a charge on property or an order made under section 67 and issued or administers the charged property must not conceal, sell, transfer or otherwise deal with the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (3) If, despite subsection (2), the person who issued or administers the charged property conceals, sells, transfers or otherwise deals with the property, the person is liable to SPER for the value or amount of the charged property dealt with or

the amount owing by the enforcement debtor, whichever is smaller.

68A Offence of concealing, selling, transferring or otherwise dealing with property subject to seizure

An enforcement debtor who is served with a copy of an enforcement warrant to seize and sell property must not conceal, sell, transfer or otherwise deal with the property with intent to—

- (a) defeat the enforcement of the warrant; or
- (b) adversely affect any seizure or sale of the property under this Act.

Maximum penalty—200 penalty units or 3 years imprisonment.

69 Enforcement of enforcement warrant may be made conditional

- (1) If the registrar issues an enforcement warrant to seize and sell real and personal property, the registrar may also instruct any or all enforcement officers not to enforce the warrant until the steps in this section are followed.
- (2) The enforcement officer must first attempt to recover the amount owing in full.
- (3) If the enforcement debtor can not pay the amount owing in full, the enforcement officer must attempt to interview the enforcement debtor.
- (4) If the enforcement officer reasonably believes the enforcement debtor will not, or is unwilling to, take part in the interview, the enforcement officer may enforce the warrant.
- (5) If, after interviewing the enforcement debtor, the enforcement officer is satisfied the enforcement debtor is unable to pay the amount owing in full, but can pay the amount in a way mentioned in subsection (6) or (7), and the enforcement debtor agrees, the enforcement officer—

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- (a) must not enforce the warrant; and
 - (b) must ensure the enforcement debtor takes all action necessary for the amount to be satisfied in the agreed way, including, for example, by giving the enforcement officer necessary information or completing necessary documents.
- (6) If the enforcement officer is satisfied the enforcement debtor can pay the amount owing by instalments at the full instalment rate, the ways the amount may be paid are as follows—
 - (a) by regular redirection from a financial institution account at the full instalment rate;
 - (b) by regular redirection from earnings.
- (7) If the enforcement officer is satisfied the enforcement debtor can not pay the amount owing by instalments at the full instalment rate, the ways the amount may be paid are as follows—
 - (a) by paying the amount by regular redirection from a financial institution account at a rate less than the full instalment rate;
 - (b) by satisfying the amount by undertaking activities under a work and development order.

69A Particular matters about enforcement of enforcement warrant

- (1) The registrar must give an enforcement warrant to an enforcement officer to be enforced, subject to any instruction under section 69(1) for the warrant.
- (2) An enforcement officer must—
 - (a) have the warrant in the enforcement officer's possession when enforcing the warrant; and
 - (b) for a warrant to seize or sell property—show the warrant to any person claiming an interest in the property to be seized.

- (3) Actual seizure is not necessary to authorise the sale of real property under an enforcement warrant.
- (4) If there is an advertisement of a notice about real property under section 73H, an enforcement officer is taken to have seized the real property for the purpose of this division.

70 Power of entry to enforce enforcement warrant

- (1) An enforcement officer may, at any reasonable time of the day or night, enter any premises stated in an enforcement warrant for the purposes of executing the warrant.
- (2) However, an enforcement officer may enter a part of premises used only for residential purposes only if the occupier consents to the entry or entry is authorised under a search warrant.

71 Search warrant

- (1) If an enforcement officer reasonably believes there may be in any premises property that may be seized under an enforcement warrant, the enforcement officer may apply to a magistrate or a justice of the peace (magistrates court) who is not an official within the meaning of section 12, for the issue of a search warrant under this section.
- (2) The magistrate or justice (*issuer*) may refuse to consider the application until the enforcement officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information about the application to be given by statutory declaration.

- (3) The issuer may issue the warrant only if satisfied there are reasonable grounds for believing there is in the premises property an enforcement officer may seize under an enforcement warrant.
- (4) The warrant must be in the approved form and state—

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- (a) that a stated enforcement officer, or all enforcement officers, may enter the place and exercise the powers under section 72; and
- (b) if the warrant is to be enforced at night—the hours when the place may be entered; and
- (c) the warrant ends 7 days after it is issued.

72 Powers under search warrant

- (1) An enforcement officer has the following powers under a search warrant—
 - (a) power to enter and re-enter stated premises and to stay on the premises for the time reasonably necessary to exercise the power mentioned in paragraph (b);
 - (b) power to search for and seize any property the enforcement officer may seize under an enforcement warrant;
 - (c) power to use reasonable help and force for paragraphs (a) and (b);
 - (d) power to do anything else reasonably necessary to be done that is incidental to searching for and seizing any property the enforcement officer may seize under an enforcement warrant.
- (2) However, an enforcement officer does not have power under this section to seize property under any enforcement warrant or order issued under another Act while the person is in premises only under a search warrant under this Act.

73 Powers supporting seizure

Having seized a thing, an enforcement officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

- 1 sealing a thing and marking it to show access to it is restricted
- 2 sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted

73A Notice to enforcement debtor etc. if seizure

- (1) An enforcement officer who seizes property under an enforcement warrant must serve a notice complying with subsection (2) on the enforcement debtor or the person who is in possession of the property immediately before it is seized.
- (2) For subsection (1), the notice must—
 - (a) be in the approved form; and
 - (b) state the property that is seized for sale under the warrant; and
 - (c) state that it is an offence—
 - (i) to conceal, sell, transfer or otherwise deal with the property seized with intent to—
 - (A) defeat the enforcement of the enforcement warrant; or
 - (B) adversely affect any seizure or sale of the property under this Act; or
 - (ii) to interfere with property, seized by an enforcement officer, left at the place of seizure or a seizure tag or sticker placed on the property.

73B Enforcement officer may authorise tow

- (1) This section applies if an enforcement officer arranges for a motor vehicle seized under an enforcement warrant to be towed to a holding yard.
- (2) An enforcement officer may sign a towing authority for the seized vehicle.

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- (3) The driver of a tow truck towing the seized motor vehicle under a towing authority must tow the vehicle to—
 - (a) if the enforcement officer directs the driver to tow the motor vehicle to a particular holding yard—the holding yard; or
 - (b) if paragraph (a) does not apply—the holding yard to which the driver ordinarily tows motor vehicles.
- (4) In this section—
towing authority means—
 - (a) a towing authority under the *Tow Truck Act 1973*; or
 - (b) another document authorising a person to tow a motor vehicle.

73C Order of selling property

- (1) An enforcement officer must seize and sell property in the order appearing to the enforcement officer to be best for—
 - (a) the prompt enforcement of the warrant without undue expense; and
 - (b) subject to paragraph (a), minimising hardship to the enforcement debtor and other persons.
- (2) However, the registrar may, after having regard to the matters mentioned in subsection (1)(a) and (b), direct the enforcement officer to seize and sell property in an order different to the order mentioned in the subsection.
- (3) An enforcement officer may seize and sell an item of property even though the enforcement officer considers that the item's value exceeds the amount recoverable, but the enforcement officer must not also seize and sell additional items.

73D Payment by enforcement debtor before sale

An enforcement officer must not sell property seized under an enforcement warrant if, at or before the sale, the enforcement debtor pays to the enforcement officer—

- (a) *the enforceable amount of the enforcement debtor's SPER debt; and*
- (b) the costs of enforcement then known to the enforcement officer.

73E Storage before sale

- (1) Until sale, an enforcement officer must put goods seized under an enforcement warrant in an appropriate place, or give them to an appropriate person, approved by the registrar for the purpose.
- (2) SPER must pay any storage expenses but may recover them as costs of enforcement.

73F Nature of sale

- (1) Unless the registrar directs otherwise, an enforcement officer must put up for sale by public auction all property liable to be sold under an enforcement warrant—
 - (a) as early as possible; and
 - (b) at a place and in a way appearing to the enforcement officer to be suitable for a beneficial sale of the property.
- (2) The public auction may be conducted by the enforcement officer or a person authorised by the registrar.
- (3) Property sold by public auction must be sold under the following conditions of sale—
 - (a) the property must be sold—
 - (i) for goods, if the person conducting the auction considers the particular lot in which the goods are to be auctioned is worth less than \$500, or for other property if the enforcement debtor agrees—at the best price obtainable; or
 - (ii) otherwise, if the reserve is reached—to the highest bidder;

- (b) if the person conducting the auction considers there is a dispute as to who is the highest bidder, the property is to be reauctioned and knocked down to the highest bidder.
- (4) However, before a sale by public auction, the enforcement debtor may apply to the registrar for a direction that the property be sold privately.
- (5) The application must state the facts relied on by the enforcement debtor.
- (6) If the registrar gives a direction under subsection (4)—
 - (a) the registrar may give the direction to an enforcement officer; and
 - (b) the enforcement debtor must pay any costs already incurred by an enforcement officer for the auction.
- (7) If property put up for sale at public auction is not sold by auction, an enforcement officer may sell the property privately—
 - (a) for an amount not less than the highest bid made at the auction that the registrar considers is a reasonable amount for the property; or
 - (b) if no bid was made at the auction—for an amount the registrar considers is a reasonable amount for the property.

Note—

See section 73G (Sale at best price obtainable).

- (8) In this section—

reserve, for property to be sold at auction, means the reserve amount set by the registrar, that is an amount the registrar considers is not less than a reasonable amount for the property.

73G Sale at best price obtainable

- (1) This section applies if the enforcement debtor's property has not been sold under section 73F.

- (2) The registrar may direct an enforcement officer to sell the property at the best price obtainable.

73H Advertising

- (1) Before selling property seized under an enforcement warrant an enforcement officer must arrange advertisement of a notice giving the time and place of sale together with details of the property to be sold.
- (2) However, an enforcement officer may sell seized goods without arranging the advertisement if—
 - (a) the goods are of a perishable nature; or
 - (b) the enforcement debtor requests it in writing.
- (3) Also, if property seized under an enforcement warrant is put up for sale at a public auction to be conducted by a person other than an enforcement officer—
 - (a) it is sufficient for a notice under subsection (1) to contain only the details reasonable and usual for a public auction of property of the same nature as the seized property; and
 - (b) subsection (5) does not apply and advertisement of the notice may be done in the way reasonable and usual for a public auction of property of the same nature as the seized property; and
 - (c) the registrar may require any additional advertising the registrar considers reasonable.
- (4) An enforcement officer must send a copy of the notice by prepaid post to the enforcement debtor at the enforcement debtor's last known address.
- (5) In this section—

advertisement, of a notice, means—

 - (a) in any case—publication of the notice on SPER's website; and

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- (b) if there are 2 or more newspapers circulating in the district where the property is located—publication of the notice once in each of 2 of the newspapers not less than 2 weeks, and no more than 4 weeks, before the date of sale; and
- (c) if there is only 1 newspaper circulating in the district where the property is located—publication of the notice twice in the newspaper (on different days, if practicable) not less than 2 weeks, and no more than 4 weeks, before the date of sale; and
- (d) if there is no newspaper circulating in the district where the property is located and the property to be sold is an interest in land—posting the notice on the land not less than 2 weeks, and no more than 4 weeks, before the date of sale; and
- (e) if there is no newspaper circulating in the district where the property is located and the property to be sold is not an interest in land—posting the notice at the place where the sale is to take place not less than 2 weeks, and no more than 4 weeks, before the date of sale.

district means Magistrates Courts district.

73I Postponement of sale

- (1) The registrar may, on application by the enforcement debtor or on the advice of an enforcement officer, direct that a sale of property seized under an enforcement warrant be postponed to a stated date.
- (2) If the enforcement warrant authorising the seizure would otherwise end before the stated date, the postponement extends the warrant's validity until the end of the stated date.

73J Accountability for, and distribution of, money received

- (1) An enforcement officer must pay to the registrar all proceeds of sale and other money received by the enforcement officer under an enforcement warrant as soon as practicable after

receiving the money, whether before or after the seizure of property under the warrant.

- (2) However, before making the payment, the enforcement officer may deduct the enforcement officer's fees and expenses in relation to enforcement or attempted enforcement.
- (3) The registrar must apply the money received from the enforcement officer in the following order—
 - (a) in payment of any other enforcement costs incurred by SPER in seizing and selling, or attempting to seize and sell, the property;
 - (b) if there is an amount owing to an entity under a security interest registered for the property on the PPS register before the charge on the property is mentioned on the register—in payment of the amount owing under the security interest;
 - (c) in payment of the amount recoverable under the enforcement warrant other than costs;
 - (d) if there is an amount owing to an entity under a security interest registered for the property on the PPS register after the charge on the property is mentioned on the register—in payment of the amount owing under the security interest;
 - (e) in payment of any balance to the enforcement debtor.
- (4) To remove any doubt, it is declared for subsection (3)(b) and (d) that, if there is an amount owing to more than 1 entity, the priority between the entities is to be determined under the PPS Act.
- (5) In this section—

charge means a charge mentioned in section 63(8).

PPS Act means the *Personal Property Securities Act 2009* (Cwlth).

PPS register means the Personal Property Securities Register under the PPS Act.

security interest see the PPS Act, section 12.

73K Reserve price provisions

- (1) To set an amount as a reasonable value of the property to be sold, an enforcement officer may require the enforcement debtor to give the enforcement officer any information about the property that is known to, or can reasonably be obtained by, the enforcement debtor.
- (2) An enforcement debtor required under subsection (1) to give an enforcement officer any information about the property that is known to, or can reasonably be obtained by, the enforcement debtor must comply with the requirement, unless the enforcement debtor has a reasonable excuse.

Maximum penalty—10 penalty units.

- (3) A failure by the enforcement debtor to comply with the enforcement officer's requirement does not prevent the registrar setting a reserve under section 73F.
- (4) The enforcement officer may communicate the amount set as a reasonable value of property to any person before the sale only if the communication is necessary to conduct the sale or there is another sufficient excuse.

74 Return of enforcement warrant

- (1) An enforcement officer must give to the registrar a return about the enforcement or otherwise of an enforcement warrant.
- (2) The return must be made by giving to the registrar a certificate signed by the enforcement officer stating what was done to enforce the warrant, or what other action, if any, was taken.

Division 3 Fine collection notices

75 Issue of fine collection notice

- (1) *The registrar may issue a notice (a ***fine collection notice***) under this division to recover the enforceable amount of an enforcement debtor's SPER debt—*

- (a) *to redirect earnings of the debtor; or*
 - (b) *to redirect all or part of a debt owed to the debtor; or*
 - (c) *for the regular redirection of all or part of the deposits made to a financial institution account held by the debtor; or*
 - (d) *directing a financial institution to make payment of an amount from money held by the institution on behalf of the debtor.*
- (2) *On the issue of the fine collection notice, the enforcement debtor's SPER debt is increased by the enforcement fee prescribed by regulation for issuing the notice.*
- (3) *The fine collection notice must be in the approved form.*

76 Issue of fine collection notice after enforcement warrant

- (1) This section applies if an enforcement debtor agrees under section 69 to satisfy an amount for which an enforcement warrant has been issued by payments under a fine collection notice.
- (2) The issue of the fine collection notice suspends the operation of the enforcement warrant for so long as amounts are deducted under the notice.

77 Registrar may cancel, suspend or vary fine collection notices

- (1) An enforcement debtor may apply to the registrar for the cancellation, suspension or variation of all or part of a fine collection notice, including because of facts that arise or are discovered after the notice was issued.
- (2) The application must state the facts relied on by the applicant.
- (3) The registrar may cancel, suspend or vary a fine collection notice.
- (4) If the registrar cancels, suspends or varies a fine collection notice for redirection of the enforcement debtor's earnings,

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the registrar must give notice of the cancellation, suspension or variation to the enforcement debtor's employer.

- (5) If the registrar cancels, suspends or varies a fine collection notice for regular redirection from a financial institution account, the registrar must give notice of the cancellation, suspension or variation to the financial institution named in the notice.
- (6) If the registrar cancels, suspends or varies a fine collection notice for regular redirection of a debt owing to the enforcement debtor, the registrar must give notice of the cancellation, suspension or variation to the third person to whom the fine collection notice was given.
- (7) The cancellation, suspension or variation of a fine collection notice for regular redirection from a financial institution account does not take effect until the end of 7 days after the day notice of the cancellation, suspension or variation to is given to the financial institution.

78 Copy of notices under this division to be given to enforcement debtor

The registrar must give a copy of any fine collection notice, or notice cancelling, varying or suspending a fine collection notice, to the enforcement debtor as soon as practicable after it is issued.

Division 4 Provisions about fine collection notices redirecting earnings

79 When registrar may issue fine collection notice for redirection of earnings

- (1) The registrar may issue to a person a fine collection notice for the redirection of an enforcement debtor's earnings only if the registrar is satisfied the person is the debtor's employer.

- (2) If the registrar considers it necessary or desirable to cancel or vary a fine collection notice, the registrar must, as soon as is practicable, give written notice to the employer of the cancellation or variation of the relevant notice.

80 Two or more employers of 1 employee

If an enforcement debtor receives earnings from 2 or more employers, the registrar may—

- (a) treat any of the employers as the only employer of the enforcement debtor; or
- (b) treat any 2 or more of the employers as joint employers of the enforcement debtor.

81 Duty of employer to make deductions

- (1) Subject to section 82, an employer who pays earnings to an employee for whom a fine collection notice for redirection of the enforcement debtor's earnings is in force must, when paying the earnings, deduct an amount from the earnings as required under this division.

Maximum penalty—20 penalty units.

- (2) On the conviction of a person for an offence against subsection (1), the court may, in addition to imposing a penalty, order the person to pay to SPER, as a debt, an amount of not more than the total of the amount the person did not deduct under the fine collection notice.

82 Working out amount to be deducted

- (1) The amount an employer must deduct from an enforcement debtor's earnings for each week under a fine collection notice is the weekly deduction amount specified in the notice.
- (2) However, if the deduction of an amount under subsection (1) would reduce the enforcement debtor's earnings for the period to less than the protected earnings amount, the employer must deduct only the amount, if any, that would reduce the

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enforcement debtor's earnings for the period to an amount equal to the protected earnings amount.

Examples for subsection (2)—

- 1 If the employee earns \$250 and the protected earning rate is \$275, no deduction may be made.
- 2 If the employee earns \$290, the protected earnings rate is \$275 and the amount to be deducted is \$25, the employer may only deduct the difference between the protected earnings rate and the amount actually earned or \$15.

83 Provisions for working out earnings for s 82

- (1) This section applies for working out the amount of earnings an employer pays to an employee.
- (2) Any amount an employer pays to an employee for piecework is taken to have been paid to the employee for the period that started when the employee started the work and ended when the work ended.
- (3) Any amount an employer pays to an employee for services under a contract that is wholly or principally for the labour of the employee is taken to have been paid to the employee for the period that started when the employee started to provide the services and ended when the provision of the services ended.
- (4) Any amount an employer pays for other work performed or services provided, but not for a particular period, is taken to have been paid for the period of 52 weeks ending the day before the day the amount is paid.
- (5) If the employee is entitled to be paid an amount for a period of more than 1 week, the employer is taken to have paid an amount of earnings to the employee for each week or part of a week in the period, worked out by dividing the amount of earnings actually paid by the number of days in the period and multiplying the result—
 - (a) for each week—by 7; and
 - (b) for a part of a week—by the number of days in the part of the week.

- (6) If an employer pays earnings for a week or part of a week in 2 or more separate amounts, the amounts must be aggregated, and the employer may make a deduction from 1 amount or partly from 2 or more amounts.
- (7) *For this section, the amount of any earnings is taken to be the amount of the earnings after deducting any amount the employer is required to deduct from the earnings under the Taxation Administration Act 1953 (Cwlth).*

84 Additional duties of employers

- (1) An employer who deducts an amount from an employee's earnings under a fine collection notice must, within 7 days after the end of the month in which the amount is deducted or the longer period, of not more than 21 days, the registrar allows—

- (a) pay to the registrar the amounts deducted; and
- (b) give to the registrar a return in the approved form.

Maximum penalty—50 penalty units or 6 months imprisonment.

- (2) An employer who does not deduct an amount from an employee's earnings under a fine collection notice relating to an employee in a particular month must, within 7 days after the end of the month, or the longer period, of not more than 21 days, the registrar allows, give to the registrar a return in the approved form.

Maximum penalty—15 penalty units.

- (3) An employer who pays earnings to an employee while a fine collection notice relating to the employee is in force must give to the employee a written notice stating—

- (a) the amount deducted under the notice; or
- (b) if no deduction is made, that no deduction has been made under the notice.

Maximum penalty—15 penalty units.

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- (4) If an employee to whom a fine collection notice relates stops being an employee while the notice is in force, the employer must give to the registrar notice of that fact in the approved form within 7 days after the end of the month in which the employment ended or the longer period the registrar allows.

Maximum penalty for subsection (4)—10 penalty units.

85 Discharge of enforcement debtor's liability to registrar and employer's liability to enforcement debtor

If an employer deducts an amount under this division from the earnings of an enforcement debtor—

- (a) the enforcement debtor is, to the extent of the amount deducted, discharged from the enforcement debtor's liability to make payments to the registrar; and
- (b) the employer is discharged from liability to pay the amount to any person other than the registrar.

86 Payment by trustees of deducted amounts

- (1) This section applies if—
- (a) an amount is payable to the registrar by an employer; and
- (b) the property of the employer has become vested in, or the control of the property of the employer has passed to, a trustee.
- (2) The trustee is liable to pay the amount to the registrar.

87 Penalty for late payment to registrar of deducted amounts

- (1) If an employer other than a government body fails to pay an amount deducted under a fine collection notice (*deducted amount*) to the registrar in accordance with section 81, the employer must pay to SPER, as a penalty (*late payment penalty*)—
- (a) 10% of the deducted amount; and

- (b) interest at the rate of 10% each year on the daily balance of the unpaid deducted amount.
- (2) Interest is payable on the deducted amount from the day after the amount should have been paid until the day the amount is actually paid.

88 Penalty for failure to make deductions from earnings

- (1) If an employer other than a government body fails to deduct an amount that could have been deducted from an employee's earnings under a fine collection notice (*undeducted amount*), the employer must pay to SPER, as a penalty (*late payment penalty*), interest at the rate of 10% each year on the undeducted amount.
- (2) Interest is payable on the undeducted amount from the day the undeducted amount should have been deducted until the day the amount is actually paid.

89 When late payment penalty may be waived

- (1) The registrar may waive all or part of a late payment penalty if the registrar is satisfied of any of the following—
 - (a) if the circumstances that contributed to the delay were not caused directly or indirectly by an act or omission of the employer—the employer has taken reasonable steps to avoid or minimise the effects of the circumstances;
 - (b) if the circumstances that contributed to the delay were directly or indirectly caused by an act or omission of the employer—
 - (i) the employer has taken reasonable steps to avoid or minimise the effects of the circumstances; and
 - (ii) having regard to the nature of the circumstances, it would be fair and reasonable to waive the penalty or part of the penalty;

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- (c) there are special circumstances because of which it would be fair and reasonable to waive all or part of the penalty.
- (2) If the registrar decides to waive part only of a late payment penalty, or not to waive any part of a late payment penalty, the registrar must give written notice of the decision to the employer concerned and the reasons for the decision.

90 Application of interest payable on judgment debt

- (1) This section applies if a court gives judgment for the State for the payment of an amount that is or is part of a relevant amount (*judgment debt*).
- (2) The relevant amount, or part of the relevant amount, must not be taken, for this division, to have stopped being payable only because of the judgment.
- (3) However, interest payable on the judgment debt must be applied to reduce the amount of interest that would otherwise be payable under this Act.
- (4) In this section—
relevant amount means—
 - (a) a deducted amount; or
 - (b) the amount of a late payment penalty; or
 - (c) an undeducted amount.

91 Penalty is alternative to prosecution for certain offences against part

- (1) If a prosecution is started against an employer for an offence against section 81, any amount payable by the employer as a late payment penalty in the circumstances of the contravention is not payable.
- (2) If—
 - (a) a person who must pay a late payment penalty to the registrar under this division pays an amount to the

registrar in full or partial discharge of the person's liability for the penalty; and

- (b) a prosecution is started against the person for an offence against section 81 in the circumstances in which the late payment penalty became payable;

the registrar must either refund the amount to the person, or apply the amount in full or partial discharge of another debt the person owes to SPER under this Act.

- (3) However, if the prosecution is withdrawn, the person again becomes liable to pay the late payment penalty.
- (4) For subsection (3), the period of the prosecution is not counted for the purpose of calculating a late payment penalty under section 87 or 88.

92 Employers not to prejudice employees because of action under this part

- (1) An employer must not, because another person is an enforcement debtor—
 - (a) refuse to employ or pay earnings to the person; or
 - (b) dismiss, or threaten to dismiss, the person from employment; or
 - (c) terminate or threaten to terminate the payment of earnings to the person; or
 - (d) prejudice or threaten to prejudice the person in the person's employment or otherwise in the receipt of earnings; or
 - (e) intimidate, coerce, impose a money or other penalty on, or take any other disciplinary action against, the person.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) On the conviction of an employer for an offence against subsection (1), the court may, whether or not it imposes any penalty for the offence, make either or both of the following orders—

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- (a) order the offender to pay compensation to the enforcement debtor for loss or damage suffered because of the offence;
 - (b) order the taking of action to remedy or reduce the loss or damage suffered by the enforcement debtor because of the offence.
- (3) The enforcement debtor may recover compensation ordered to be paid under subsection (2)(a) as a debt.
- (4) Subsection (2) does not limit the powers of a court under the *Penalties and Sentences Act 1992*, part 3, division 4.

93 Employers not to disclose information etc.

- (1) This section applies to a person who is or has been—
 - (a) an employer of an enforcement debtor; or
 - (b) a person employed by, or performing services for, an employer of an enforcement debtor.
- (2) The person must not directly or indirectly disclose or communicate to another person any information about the financial affairs of the enforcement debtor that is disclosed or obtained under this division and acquired by the person because of, or in performing, the employer's duties under this division, other than—
 - (a) for this Act; or
 - (b) for performing the employer's duties under this Act; or
 - (c) for carrying on the employer's business affairs.

Maximum penalty for subsection (2)—25 penalty units or 6 months imprisonment.

94 Records to be kept by employers

- (1) An employer must keep written records, in English, of—
 - (a) all amounts deducted or required to be deducted from earnings under a fine collection notice; and

- (b) other acts done, or required to be done, by the employer under this division.

Maximum penalty—25 penalty units or 6 months imprisonment.

- (2) The employer must—

- (a) keep the records in a way that correctly records and explains the matters to which they relate; and
- (b) keep a particular record for 5 years after it is made.

Maximum penalty—25 penalty units or 6 months imprisonment.

- (3) This section does not require a person to keep records if the registrar has notified the person, in writing, that keeping the records is not required.
- (4) In a proceeding for an offence against subsection (2)(a), it is a defence for the employer to prove that the employer did not know, and could not reasonably be expected to have known, that the record to which the proceeding relates did not correctly record and explain the matter to which the record relates.

95 Access to premises etc.

- (1) For enforcing this part against an employer, the registrar may give an enforcement officer written authority to exercise powers under this section.
- (2) The enforcement officer may not exercise powers under this section unless the enforcement officer first produces the written authority for inspection by the employer and an identity card.
- (3) The powers the enforcement officer has under this section are as follows—
 - (a) power, at all reasonable times, to enter premises of an employer, other than premises used exclusively as a residence, and remain on the premises for the time

reasonably necessary to exercise powers under this section;

- (b) power to inspect or examine any business records relevant to the employer's obligations under this Act on the employer's premises;
 - (c) power to make copies of, or take extracts from, any document the enforcement officer considers is reasonably necessary for ensuring compliance with this Act;
 - (d) power to require the occupier of the premises to give the enforcement officer reasonable help to exercise a power mentioned in paragraph (a), (b) or (c).
- (4) A person required under subsection (3)(d) to give an officer reasonable help must comply with the request, unless the person has a reasonable excuse for not doing so.

Maximum penalty—20 penalty units.

- (5) To the extent reasonable help required by an enforcement officer would involve the production of a document or the giving of information, it is a reasonable excuse for the purposes of subsection (4) that the production of the document or the giving of the information would tend to incriminate the person.

96 Application of amounts paid or credited if 2 or more debts due

- (1) This section applies if—
- (a) 2 or more debts are payable to SPER by an employer under this part; and
 - (b) an employer pays an amount, or the registrar credits an amount towards a debt.
- (2) *Part 4A applies to the amount despite any direction of the employer to the contrary.*

Division 5 Provisions about fine collection notice for redirection of a debt

97 When debt redirected under fine collection notice

- (1) A fine collection notice authorising redirection of a debt belonging to an enforcement debtor from a third person must be served on the third person to have effect.
- (2) On service of the notice on the third person, the debt is redirected in the hands of the third person to SPER to the extent of the amount stated in the notice.
- (3) However, this section does not limit the right of—
 - (a) the third person to dispute liability to pay all or part of the debt to the enforcement debtor; or
 - (b) another interested person including, for example, a person other than an enforcement debtor, to claim an entitlement to all or a part of the debt or to a charge or lien on it.
- (4) This section does not apply to a regular redirection of a regular debt belonging to an enforcement debtor from a financial institution.

98 Payment to enforcement debtor despite redirection

- (1) This section applies if, after redirection of a debt in the hands of a third person—
 - (a) the third person acts with reasonable diligence to give effect to the redirection; and
 - (b) despite the third person acting with reasonable diligence, the third person deals with the redirected debt in a way that satisfies, as between the third person and the enforcement debtor, all or part of the redirected debt, including, for example, by payment to the enforcement debtor.

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- (2) If, after acting under subsection (1), the amount still available for redirection is less than the amount owing to SPER, the registrar may vary or cancel the fine collection notice.

99 Discharge of the third person

- (1) A payment to SPER made by a third person in compliance with a fine collection notice is a valid discharge of the person's liability to the enforcement debtor to the extent of the amount paid.
- (2) Subsection (1) applies even if, after payment, the fine collection notice is cancelled.

Division 6 Provisions about regular redirection from a financial institution account

100 Application of div 6

This division applies if—

- (a) an enforcement debtor has an account with a financial institution; and
- (b) another person (*depositor*) regularly deposits earnings into the account (a *regular deposit*).

101 Service of fine collection notice for regular redirection from a financial institution account

- (1) This section applies if the registrar issues a fine collection notice for regular redirection from a financial institution account under section 75.
- (2) The notice must be served on the enforcement debtor and on the financial institution.
- (3) The notice does not have effect until the end of 7 days after the day on which the notice is served on the financial institution.

- (4) The notice continues in force until the total amount stated in the notice is paid or the notice is cancelled or varied or expires according to its terms.

102 Financial institution to make payments

- (1) For each regular deposit into the enforcement debtor's account while the fine collection notice for regular redirection is in force, the financial institution—
 - (a) within 2 days after the deposit, must deduct from the account the amount stated in the notice and pay it to SPER as stated in the notice; and
 - (b) may only charge the enforcement debtor an amount (an *administration charge*), as an administrative cost of complying with the notice, of not more than the amount prescribed by regulation; and
 - (c) must give the enforcement debtor notice of the deduction and any administration charge.
- (2) However, the financial institution must not deduct an amount from the account if—
 - (a) the deduction would cause the account to be overdrawn; or
 - (b) the deduction would cause the total balance of all the accounts the enforcement debtor holds with the financial institution to be less than the amount prescribed by regulation (the *protected amount*).
- (3) Also, in applying subsection (1)(a) to the last deduction, the financial institution must deduct the amount, not more than the amount stated in the notice for deduction for each regular deposit, that results in the total amount deducted by the financial institution being the total amount to be deducted under the notice.
- (4) If the financial institution is prevented by subsection (2) from deducting from the account the full amount of the recoverable amount, it must deduct as much of the amount, if any, that it may deduct without contravening subsection (2).

Example—

If the recoverable amount is \$950, the protected amount is \$400 and the enforcement debtor's account has a balance of \$725, the financial institution must deduct \$325 from the account.

- (5) A deduction paid or kept by a financial institution under this section is a valid discharge of the financial institution's liability to the enforcement debtor to the extent of the deduction.

103 Offence of intentionally defeating notice for regular redirection from a financial institution account

- (1) An enforcement debtor who is served with a copy of a fine collection notice for regular redirection from a financial institution account must ensure that enough funds remain in the enforcement debtor's account with the financial institution after each regular deposit for the deduction from the account of the amount stated in the notice.
- (2) The enforcement debtor must notify SPER if—
 - (a) the depositor discontinues regular payments of earnings to the enforcement debtor; or
 - (b) the enforcement debtor closes the account or arranges for the depositor to pay the enforcement debtor in another way.
- (3) An enforcement debtor who contravenes subsection (1) or (2) with intent to defeat a notice for regular redirection from a financial institution account commits an offence.

Maximum penalty for subsection (3)—20 penalty units.

Division 6A Provisions about direction to pay amount from financial institution account

103A Application of division

This division applies if the registrar issues a fine collection notice for the payment of an amount from a financial institution account under section 75(1)(d).

103B Copy of fine collection notice to enforcement debtor

The registrar must serve a copy of the fine collection notice on the enforcement debtor.

103C Financial institution to make deduction

- (1) As soon as practicable after receiving the fine collection notice, the financial institution must deduct the amount stated in the notice (the *recoverable amount*) from the accounts held by the enforcement debtor with the institution.
- (2) Unless required under the fine collection notice to deduct the recoverable amount from a particular account held by the enforcement debtor with the financial institution—
 - (a) the institution may decide the account from which to deduct the recoverable amount; and
 - (b) the institution may deduct the recoverable amount by deducting lesser amounts from 2 or more of the accounts held by the enforcement debtor.

Example—

If the recoverable amount is \$1,200, the financial institution may deduct \$1,000 from one account and \$200 from another account.

- (3) However, the financial institution must not deduct an amount from an account if—
 - (a) the deduction would cause the account to be overdrawn; or

- (b) the deduction would cause the total balance of all the accounts the enforcement debtor holds with the financial institution to be less than the amount prescribed by regulation (the *protected amount*).
- (4) If the financial institution is prevented by subsection (3) from deducting from the accounts the full amount of the recoverable amount, it must deduct as much of the amount, if any, that it may deduct without contravening subsection (3).

Example—

If the recoverable amount is \$950, the protected amount is \$400 and the enforcement debtor's account has a balance of \$725, the financial institution must deduct \$325 from the account.

- (5) If the financial institution makes a deduction under this section, the institution may only charge the enforcement debtor an amount, as an administrative cost of complying with the fine collection notice, of not more than the amount prescribed by regulation.

103D Financial institution to make payment

As soon as practicable after making a deduction under section 103C, the financial institution must pay the amount of the deduction to SPER and, if the deduction is less than the recoverable amount, inform SPER of the reasons why the amount is less.

Division 7 Suspension of driver licence

104 Criteria for suspending driver licence

- (1) This division applies whether or not the enforcement debtor has a driver licence.
- (2) The registrar may suspend an enforcement debtor's driver licence under this division if satisfied the debtor is not taking steps to pay or otherwise discharge the enforceable amount of the debtor's SPER debt.

105 Suspension of driver licence

- (1) *If the registrar decides to suspend an enforcement debtor's driver licence, the registrar must serve on the debtor a notice of intention to suspend the licence in the approved form.*
- (2) *If the registrar acts under subsection (1), the enforcement debtor's SPER debt is increased by the enforcement fee prescribed by regulation for taking the action.*
- (3) *The enforcement debtor's driver licence is suspended if, within 14 days after the date of issue of the notice of intention to suspend the licence—*
 - (a) *the debtor does not pay SPER the enforceable amount of the debtor's SPER debt; and*
 - (b) *the debtor is not otherwise discharging the enforceable amount of the debtor's SPER debt.*
- (4) *The suspension continues until—*
 - (a) *the enforcement debtor pays SPER the enforceable amount of the debtor's SPER debt; or*
 - (b) *the enforcement debtor begins to otherwise discharge the enforceable amount of the debtor's SPER debt.*
- (5) *However, the registrar may end the suspension at any time by written notice given to the enforcement debtor.*

106 General effect of suspension of driver licence

- (1) Despite any other Act, the suspension of a driver licence under section 105 operates to suspend the driver licence of an enforcement debtor who holds a driver licence issued outside Queensland while the person is in Queensland.
- (2) A renewal or replacement of a driver licence suspended under section 105 does not affect the suspension.
- (3) Also, the suspension of a driver licence under section 105 does not affect the powers a court or another person may exercise under another Act to suspend or cancel the licence.

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- (4) *If the enforcement debtor does not hold a driver licence, the debtor is disqualified from holding or obtaining a driver licence until—*
 - (a) *the debtor pays SPER the enforceable amount of the debtor's SPER debt; or*
 - (b) *the debtor begins to otherwise discharge the enforceable amount of the debtor's SPER debt.*

107 Review of suspension of driver licence

- (1) This section applies if an enforcement debtor's driver licence is suspended for 3 months or more.
- (2) As soon as practicable after the end of each 3 months of the suspension, the registrar must review the suspension.
- (3) *If the registrar is satisfied the enforcement debtor is not taking steps to pay or otherwise discharge the enforceable amount of the debtor's SPER debt, the registrar may issue an arrest and imprisonment warrant for the enforcement debtor for the amount, without notice to the enforcement debtor.*

108 Effect of suspension of driver licence on vehicle insurance

- (1) The suspension of a person's driver licence under this Act does not terminate a vehicle insurance policy.
- (2) Also, a claim under a vehicle insurance policy can not be refused only because a person's driver licence is suspended under this Act.
- (3) This section has effect despite anything to the contrary in a vehicle insurance policy or any other agreement.
- (4) In this section—
vehicle insurance policy means a policy of insurance for damage or loss caused by or arising out of the use or operation of a vehicle, but does not include a CTP insurance policy within the meaning of the *Motor Accident Insurance Act 1994*.

Division 7A Enforcement by vehicle immobilisation

Subdivision 1 Criteria for vehicle immobilisation

108A Criteria for vehicle immobilisation

A vehicle may be immobilised under this division if—

- (a) the vehicle is of a type that under section 108B may be immobilised under this division; and
- (b) an enforcement debtor is the sole registered operator of the vehicle; and
- (c) the amount owing by the enforcement debtor is at least the amount prescribed under a regulation; and
- (d) the registrar is satisfied the enforcement debtor is not taking steps to pay or otherwise discharge the enforceable amount of the debtor's SPER debt; and
- (e) the registrar is satisfied either—
 - (i) it is not possible or appropriate for another form of enforcement action under this Act to be applied to the enforcement debtor; or
 - (ii) another form of enforcement action has been attempted unsuccessfully under this Act in relation to the enforcement debtor.

108B Types of vehicles that may be immobilised

- (1) The following vehicles may be immobilised under this division—
 - (a) a motor vehicle that has wheels;
 - (b) a trailer, including a caravan, built to be attached to a motor vehicle that has wheels.

[s 108C]

- (2) However, the following vehicles may not be immobilised under this division—
- (a) a motorised wheelchair;
 - (b) a motorised wheeled recreational device;
 - (c) any of the following used wholly or primarily by a person with a disability or by the person's carer—
 - (i) a scooter;
 - (ii) a quad bike;
 - (iii) a motor vehicle that has been adapted to accommodate the disability.

Subdivision 2 Notice of intention to issue immobilisation warrant

108C Registrar to serve notice of intention to issue immobilisation warrant

If the registrar wants to immobilise 1 or more vehicles under this division, the registrar must serve the enforcement debtor with a notice of intention to issue an immobilisation warrant in the approved form.

Subdivision 3 Immobilisation warrant and related matters

108D Issue and service of immobilisation warrant

- (1) The registrar may issue a warrant (an *immobilisation warrant*), in the approved form, to immobilise 1 or more vehicles of an enforcement debtor if, within 14 days after the registrar serves on the debtor a notice of intention to issue an immobilisation warrant—
- (a) the debtor does not pay SPER the enforceable amount of the debtor's SPER debt; and

- (b) the debtor is not otherwise discharging the enforceable amount of the debtor's SPER debt.
- (2) In deciding whether to issue an immobilisation warrant for a vehicle, the registrar may have regard to whether immobilising the vehicle would cause severe or unusual hardship to the enforcement debtor, the enforcement debtor's family or another person who uses the vehicle but has no capacity to ensure the enforcement debtor pays the amount owing.
- (3) A copy of the immobilisation warrant must be served on the enforcement debtor as soon as practicable after it is issued.

108E Registrar may cancel, suspend or vary immobilisation warrant

- (1) A person claiming an interest in a vehicle that is or is about to be immobilised under an immobilisation warrant may apply to the registrar for the cancellation, suspension or variation of all or part of the warrant, including because of facts that arise or are discovered after the warrant was issued.
- (2) The application must be written and state the facts relied on by the applicant.
- (3) The registrar may, by order, cancel, suspend or vary an immobilisation warrant.

108F Effect of immobilisation warrant

- (1) An immobilisation warrant for a vehicle authorises an enforcement officer to immobilise the vehicle stated in the warrant, without further notice to the enforcement debtor and without the enforcement debtor's consent, by attaching an immobilising device to the vehicle.
- (2) Under an immobilisation warrant, an enforcement officer has the additional powers stated in section 108I.
- (3) *On the issue of an immobilisation warrant, the enforcement debtor's SPER debt is increased by the enforcement fee prescribed by regulation for issuing the warrant.*

[s 108G]

- (4) An immobilisation warrant ends 12 months after the date of issue of the warrant or the earlier date, decided by the registrar, stated in the warrant.

108G Who may enforce an immobilisation warrant

An immobilisation warrant may be enforced by an enforcement officer.

108H Where and when an immobilisation warrant may or may not be enforced

- (1) Under an immobilisation warrant for a vehicle, an immobilising device may be attached to the vehicle stated in the warrant if it is parked or stopped—
 - (a) in a public place; or
 - (b) on property occupied by the enforcement debtor; or
 - (c) if the enforcement debtor is not an individual, at the enforcement debtor's place of business or registered office; or
 - (d) at any other premises, but only with the consent of the occupier of the premises.
- (2) The vehicle may be immobilised even if it is unattended.
- (3) An enforcement officer may enforce an immobilisation warrant at any reasonable time of the day or night.
- (4) An enforcement officer must not enforce an immobilisation warrant—
 - (a) at a place where the vehicle, if immobilised, could impede the use of the place or the road network or be a risk to safety; or
 - (b) at a place where the enforcement officer reasonably believes the safety of the driver and any other occupants of the vehicle may be at risk, for example, at an isolated location; or

- (c) if, before the immobilising device is attached to the enforcement debtor's vehicle—
 - (i) the debtor pays SPER the enforceable amount of the debtor's SPER debt; or
 - (ii) the debtor begins to otherwise discharge the enforceable amount of the debtor's SPER debt.
- (5) In this section—

public place means an area that is open to or used by the public and is developed for, or has as one of its uses, the driving or riding of motor vehicles, whether on payment of a fee or otherwise.

108I Additional powers under an immobilisation warrant

- (1) For the purpose of enforcing an immobilisation warrant for a vehicle, an enforcement officer may also—
 - (a) enter and re-enter a public place; and
 - (b) enter and re-enter premises occupied by the enforcement debtor, without the enforcement debtor's consent; and
 - (c) enter and re-enter premises, other than premises mentioned in paragraph (b), with the consent of the occupier of the premises; and
 - (d) do anything else reasonably necessary to immobilise the vehicle.
- (2) However, an enforcement officer may, under subsection (1)(b), enter a part of any premises used only for residential purposes only if the occupier consents to the entry or entry is authorised under an immobilisation search warrant.
- (3) In this section—

public place means a place that is open to or used by the public, whether or not on payment of a fee.

108J Entry to ask occupier for consent to enter

For the purpose of asking an occupier of premises for consent to enter, an enforcement officer may, without the occupier's consent or a warrant—

- (a) enter land around the premises to an extent that is reasonable to contact the occupier; or
- (b) enter part of the premises the enforcement officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

108K Entry with consent

- (1) This section applies if an enforcement officer intends to ask an occupier of premises to consent to the enforcement officer or another enforcement officer entering the premises under section 108I.
- (2) Before asking for the consent, the enforcement officer must show the occupier the immobilisation warrant and tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the enforcement officer may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
 - (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the enforcement officer consent to enter and re-enter the premises and enforce the warrant; and
 - (d) the time and date the consent was given.

- (5) If the occupier signs the acknowledgement, the enforcement officer must immediately give a copy to the occupier.
- (6) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry or re-entry; and
 - (b) an acknowledgement complying with subsection (4) for the entry or re-entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry or re-entry to prove the occupier consented.

108L Immobilisation search warrant

- (1) This section applies if an enforcement officer reasonably believes there may be a vehicle, mentioned in an immobilisation warrant, at a premises.
- (2) The enforcement officer may apply to a magistrate or a justice of the peace (magistrates court), who is not an official within the meaning of section 12, for the issue of a search warrant (*immobilisation search warrant*) under this section.
- (3) The magistrate or justice (*issuer*) may refuse to consider the application until the enforcement officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information about the application to be given by statutory declaration.

- (4) The issuer may issue the immobilisation search warrant only if satisfied there are reasonable grounds for believing the vehicle may be at the premises.
- (5) The immobilisation search warrant must be in the approved form and state—
 - (a) that a stated enforcement officer, or all enforcement officers, may enter the stated premises and exercise the powers mentioned in section 108M; and

[s 108M]

- (b) if the warrant is to be enforced at night—the hours when the stated premises may be entered; and
- (c) the time, no later than 7 days after the warrant is issued, when the warrant ends.

108M Powers under immobilisation search warrant

An enforcement officer has the following powers under an immobilisation search warrant—

- (a) power to enter and re-enter stated premises and to stay on the premises for the time reasonably necessary to search for the vehicle;
- (b) power to search for the vehicle;
- (c) power to use reasonable help for paragraphs (a) and (b).

108N Immobilisation notice

- (1) As soon as practicable after immobilising a vehicle under an immobilisation warrant, an enforcement officer must attach a notice (***immobilisation notice***) to a prominent place on the vehicle, for example, the windscreen of a motor vehicle.
- (2) The immobilisation notice must be in the approved form.

108O Immobilisation period and access to vehicle

- (1) An immobilising device and immobilisation notice may be attached to a vehicle stated in an immobilisation warrant for no longer than 14 days (the ***immobilisation period***).
- (2) The enforcement debtor is not prevented from accessing the vehicle, for example, to retrieve personal property, during the immobilisation period.

108P When immobilising device may be removed before end of immobilisation period

- (1) The registrar must direct an enforcement officer to remove the immobilising device and immobilisation notice as soon as practicable if, before the end of the immobilisation period, the registrar is satisfied that—
 - (a) the enforcement debtor has paid SPER the enforceable amount of the debtor's SPER debt or the debtor is otherwise discharging the amount; or
 - (b) the immobilised vehicle is impeding the use of a place or the road network or is a risk to safety.
- (2) The registrar may also direct an enforcement officer to remove the immobilising device and immobilisation notice as soon as practicable if, before the end of the immobilisation period, the registrar is satisfied that if the immobilising device is not removed before the end of the immobilisation period, severe or unusual hardship would be caused to—
 - (a) the enforcement debtor or the enforcement debtor's family; or
 - (b) another person who uses the vehicle but has no capacity to ensure the enforcement debtor pays the amount owing.

108Q Removal of immobilising device immediately after immobilisation period ends

An enforcement officer must remove the immobilising device and immobilisation notice from the vehicle immediately after the immobilisation period for the vehicle ends.

108R Direction by registrar to seize vehicle under enforcement warrant

The registrar may direct an enforcement officer to seize a vehicle under an enforcement warrant if—

[s 108S]

- (a) the immobilisation period has ended or the immobilising device and immobilisation notice have been removed from the vehicle before the end of the immobilisation period; and
- (b) the enforcement debtor has not paid SPER the enforceable amount of the debtor's SPER debt; and
- (c) the enforcement debtor is not otherwise discharging the enforceable amount of the debtor's SPER debt.

108S Direction by registrar to re-enforce current immobilisation warrant

- (1) This section applies if—
 - (a) the enforcement of an immobilisation warrant was stopped because the affected enforcement debtor was discharging the enforceable amount of the debtor's SPER debt under a payment plan or work and development order; and
 - (b) the payment plan is cancelled or the work and development order is withdrawn or revoked.
- (2) The registrar may direct an enforcement officer to re-enforce the immobilisation warrant.

108T Return of immobilisation warrant

- (1) An enforcement officer must, within a reasonable time, give to the registrar a return about the enforcement or otherwise of an immobilisation warrant.
- (2) The return must be made by giving to the registrar a certificate signed by the enforcement officer stating what was done to enforce the warrant, or what other action, if any, was taken.

108U Notice of damage—immobilisation warrant

- (1) This section applies if an enforcement officer damages property when exercising or purporting to exercise a power under an immobilisation warrant.
- (2) The officer must immediately give written notice of particulars of the damage to the person who appears to the officer to be the owner of the property.
- (3) If the officer believes the damage was caused by a latent defect in the property or circumstances beyond the officer's control, the enforcement officer may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the officer reasonably believes is trivial.
- (6) In this section—
owner, of property, includes the person in possession or control of it.

108V Compensation—immobilisation warrant

- (1) A person may claim from the State the cost of repairing or replacing property damaged by an enforcement officer when exercising or purporting to exercise a power under an immobilisation warrant.
- (2) Without limiting subsection (1), compensation may be claimed for a loss or expense incurred in complying with a requirement made of the person under section 114.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

[s 108W]

- (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

108W Effect of immobilisation on vehicle insurance

- (1) A claim under a vehicle insurance policy for an event that occurred during the immobilisation period can not be refused merely because the vehicle was immobilised under this division.
- (2) Subsection (1) applies despite anything to the contrary in a vehicle insurance policy or other agreement.

Subdivision 4 Offences

108X Offences of concealing, selling, transferring or otherwise dealing with vehicle with particular intent

- (1) An enforcement debtor who is the registered operator of a vehicle mentioned in a notice of intention to issue an immobilisation warrant must not conceal, sell, transfer or otherwise deal with the vehicle with intent to avoid the issue of an immobilisation warrant for the vehicle.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (2) An enforcement debtor who is the registered operator of a vehicle mentioned in an immobilisation warrant must not conceal, sell, transfer or otherwise deal with the vehicle with intent to avoid the enforcement of the warrant.

Maximum penalty—200 penalty units or 3 years imprisonment.

108Y Offence of interfering with or removing immobilised vehicle

A person must not interfere with, or remove, an immobilised vehicle during the immobilisation period with intent to adversely affect any seizure or sale of the vehicle under this Act.

Maximum penalty—200 penalty units or 3 years imprisonment.

108Z Offence of tampering with or removing immobilising device or immobilising notice

A person must not, without reasonable excuse, tamper with, or remove, or attempt to remove, an immobilising device or an immobilisation notice attached to a vehicle under this Act.

Maximum penalty—50 penalty units.

Division 8 Other enforcement options

110 Registration of interests

(1) *The registrar may register with the registrar of titles or any other person required or permitted to keep a register about dealing with property, an interest in land or an interest in any other property only if—*

(a) the total amount owing by the enforcement debtor is—
(i) for an interest in a motor vehicle—more than \$500;
or

(ii) otherwise—more than \$1,000; and

(b) *the registrar issues an enforcement warrant, imposing a charge on the land or property, for the amount.*

(2) *The registration of an interest under subsection (1) does not prevent the registrar issuing—*

(a) *an enforcement warrant to seize and sell property; or*

- (b) *for property that is a motor vehicle—*
 - (i) *a notice of intention to immobilise a vehicle; or*
 - (ii) *an immobilisation warrant.*
- (3) On registration of an interest in land or other property, the amount accrues interest at the annual rate prescribed under the *Civil Proceedings Act 2011*, section 59(3).
- (4) Also, the amount and any accruing interest becomes a charge on the debtor's interest in the land or other property ranking in priority according to the time of registration of the interest.
- (5) Subsection (4) applies subject to any other Act.
- (6) *The registrar must, as soon as practicable after either of the following happens, request removal of an interest registered under subsection (1)—*
 - (a) *the enforcement debtor pays SPER the amount stated in the enforcement warrant;*
 - (b) *the enforcement debtor begins to otherwise discharge the amount stated in the enforcement warrant.*
- (7) *This section does not prevent the registrar requesting removal of an interest registered under subsection (1) in other circumstances.*

Division 10 General provisions

114 **Power of person serving fine collection notice or enforcing warrant to demand name and address etc.**

- (1) An enforcement officer serving a fine collection notice or enforcing a warrant under this Act may require a person the enforcement officer reasonably suspects to be the person named in the notice or warrant to provide any of the following information that is relevant to the notice or warrant or the exercise of powers under this Act because of the notice or warrant—
 - (a) the person's full name and address;

- (b) the person's employment details;
 - (c) the person's bank account details;
 - (d) the person's driver licence number;
 - (e) who owns specified property;
 - (f) the person's pension details;
 - (g) the person's income and expenditure;
 - (h) the person's date of birth.
- (2) Also, an enforcement officer may require the person to provide evidence to the officer of the correctness of the information if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the information or to otherwise be able to give the evidence.
- (3) When making a requirement under subsection (1), the enforcement officer must warn the person that, unless the person has a reasonable excuse, it is an offence not to provide the information required.
- (4) When making a requirement under subsection (2), the enforcement officer must warn the person that, unless the person has a reasonable excuse, it is an offence to fail to provide evidence of the correctness of information provided by the person.
- (5) An enforcement officer who is enforcing an immobilisation warrant may require a person the enforcement officer reasonably suspects to be the person named in the warrant to answer a question relevant to the warrant or the exercise of powers under this Act because of the warrant.
- Example of a question under this subsection—*
- a question to establish a vehicle's location
- (6) When making a requirement under subsection (5), the enforcement officer must warn the person that, unless the person has a reasonable excuse, it is an offence not to provide the answer required.

[s 115]

- (7) A person must comply with a requirement under subsection (1), (2) or (5), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (8) A person does not commit an offence against subsection (7) if the person given the requirement is not proved to be the person named in the notice or warrant.
- (9) Before exercising a power under subsection (1) or (5) in relation to a person, the enforcement officer must show the person the identity card given to the enforcement officer under section 11A(1).

115 Effect of particular proceedings

- (1) If, for an offence—
- (a) a person served with an infringement notice—
- (i) pays the amount owing under an enforcement order for the offence in full; or
- (ii) pays the amount stated in an enforcement order for the offence under a payment plan; or
- (iii) is subject to a work and development order for the amount stated in an enforcement order for the offence; or
- (b) an enforcement warrant, an immobilisation warrant or an arrest and imprisonment warrant is enforced against a person served with an infringement notice for the amount owing under an enforcement order for the offence;

the proceedings that may be brought against, and the penalties that may be imposed on, the person for the offence are limited to proceedings and penalties that could be brought or imposed if the person had already been convicted of, and punished for, the offence.

- (2) Subsection (1)(a) stops applying if the enforcement order is withdrawn or cancelled after the amount is paid.

- (3) The making of the enforcement order is not a conviction for the offence.
- (4) Payment of an amount for the offence is not an admission for any civil or criminal proceeding arising out of the event for which the infringement notice was issued.
- (5) The Governor may waive all or part of an unpaid amount stated in an enforcement order, whether or not any part of the amount is payable to someone other than the State, and on the giving of the waiver the enforcement order stops having effect to the extent of the waiver.

116 Offence of obstructing enforcement officer

A person must not threaten, obstruct or assault an enforcement officer acting in the performance of duties under this Act.

Maximum penalty—50 penalty units or 1 year's imprisonment.

117 Offence of defacing or removing seizure tags

A person must not interfere with an item seized by an enforcement officer left at the place of seizure or a seizure tag or sticker placed on it.

Maximum penalty—50 penalty units.

Part 6 Imprisonment

119 Enforcement by imprisonment

- (1) *This section applies if, after attempting to enforce an enforcement warrant or immobilisation warrant against an enforcement debtor, the registrar is satisfied the unpaid amount under the warrant can not be discharged in any other way authorised under this Act.*

- (2) *The registrar may issue a warrant (**arrest and imprisonment warrant**), directed to all police officers, for the arrest and imprisonment of the enforcement debtor for the period stated in the warrant.*
- (3) *The period of imprisonment is to be worked out for the unpaid amount under the warrant, increased by the amount of the enforcement fee for issuing the warrant, in the same way as the period of imprisonment for an amount stated in an enforcement order is worked out under section 52A.*
- (4) *The arrest and imprisonment warrant must be in the approved form.*
- (5) *The warrant stops having effect if the unpaid amount is paid before the enforcement debtor is imprisoned.*
- (6) *The period of imprisonment an enforcement debtor must serve under the warrant is cumulative on any other period of imprisonment the debtor must serve under any other warrant or an order of a court.*

119A Enforcement fee imposed for defaults requiring arrest and imprisonment warrant

- (1) *If the registrar issues an arrest and imprisonment warrant for the arrest and imprisonment of an enforcement debtor, the enforcement debtor must also pay SPER the enforcement fee prescribed by regulation for issuing the warrant.*
- (2) *The amount of the enforcement fee is added to the enforcement debtor's SPER debt.*

120 Satisfaction of fine by imprisonment

- (1) *If a person serves the total period of imprisonment under an arrest and imprisonment warrant, the unpaid amount stated in the warrant is taken to be satisfied.*
- (2) *If, after an arrest and imprisonment warrant is issued, but before the person named in the warrant is imprisoned, the person pays part of the unpaid amount stated in the warrant,*

the warrant has effect as if the period of imprisonment stated in it were the balance remaining to be paid divided by—

- (a) for a court ordered amount—the relevant cut-out rate for the court order, rounded down to the nearest whole number and expressed as a number of days; or
- (b) for an infringement notice offence—the cut-out rate for the infringement notice offence, rounded down to the nearest whole number and expressed as a number of days.

Example for subsection (2)(a)—

B is fined \$1,000 and ordered to serve 14 days imprisonment if the fine is not paid. Before B is imprisoned, B pays \$600 of the fine. The cut-out rate is \$71.42 and the period for which B may be imprisoned is reduced to 5 days.

Example for subsection (2)(b)—

J owes SPER a total of \$350 for an infringement notice offence and charges for which J may be imprisoned for 6 days. Before J is imprisoned, J pays \$110. If the cut-out rate is \$60, the period for which J may be imprisoned is 4 days.

- (3) If a person who is imprisoned under an arrest and imprisonment warrant wants to pay the balance of the unpaid amount stated in the warrant, the balance is the amount worked out by multiplying the number of days remaining to be served by the relevant cut-out rate.

Example for subsection (3)—

B is imprisoned for failing to pay a fine of \$1,000. After serving 5 days imprisonment, B decides to pay the balance of the amount. If the cut-out rate is \$60, B must pay \$660.

- (4) On the satisfaction of the unpaid amount under this section, the person's imprisonment ends and the person must be released.

121 Order of satisfaction of fines if enforcement debtor imprisoned

If an enforcement debtor is imprisoned, the period of imprisonment discharges the unpaid amount in the reverse

order to the order of satisfaction that would have applied under part 4A if the person had not been imprisoned.

Part 8 Reciprocal enforcement of fines

131 Definitions for pt 8

In this part—

conviction means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether before or after the commencement of this part, in a proceeding for an offence, and includes an enforcement order or a similar order under a law of another State.

fine includes an amount stated in an enforcement order or a similar order under a law of another State.

Queensland fine means—

- (a) a fine payable under a conviction of a Queensland court; or
- (b) an amount payable under an enforcement order under this Act; or
- (c) another amount for which the registrar must take enforcement action.

reciprocating court means a court declared under section 132 to be a reciprocating court for this Act.

relevant officer of a reciprocating court means the registrar, however called, of the reciprocating court.

132 Declaration of reciprocating court

If another State has laws providing for the enforcement in that State of a Queensland fine, the Governor in Council may, under a regulation, declare a court that exercises criminal

jurisdiction in the other State to be a reciprocating court for this Act.

133 Enforcement of Queensland fine by reciprocating court

- (1) SPER may, on the registrar's initiative or on the request of the registrar of a Queensland court, give to the relevant officer of the reciprocating court a request for the enforcement of a particular Queensland fine in that State.
- (2) An amount received from a reciprocating court in satisfaction of all or part of a Queensland fine must be applied as if the amount had been paid to SPER by the person by whom the fine was payable in satisfaction of all or part of the fine.
- (3) If, after a request is made under subsection (1), SPER receives an amount in satisfaction of all or part of the fine from someone other than the relevant officer of the reciprocating court to whom the request was made, SPER must, as soon as practicable, notify the relevant officer of the amount of the payment.

134 Enforcement of fine imposed by reciprocating court

- (1) This section applies if—
 - (a) under a conviction of a reciprocating court, a fine is payable by a person having or appearing to have property in Queensland; and
 - (b) SPER receives a request from the relevant officer of the reciprocating court for the enforcement of the fine; and
 - (c) the request is accompanied by—
 - (i) a copy, certified by the relevant officer to be correct, of the conviction; and
 - (ii) a certificate by the relevant officer stating the amount of the fine that remains unpaid.
- (2) The registrar must register the certified copy of the conviction and write the date of registration on it.

[s 134A]

- (3) On registration of the conviction—
 - (a) the conviction is, for this part, taken to be a conviction of a Queensland court; and
 - (b) the registrar must make an enforcement order under this Act for the purpose of recovering the amount stated as unpaid in the certificate relating to the conviction.
- (4) If, after SPER receives a request under this section in relation to a fine payable under a conviction of a reciprocating court, SPER receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction of all or part of the amount of the fine—
 - (a) the registrar must register particulars of the payment; and
 - (b) the payment is, for the purposes of enforcement action under this Act, taken to be a payment under an enforcement order made under this section.
- (5) The registrar must pay the amount of any fine recovered by the registrar under the enforcement order into the consolidated fund, unless the amount must be dealt with in another way under an agreement between the Minister and the relevant Minister of the other State.
- (6) A document that appears to have been signed by the relevant officer of a reciprocating court is taken to have been signed by the relevant officer, unless the contrary is proved.

Part 8A Information sharing

Division 1 Preliminary

134A Definitions for part

In this part—

confidential information means information, including a document, that is disclosed to, obtained by, or otherwise held by, an official under or in relation to this Act.

official means a person who is, or has been, engaged in administering or enforcing this Act, including a person who is providing, or has provided, an authorised service under a service contract or service subcontract.

police commissioner means the commissioner of the police service under the *Police Service Administration Act 1990*.

Division 2 Information collection

134B Information from police commissioner

- (1) For the purpose of taking action against a person to enforce payment of an amount under this Act, the registrar may, by written notice given to the police commissioner, ask the police commissioner for any of the following information—
 - (a) the person's criminal history;
 - (b) a brief description of the circumstances of a conviction mentioned in the person's criminal history;
 - (c) any address of the person known to the commissioner;
 - (d) any assets of the person known to the commissioner.
- (2) If the registrar advises the police commissioner under section 134M about a particular warrant, the registrar may ask the commissioner for any of the following information about any person known to the commissioner to reside at premises where the registrar proposes to have the warrant enforced—
 - (a) the person's criminal history;
 - (b) whether any warning, including, for example, a warning about the health or behaviour of the person, is recorded in a document in the possession of the commissioner;
 - (c) the details of any warning mentioned in paragraph (b).

- (3) The police commissioner may comply with a request of the registrar made under subsection (1) or (2) to the extent the information is in the commissioner's possession or to which the commissioner has access.
- (4) If the police commissioner gives the registrar information under this section in writing, the registrar must destroy the information as soon as practicable after the registrar is satisfied it is no longer needed for the purpose for which it was given.
- (5) This section applies subject to the *Police Powers and Responsibilities Act 2000*, chapter 21, part 2.

134C Registrar may require person to give information

- (1) For the administration or enforcement of this Act the registrar may, by written notice given to a person, require the person to—
 - (a) give the registrar, either orally or in writing, information in the person's knowledge about a stated matter within a stated reasonable period and in a stated reasonable way; or
 - (b) give the registrar a document about a stated matter in the person's possession or control within a stated reasonable period and in a stated reasonable way.
- (2) When making the requirement, the registrar must warn the person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.
- (3) The person must comply with the requirement, unless the person has a reasonable excuse.
Maximum penalty—100 penalty units.
- (4) It is not a reasonable excuse for an individual to fail to comply with the requirement because complying with the requirement might tend to incriminate the individual.
- (5) It is a reasonable excuse for a person to fail to comply with the requirement because the person reasonably believes

complying with the requirement is likely to endanger a person's safety.

- (6) This section does not apply to the Queensland Police Service.

134D Registrar may require attendance by persons

- (1) For the administration or enforcement of this Act the registrar may, by written notice given to a person, require the person to attend before the registrar, at a stated reasonable time and place, to do either or both of the following—
 - (a) give the registrar, either orally or in writing, information in the person's knowledge about a stated matter;
 - (b) give the registrar a document about a stated matter in the person's possession or control.
- (2) The registrar may require—
 - (a) the information to be given on oath; or
 - (b) the information or document given to be verified by statutory declaration.
- (3) When making the requirement, the registrar must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (4) The person must not fail, without reasonable excuse, to—
 - (a) attend as required by the notice; or
 - (b) give the registrar information the person is required to give the registrar, and in the way required, under the notice; or
 - (c) give the registrar a document the person is required to give under the notice; or
 - (d) give information on oath if required by the registrar; or
 - (e) verify information or a document by statutory declaration if required by the registrar.

Maximum penalty—100 penalty units.

[s 134E]

- (5) It is not a reasonable excuse for an individual to fail to give the registrar information or a document because the information or document might tend to incriminate the individual.
- (6) It is a reasonable excuse for a person to fail to give the registrar information or a document because the person reasonably believes giving the registrar the information or document is likely to endanger a person's safety.
- (7) A person, other than an enforcement debtor or the enforcement debtor's representative, who is required under this section to attend a place is entitled to be paid the expenses prescribed by regulation.
- (8) For subsection (2)(a), the registrar may administer an oath.
- (9) This section does not apply to the Queensland Police Service.

134E Power to record giving of information

- (1) This section applies if a person is giving information to the registrar under section 134D.
- (2) With the person's knowledge, a recording may be made, in the way the registrar considers appropriate, of questions asked by the registrar and information given by the person.
- (3) The registrar must give the person a copy of the recording if asked to do so by the person.

134F Registrar may require translation or conversion of information

- (1) This section applies if—
 - (a) a person gives information to the registrar; and
 - (b) the registrar reasonably believes the information is relevant to the administration or enforcement of this Act.

- (2) The registrar may, by written notice given to the person, require the person to do 1 or more of the following within a stated reasonable period—
 - (a) translate the information into the English language;
 - (b) convert the information into a written document;
 - (c) convert any amount mentioned in the information into Australian currency.
- (3) The person must comply with the requirement, unless the person has a reasonable excuse.
Maximum penalty—100 penalty units.
- (4) If the person does not comply with the requirement, the registrar may have the information translated or converted as mentioned in subsection (2).
- (5) The costs and expenses incurred under subsection (4) are a debt payable to the State by the person.

134G False or misleading information

- (1) A person must not, in relation to the administration or enforcement of this Act, give the registrar or SPER information the person knows is false or misleading in a material particular.
Maximum penalty—100 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
 - (a) tells the registrar or SPER, to the best of the person's ability, how the information is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

Division 3 Information protection

134H Unauthorised disclosure of confidential information

- (1) An official must not disclose confidential information acquired by the official in the official's capacity to someone else unless the disclosure is authorised under division 4.

Maximum penalty—100 penalty units.

- (2) A person who knowingly acquires confidential information without lawful authority must not disclose the information to someone else.

Example—

A person employed by a cleaning contractor engaged by the State to clean reads a document in the registrar's office containing confidential information.

Maximum penalty—100 penalty units.

- (3) A person who receives confidential information and knows, or ought reasonably to know, it is confidential information must not disclose the information to someone else unless the disclosure is authorised under division 4.

Maximum penalty—100 penalty units.

- (4) However, subsection (3) does not apply to the person if, under division 4, the registrar disclosed the confidential information to the person and the person disclosed the information—
- (a) to the extent necessary to enable the person to exercise a power or perform a function conferred on the person under a law for the administration or enforcement of the law; or
 - (b) for the purpose for which the information was disclosed to the person; or
 - (c) to someone else for any purpose if the information relates to the person.

134I Non-disclosure of particular information

- (1) A person engaged in the administration or enforcement of this Act can not be compelled to disclose to a court or QCAT in a proceeding, or to a party to the proceeding—
 - (a) confidential information; or
 - (b) whether or not the person has received particular confidential information; or
 - (c) the identity of the source of particular confidential information.
- (2) This section does not apply to a proceeding for the administration or enforcement of this Act.

134J Limited use of self-incriminating information

- (1) This section applies if, in compliance with a requirement to give the registrar information or a document under section 134C or 134D, a person gives the registrar information or a document that might tend to incriminate the person.
- (2) Evidence of, or evidence directly or indirectly derived from, the information or document is not admissible in evidence against the person in a criminal proceeding, other than a proceeding in which the falsity or misleading nature of the information or document is relevant.

Division 4 Information sharing

134K Information-sharing arrangements

- (1) The registrar may enter into an arrangement (an *information-sharing arrangement*) with an entity prescribed by regulation for the purpose of sharing information held by SPER or the prescribed entity.
- (2) Under the information-sharing arrangement, a party to the arrangement may request and receive information held by

another party to the arrangement for any of the following purposes—

- (a) the administration or enforcement of this Act;
 - (b) the administration or enforcement of a court order;
 - (c) the enforcement of an offence administered by a prescribed entity;
 - (d) another purpose prescribed by regulation.
- (3) However, the registrar may only disclose information prescribed by regulation under the information-sharing arrangement.
- (4) Disclosure of information by a prescribed entity under an information-sharing arrangement is subject to any limitation on disclosure of the information under another Act.
- (5) Each party to the information-sharing arrangement must review their compliance with the requirements of the arrangement annually.
- (6) In this section—
- enforcement***, of an offence, includes the following—
- (a) investigating the offence;
 - (b) prosecuting the offence;
 - (c) imposing or collecting a fine for the offence;
 - (d) applying to a court for a civil penalty or other order for the offence.

prescribed entity means an entity prescribed by regulation under subsection (1).

134L Disclosure of confidential information by registrar

- (1) The registrar may disclose confidential information that includes personal information—
- (a) to the person to whom the information relates or to someone else—

- (i) with the consent, express or implied, of the person to whom the information relates; or
 - (ii) who the registrar reasonably believes is acting for the person to whom the information relates; or
 - (b) if the disclosure is expressly permitted or required under another Act; or
 - (c) in connection with the administration or enforcement of this Act or a revenue law; or
 - (d) in relation to a legal proceeding under this Act; or
 - (e) to the Minister, or an officer of the department, for—
 - (i) developing or monitoring policies for, or for the operation of, this Act; or
 - (ii) administering the *Financial Accountability Act 2009*, section 21; or
 - (f) to a law enforcement agency for the purpose of an investigation or proceeding, including for the purpose of deciding whether to start an investigation or proceeding.
- (2) The registrar may disclose confidential information that does not include personal information to any person, or for any purpose, the registrar is satisfied is appropriate in the circumstances.
- (3) If confidential information contains personal information, the registrar may disclose the confidential information under subsection (2) if the registrar first removes or conceals the personal information.

Note—

Under section 161 the registrar may delegate a power of the registrar under this section to an appropriately qualified person.

- (4) This section does not create a right in any person to be given information under this section.
- (5) In this section—

law enforcement agency means—

[s 134M]

- (a) an enforcement body within the meaning of the *Privacy Act 1988* (Cwlth); or
- (b) the Queensland Police Service under the *Police Service Administration Act 1990*; or
- (c) the Crime and Corruption Commission; or
- (d) the department in which the *Corrective Services Act 2006* is administered.

personal information, about a person, means information that—

- (a) identifies, or is likely to identify, the person; or
- (b) discloses matters about the person's affairs.

revenue law means—

- (a) a law of the Commonwealth or a State about the assessment, imposition or collection of a tax, fee, duty, royalty or other impost; or
- (b) another law administered by the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001*.

Note—

See the *Taxation Administration Act 2001*, sections 7 and 8 for the appointment and functions of the Commissioner of State Revenue.

134M Registrar may advise police commissioner about particular warrants

- (1) The registrar may advise the police commissioner of the following information—
 - (a) that the registrar has issued a particular warrant;
 - (b) when and where the registrar proposes to have the warrant enforced.
- (2) The information may only be used by the Queensland Police Service for the enforcement of the warrant.

- (3) In this section—

warrant means an enforcement warrant or an immobilisation warrant.

Part 9 Miscellaneous

Division 2 Other enforcement related provisions

147 Effect of notices, orders and warrants

- (1) For this Act, a fine collection notice, an enforcement order or a warrant issued by the registrar is taken to be a notice, order or warrant of a Magistrates Court in the central division of the Brisbane Magistrates Court district.
- (2) If the registrar believes that the enforcement debtor or any of the enforcement debtor's property is in a Magistrates Court district other than the Brisbane Magistrates Court district (the **receiving district**), the registrar may send a warrant issued by the registrar to the registrar of the court in the receiving district (the **receiving registrar**).
- (3) The receiving registrar must—
 - (a) record the warrant; and
 - (b) stamp the warrant with the court seal; and
 - (c) issue the warrant to an enforcement officer in the receiving district and record having issued it.
- (4) An enforcement officer in the receiving district—
 - (a) is authorised and required to act as if the warrant had been directed to the enforcement officer; and
 - (b) must, within a reasonable time, report in writing to the receiving registrar about what the enforcement officer has done to enforce the warrant; and

- (c) must, within a reasonable time, give the receiving registrar any money received in the enforcement of the warrant.

148 Electronic transmission of particular documents

- (1) A notice, order or warrant, or any document under this Act containing information or a request for information, that is required or permitted by this Act to be given by someone to someone else may be transmitted electronically to the person or entity to whom it is to be given or directed.

Note—

For service of documents under this Act, see section 158.

- (2) For serving a notice or enforcing an enforcement warrant or immobilisation warrant that is transmitted electronically, the enforcement officer to whom it is transmitted must arrange for a copy of the notice or warrant to be converted into written form, and to be completed in the way required under a regulation.

149 Enforcement costs and their allocation

- (1) A regulation may prescribe the enforcement costs payable for any step taken for enforcing payment of a fine, penalty or another amount under this Act.
- (2) If no enforcement costs are prescribed, no enforcement costs are payable.
- (3) The amount prescribed as enforcement costs may include costs payable to an entity other than SPER that takes the step.

149A References to amounts otherwise being discharged

- (1) A reference in this Act to a person otherwise discharging an amount, other than by paying the amount, is a reference to the person satisfying the amount in full by any 1 or a combination of the following—
 - (a) payment of an amount;

- (b) the payment of instalments under a payment plan;
- (c) undertaking activities under a work and development order.

Example—

The \$2,000 amount of a person's SPER debt is otherwise discharged if the person makes a payment to SPER of \$250, is subject to a work and development order for \$750 and enters into a payment plan for the remaining \$1,000.

- (2) However, the person ceases to be satisfying the amount if—
 - (a) the person is satisfying all or part of the amount through the payment of instalments under a payment plan and the plan is cancelled; or
 - (b) the person is satisfying all or part of the amount by undertaking activities under a work and development order and the order is withdrawn or revoked.

150 Dishonoured cheques etc.

- (1) This section applies if full or part payment of a fine or another amount payable under this Act is made—
 - (a) by cheque, and the cheque is dishonoured on presentation; or
 - (b) by credit card, and the credit provider declines to authorise the payment; or
 - (c) by direct debit from an account held with a financial institution, and the financial institution can not comply with the transfer request because there is not enough money in the account; or
 - (d) in another electronic way acceptable to SPER and the way of making the payment is not successful.
- (2) Payment is taken not to have been made—
 - (a) if the payment is made by cheque, until—
 - (i) the cheque is honoured on presentation; or

- (ii) payment in cash or in another way acceptable to the administering authority or to SPER is made in place of the cheque; or
- (b) in any other case—until payment is made in cash or in another way acceptable to SPER.

150A Registrar may write off unpaid fine or other amount

- (1) The registrar may write off all or part of a fine or another amount payable by a person under this Act, whether or not any part of the fine or other amount is payable to someone other than the State—
 - (a) if the person dies; or
 - (b) if the person is a corporation that has been deregistered; or
 - (c) if there is insufficient information to establish the identity of the person liable to pay the fine or other amount; or
 - (d) in other circumstances permitted under a guideline issued by the Minister under section 150B.
- (2) However, a fine or other amount that has been written off may be reinstated if—
 - (a) the fine or other amount was incorrectly identified for writing off; or
 - (b) the reinstatement is permitted under a guideline issued by the Minister under section 150B.
- (3) The fine or other amount—
 - (a) stops being payable from the time it is written off; and
 - (b) starts being payable again from the time it is reinstated.

150AA Registrar may waive or return fee

- (1) The registrar may waive or return all or part of a fee payable by a person under this Act in the circumstances prescribed by regulation.
- (2) However, a fee that is waived may be reinstated if—
 - (a) the fee was incorrectly identified for waiver; or
 - (b) the reinstatement is permitted under the circumstances prescribed by regulation.

150AB Redirecting amounts to unpaid SPER debts

- (1) This section applies if—
 - (a) SPER is to pay an amount to a person under this Act; and
 - (b) the person has a SPER debt.
- (2) Despite any other provision of this Act, SPER may apply the whole or part of the amount to the SPER debt instead of paying the money to the person.
- (3) This section does not apply to the payment of any balance to an enforcement debtor under section 73J(3)(e) because of the sale of property by an enforcement officer.
- (4) In this section—

pay includes transfer or refund.

150B Guidelines

- (1) The Minister may issue guidelines about the writing off or reinstatement of fines and other amounts payable by persons under this Act.
- (2) A guideline issued under subsection (1) must not be made available to members of the public.
- (3) The Minister may make guidelines, not inconsistent with this Act, about work and development orders.

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- (4) The registrar may issue guidelines for the purposes of section 108B, 108C, 108D(2), 108H(4)(a) or (b) or 108P(1)(b) or (2).
- (5) Without limiting subsection (4), a guideline for the purposes of section 108D(2) or 108P(2) may deal with—
 - (a) whether there is severe or unusual hardship caused by depriving an enforcement debtor of the enforcement debtor's means of earning a living; and
 - (b) whether there is severe or unusual hardship caused other than by depriving an enforcement debtor of the enforcement debtor's means of earning a living.
- (6) The registrar—
 - (a) may have regard to a guideline issued by the registrar for the purposes of section 108B, 108D(2) or 108P(2); and
 - (b) must have regard to a guideline issued by the registrar for the purposes of section 108C or 108P(1)(b).
- (7) An enforcement officer must have regard to a guideline issued by the registrar for the purposes of section 108H(4)(a) or (b).
- (8) A guideline under subsection (3) or (4) must be publicly available including available on SPER's website.

151 Registrar may arrange for use of information system

- (1) The registrar may approve a system (an *information system*) for—
 - (a) generating, sending, receiving, storing or otherwise processing electronic communications between SPER and an administering authority; or
 - (b) generating, sending, receiving, storing or otherwise processing electronic communications between SPER and an enforcement debtor or other person; or
 - (c) generating a decision of the registrar, other than a decision prescribed by regulation.

- (2) A decision generated by an information system is taken to be a decision made by the registrar.

153 Register

- (1) The registrar must keep a State penalties enforcement register.
- (2) *The register must include particulars of the following registered under section 34—*
- (a) *an infringement notice default;*
 - (b) *an early referral;*
 - (c) *an unpaid court debt.*
- (3) *The register must also include particulars of the following orders, notices and warrants, any payments made and any enforcement action taken after the issue by the registrar of any of the following—*
- (a) *an early referral notice;*
 - (b) *a court debt payment notice;*
 - (c) *an enforcement order;*
 - (d) *a work and development order;*
 - (e) *an enforcement warrant to seize and sell personal property;*
 - (f) *an enforcement warrant imposing a charge on property;*
 - (g) *a fine collection notice;*
 - (h) *a notice of intention to suspend a driver licence;*
 - (i) *a notice of intention to issue an immobilisation warrant;*
 - (j) *an immobilisation warrant;*
 - (k) *an arrest and imprisonment warrant.*
- (4) *The register must also include particulars of enforcement action taken under part 8.*

154 No fees payable for registration under other Acts

No fee is payable by SPER for—

- (a) lodging in a registry any order or instrument under this Act or any instrument lodged to transfer property to the State under this Act; or
- (b) doing anything else for which registry fees are fixed.

Example of paragraph (b)—

If fees are fixed for register searches or copies of anything in a register, SPER is not required to pay the fees.

155 Non-reviewable decision

- (1) This section applies to any of the following decisions (the **decision**)—

- (a) *a decision of the registrar to refuse to offer a person a payment plan under section 32B;*
- (b) *a decision of the registrar to cancel a payment plan under section 32E;*
- (c) a decision of the registrar to issue—
 - (i) an enforcement order under section 38; or
 - (ii) an enforcement warrant under section 63; or
 - (iii) a fine collection notice under section 75; or
 - (iv) a notice of intention to suspend a driver licence under section 105; or
 - (v) an arrest and imprisonment warrant under section 119;
- (d) a decision of the registrar to register an interest in land or property under section 110;
- (e) a decision of the registrar to issue—
 - (i) a notice of intention to issue an immobilisation warrant; or
 - (ii) an immobilisation warrant.

- (2) The *Judicial Review Act 1991*, parts 3 and 4 does not apply to the following matters—
 - (a) conduct engaged in for the purpose of making the decision;
 - (b) other conduct that relates to the making of the decision;
 - (c) the making of the decision;
 - (d) the decision.
- (3) Without limiting subsection (2), the Supreme Court does not have jurisdiction to hear and decide applications made to it under the *Judicial Review Act 1991*, part 3 or 4 about matters mentioned in that subsection.

156 Responsibility for acts or omissions of representatives

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves—
 - (a) if the person was in a position to influence the conduct of the representative in relation to the act or omission—the person took reasonable steps to prevent the act or omission; or
 - (b) the person was not in a position to influence the conduct of the representative in relation to the act or omission.
- (4) In this section—

representative means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

157 Evidentiary provisions

- (1) This section applies to a proceeding under this or another Act.
- (2) A certificate purporting to be signed by or for an administering authority and stating any of the following matters is evidence of the matter—
 - (a) a stated infringement notice was served in a stated way on a stated person at a stated address on a stated day for a stated infringement notice offence;
 - (b) an alleged offender did not pay a fine as required under an infringement notice;
 - (c) an alleged offender elected to have a matter of an offence decided in a Magistrates Court;
 - (d) *an alleged offender applied to the administering authority under section 23(2) for the immediate registration of a fine for the purpose of paying the fine under a payment plan with SPER;*
 - (e) an infringement notice has not been withdrawn or was withdrawn on a stated date;
 - (f) an offence stated in an infringement notice involved a stated vehicle or animal;
 - (g) a stated person owned a stated vehicle or animal at a stated time;
 - (h) a stated person owned a stated animal at a stated time;
 - (i) a stated address is the address of the owner of a stated vehicle in the record of registration of vehicles under a registration Act;

- (j) a stated person has or has not given the administering authority an illegal user declaration, known or unknown user declaration or sold vehicle declaration for an offence stated in an infringement notice;
 - (k) a fine has not been paid by, and a penalty has not been imposed on, a stated or any person for an offence stated in an infringement notice.
- (3) A certificate purporting to be signed by the registrar and stating any of the following matters is evidence of the matter—
- (a) *a stated matter, including an infringement notice default or unpaid court debt, or particulars were registered under the Act on a stated day;*
 - (b) a stated amount was paid to SPER on a stated day to satisfy all or a stated part of a stated amount owing under a stated notice, order or warrant;
 - (c) a stated person applied to SPER to pay an amount under a payment plan;
 - (d) a stated enforcement action is being taken, or has been taken, against a stated person, including the date the action was taken, ceased or withdrawn;
 - (e) the amount of a stated person's SPER debt, including information about the unpaid amount of the debt and the history of the debt;
 - (f) a stated payment plan was accepted by a stated person on a stated day, or cancelled on a stated date;
 - (g) a stated work and development order was made, varied, withdrawn or revoked on a stated day;
 - (h) a notice of intention to suspend the driver licence of a stated person was served on the person in a stated way on a stated day;
 - (i) an administering authority withdrew an infringement notice on a stated day;

- (j) a stated enforcement order was cancelled on a stated day;
 - (k) a stated document was issued on a stated day.
- (4) The registrar must give an administering authority a certificate under subsection (3) about a matter mentioned in subsection (3)(j) if requested by the authority for the purpose of starting a proceeding against a person for an infringement notice offence.
- (5) In this section—
enforcement action means any of the following actions taken by the registrar—
 - (a) serving an enforcement order;
 - (b) issuing an enforcement warrant;
 - (c) issuing a fine collection notice;
 - (d) serving a notice of intention to suspend a driver licence;
 - (e) serving a notice of intention to issue an immobilisation warrant;
 - (f) issuing an immobilisation warrant;
 - (g) registering an interest in land or other property under section 110;
 - (h) issuing an arrest and imprisonment warrant.

158 Service of document

- (1) A document may be served under this Act—
 - (a) as provided for under the *Acts Interpretation Act 1954*, part 10; or
 - (b) if a person gives SPER or the registrar a unique electronic address for the person—by using electronic communication to send the document to the address; or
 - (c) if a person consents to SPER using a unique electronic address for serving a document to the person—by using

electronic communication to send the document to the address; or

- (d) in another way prescribed by regulation.
- (2) Also, in addition to being able to send a document to a person by post as provided for under the *Acts Interpretation Act 1954*, part 10, the registrar may send the document by post to another address for the person known to the registrar.
- (3) A document is taken to have been served on a person—
 - (a) for a document served by using electronic communication—
 - (i) on the day the communication is sent to the person; or
 - (ii) if the communication is sent after 5pm—on the following business day; or
 - (b) for a document served in a way prescribed by regulation—the day prescribed by regulation for the method of service.

Note—

For the time of giving a document by post, see the *Acts Interpretation Act 1954*, section 39A(1)(b).

- (4) In this section—

communication network means a network—

- (a) capable of electronic communication; and
- (b) designed to enable a user of the network to communicate with a specific person or a group of people.

Examples—

a telephone network or computer network

unique electronic address, for a person, means a fixed designation on a communication network assigned to the person for the purpose of the person receiving information.

Examples—

an email address, mobile phone number or user account

159 Proceedings for offences

A proceeding for an offence against this Act may be taken by way of summary proceedings under the *Justices Act 1886*—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

159A Registrar may communicate with enforcement debtors by SMS

The registrar may communicate with an enforcement debtor by SMS, without the enforcement debtor's consent, about—

- (a) enforcement action under the Act that is being, or may be, taken against the enforcement debtor; or
- (b) matters relating to the enforcement debtor's payment of the amount owing.

Division 3 General

160 Delegation by administering authority

The chief executive officer of an administering authority may delegate the administering authority's powers under this Act to an appropriately qualified person.

161 Delegation by registrar

- (1) Subject to section 10C, the registrar may delegate functions and powers of the registrar, or of SPER, under this Act to an appropriately qualified person.
- (2) Without limiting subsection (1), the registrar may delegate the registrar's powers to engage a debt collector as an enforcement officer to a bailiff.

162 Approval of forms by administering authority

An administering authority may approve forms for use as infringement notices under this Act.

163 Approval of other forms

The registrar may approve forms for use under this Act, other than forms for use as infringement notices.

165 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may prescribe an offence to be an infringement notice offence.
- (3) A regulation may prescribe an infringement notice fine for an infringement notice offence.
- (4) A regulation may prescribe an infringement notice fine for a corporation up to 5 times the amount payable by an individual for the offence under an infringement notice.
- (5) Also, a regulation may make provision for enforcing enforcement orders, enforcement warrants and fine collection notices including, but not limited to—
 - (a) the conduct of hearings or interviews for enabling the registrar to obtain information to facilitate the enforcement of fines, penalties and other amounts under enforcement orders, enforcement warrants, immobilisation warrants and fine collection notices; and
 - (b) requiring enforcement debtors to prepare and give to the registrar statements of the enforcement debtor's financial position; and
 - (f) the order of priority for enforcing enforcement warrants.
- (6) A regulation may be made about fees.
- (7) A regulation may be made about an offender levy including, for example, the prescribed particulars for an offender levy.

- (8) A regulation may prescribe a law to be a law that does not apply to—
 - (a) a service contractor under section 10A(4); or
 - (b) a service subcontractor under section 10B(7).
- (9) A regulation may prescribe a function or power of the registrar, or of SPER, under this Act to be a prescribed function for section 10C.
- (10) A regulation may be made about—
 - (a) the way in which a document may be served under this Act; and
 - (b) when a document is taken to have been served under this Act.
- (11) A regulation may be made about the following for work and development orders—
 - (a) the activities that are unpaid work, and the restrictions, if any, on those activities being unpaid work, including, for example—
 - (i) the places where an activity may be undertaken; and
 - (ii) the licences, authorisations or qualifications a person must have to undertake an activity;
 - (b) the courses, plans or programs that may be undertaken under an order;
 - (c) the amount by which a SPER debt is taken to be satisfied by undertaking particular activities under an order.
- (12) A regulation may be made about the following—
 - (a) the approval of persons or entities as approved sponsors, including conditions of approvals;
 - (b) the keeping of records relating to work and development orders;

- (c) the supporting evidence for eligibility assessments for work and development orders;
- (d) disciplinary action that may be taken against approved sponsors, including immediate suspension or cancellation of approvals.

Part 10 Transitional, validating and declaratory provisions

Division 1 Transitional provisions for Act No. 70 of 1999

167 Amnesty period

- (1) During the amnesty period, a warrant of commitment issued under—
 - (a) the *Justices Act 1886* for an infringement notice offence under the *Justices Act 1886*, part 4A; or
 - (b) the *Penalties and Sentences Act 1992* for non-payment of a fine imposed under that Act;but not enforced before the amnesty period started (*outstanding warrant*) must not be enforced.
- (2) Also, during the amnesty period a person may satisfy an outstanding warrant by paying the amount stated in the warrant free of any warrant issue fee mentioned in the warrant.
- (3) Subsection (1) does not apply to the enforcement of a warrant of commitment for a person who is a prisoner within the meaning of the *Corrective Services Act 1988*.
- (4) This section has effect despite anything to the contrary in the *Justices Act 1886* or any other Act.
- (5) In this section—

amnesty period means a 2-month period commencing on the commencement of this section or, if a longer period is prescribed under a regulation, the longer period.

168 Saving of infringement notice

An infringement notice issued under the *Justices Act 1886*, part 4A as in force before the commencement of section 167 is taken to be an infringement notice issued under this Act, and the penalty stated in the infringement notice is taken to be a fine under the notice.

169 Saving of enforcement orders

- (1) This section applies to enforcement orders issued under the *Justices Act 1886*, section 98P for an existing penalty and in force immediately before the commencement of this section.
- (2) Each enforcement order continues to have effect until the registrar issues an enforcement order under subsection (3) or an enforcement warrant or fine collection notice under subsection (5).
- (3) As soon as practicable after the commencement of this section, the registrar must issue an enforcement order under this Act for each infringement notice to which an enforcement order mentioned in subsection (1) relates.
- (4) Subsection (3) does not apply to an enforcement order that is amended under the *Justices Act 1886*, section 98R.
- (5) If a person contravenes an enforcement order mentioned in subsection (4), the registrar may issue an enforcement warrant or fine collection notice for the amount unpaid under the order.

170 Issue of infringement notices by administering authority

- (1) Despite the repeal of the *Justices Act 1886*, part 4A, an administering authority may continue to issue an infringement

notice that complies with that Act for a period ending 6 months after the commencement of this section.

- (2) However, the administering authority must at the same time issue a notice in the approved form to the alleged offender stating—
 - (a) the infringement notice will be enforced as if it is was issued under this Act; and
 - (b) the rights and obligations of the alleged offender under section 22.
- (3) The infringement notice may be enforced as if it were an infringement notice issued under this Act.

171 Existing warrant of commitment

- (1) If a warrant of commitment issued against a person under the *Justices Act 1886* or the *Penalties and Sentences Act 1992* for non-payment of an amount that may be registered under this Act was not enforced before the commencement of this section, the registrar may, despite the relevant Act, recall the warrant and cancel it.
- (2) If, at the end of the amnesty period the amount has not been paid, the SPER registrar—
 - (a) may issue an enforcement order under this Act for the amount stated in the cancelled warrant; but
 - (b) is not required to serve a copy of the enforcement order on the person or to give the person any further time to pay the amount before taking enforcement action under part 5 or 6.
- (3) The registrar may take enforcement action under this Act for the amount at any time after the order is made.

172 Existing fine option order

- (1) A fine option order made for a person on an application under the *Justices Act 1886*, section 98U and in force immediately

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before the commencement of this section is taken to be a fine option order made under this Act.

- (2) If the fine option order is revoked, the registrar—
 - (a) may issue an enforcement warrant or a fine collection notice under this Act for the amount concerned; but
 - (b) is not required to serve a copy of the warrant or notice on the person.
- (3) The registrar may take enforcement action under this Act at any time after the fine option order is revoked.

Division 2 Validating and declaratory provisions

173 **Infringement notice for Motor Accident Insurance Act 1994**

- (1) This section applies to an infringement notice for an offence against the *Motor Accident Insurance Act 1994*.
- (2) An infringement notice issued or served by a police officer before 20 December 2002 is taken to have been issued or served by an authorised person.
- (3) In this section—

infringement notice means an infringement notice under this Act or the *Justices Act 1886*, repealed part 4A.

174 **Infringement notice for a corporation**

To remove any doubt, it is declared that section 165(4), as in force immediately before the commencement of the *Justice and Other Legislation Amendment Act 2005*, section 149 was not and has never been, a contrary intention for the purposes of the application of the *Statutory Instruments Act 1992*, sections 24 and 25.

174A Particular orders made under Industrial Relations Act 2016

- (1) Subsection (2) applies if, before the commencement of this section—
 - (a) a magistrate gave particulars of a relevant order to the court registrar for the purpose of registering the prescribed particulars, in relation to the unpaid amount payable under the order, under section 34; or
 - (b) a court registrar purported, under section 34, to give to SPER, for registration, the prescribed particulars in relation to the unpaid amount payable under the order.
- (2) The giving of the particulars by the magistrate and the giving of the prescribed particulars by the court registrar is, and always has been, lawful.
- (3) Subsection (4) applies if, before the commencement of this section—
 - (a) the registrar purportedly registered, under section 34, prescribed particulars in relation to the unpaid amount payable under a relevant order; or
 - (b) a person took action purportedly under the Act to enforce a relevant order.
- (4) The registration of the prescribed particulars, and the action taken, is as valid, and always has been as valid, as if, at the time the relevant order was made, it was an order to which section 34 applied.
- (5) In this section—

relevant order means an order mentioned in the *Industrial Relations Act 2016*, section 380(1) or 406(1).

Division 3 **Transitional provisions for State Penalties Enforcement and Other Legislation Amendment Act 2007**

175 **Definition for div 3**

In this division—

amendment Act means the *State Penalties Enforcement and Other Legislation Amendment Act 2007*.

176 **Transitional provision about management of office**

- (1) This section applies if, immediately before the commencement of the amendment provision, an enforcement order, warrant or fine collection notice properly made or issued by a member of the staff of the registry was still in force.
- (2) The order, warrant or notice continues in force according to its terms as if the amendment provision had not commenced.
- (3) A member of the staff of the registry continues to have the same immunities and protections in relation to making or issuing the relevant document as the staff member would have had if the amendment provision had not commenced.
- (4) In this section—
amendment provision means section 4 of the amendment Act.

177 **Transitional provision for extension of time to pay an amount stated in an enforcement order**

- (1) This section applies if, immediately before the commencement of this section, an application for an extension of time to pay an amount stated in an enforcement order has been made under repealed section 41(b) or 42(1)(a) but not decided.
- (2) On the commencement, the application is taken to be cancelled.

- (3) In this section—

repealed section 41(a) or 42(1)(a) means section 41(a) or 42(1)(a) as in force before the commencement of section 15 of the amendment Act.

178 Transitional provision for cancellation of enforcement order

- (1) This section applies if, immediately before the commencement of this section, the registrar had cancelled an enforcement order under previous section 57 but had not referred the matter of the offence to a Magistrates Court.

- (2) On the commencement—

- (a) the registrar must not refer the matter of the offence to a Magistrates Court; and
- (b) new section 57 applies to the cancellation of the enforcement order as if the cancellation had happened after the commencement.

- (3) In this section—

new section 57 means section 57 as amended by the amendment Act.

previous section 57 means section 57 as in force before the commencement of section 20 of the amendment Act.

179 Transitional provision for good behaviour order

- (1) After the commencement of this section, a good behaviour order may be made under the new section 118 in relation to an enforcement warrant or a fine collection notice issued or that could have been issued before the commencement as if the enforcement warrant or fine collection notice was issued after the commencement.

- (2) In this section—

new section 118 means section 118 as in force after the commencement of section 26 of the amendment Act.

Division 6 **Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010**

182 **Effect of provision disqualifying person from holding or obtaining driver licence**

Section 106(4) as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* has effect in relation to a person whose licence is suspended under section 105 regardless of whether the suspension happened before or after the commencement of this section.

Division 7 **Transitional provisions for State Penalties Enforcement Amendment Act 2017**

183 **Definitions for division**

In this division—

amendment Act means the *State Penalties Enforcement Amendment Act 2017*.

amendments means the amendments of this Act made by the amendment Act.

community service has the meaning given by the *Corrective Services Act 2006*, schedule 4.

fine option order means an order converting the unpaid amount of a fine under an enforcement order to hours of unpaid community service.

former, in relation to a provision, means the provision as in force immediately before its amendment by the amendment Act.

183A Department (corrective services) is approved sponsor

- (1) From the commencement, the department (corrective services) is taken to be an approved sponsor for a work and development order to undertake unpaid work.
- (2) The chief executive (corrective services) may appoint an appropriately qualified person to supervise a person undertaking unpaid work under a work and development order.
- (3) The *Corrective Services Act 2006* applies to a person appointed under subsection (2) as if a reference in that Act to a community service supervisor were a reference to the person.
- (4) A corrective services officer has, subject to the directions of the chief executive (corrective services), the powers necessary to facilitate the department (corrective services) carrying out the functions of an approved sponsor.
- (5) In this section—

corrective services officer see the *Corrective Services Act 2006*, schedule 4.

department (corrective services) means the department in which the *Corrective Services Act 2006* is administered.

184 Other approved sponsors

- (1) This section applies if, before the commencement, the registrar published, on the department's website, a list of entities that are to be approved sponsors under this Act.
- (2) From the commencement, an entity included in the published list is taken to be an approved sponsor for the types of work and development orders stated for the entity in the list.
- (3) Nothing in this section prevents the registrar from cancelling an approval granted under subsection (2) or otherwise taking disciplinary action against the approved sponsor as provided by a regulation made under section 165(12).

185 Conversion of fine option orders

- (1) This section applies if immediately before the commencement a person was subject to a fine option order.
- (2) The fine option order is taken to be a work and development order to undertake unpaid work for, or on behalf of, an approved sponsor.
- (3) If the person was subject to 2 or more fine option orders, the registrar may combine the orders into a single work and development order applying under subsection (2).
- (4) The registrar must assign an approved sponsor for a work and development order mentioned in subsection (2).
- (5) The registrar may revoke the order under this section if after the commencement—
 - (a) a fine option order breach notice is in force under section 190; and
 - (b) the registrar is satisfied the person concerned has contravened the order without reasonable excuse.
- (6) Former section 129 applies for revoking the order despite the repeal of that section by the amendments.
- (7) The registrar must give the person a written notice explaining the effect of this section and stating the name of the approved sponsor for the person's work and development order.

186 Conversion of applications for fine option orders

- (1) This section applies if, before the commencement, a person applied to SPER under former section 43 for the conversion of an amount stated in an enforcement order to hours of unpaid community service under a fine option order and, on the commencement, the application had not been finally dealt with under this Act.
- (2) The application is taken to be an application for a work and development order to undertake unpaid work for, or on behalf of, an entity.

- (3) For processing the application as an application for a work and development order—
 - (a) the registrar must assign an approved sponsor for the application; and
 - (b) despite the amendments, former sections 44 to 46 continue to apply for the application as if a reference in the provisions to a fine option order were a reference to a work and development order; and
 - (c) former sections 47 to 50 do not apply for the application, regardless of whether the application was referred to the chief executive (corrective services) under former section 47; and
 - (d) if, before the commencement, the chief executive (corrective services) decided the applicant was not suitable for performing community service under former section 48, the registrar may have regard to the decision when deciding whether to grant the application as an application for a work and development order.

187 Continuation of good behaviour orders

- (1) This section applies if immediately before the commencement a good behaviour order (a *continuing order*) applied to a person.
- (2) The former provisions of this Act that applied for good behaviour orders continue to apply for the continuing order as if the provisions had not been amended or repealed under the amendment Act.

188 Application to pay fine by instalments

- (1) *Subsection (2) applies if—*
 - (a) *before the commencement—*
 - (i) *a person was served with an infringement notice for an offence; and*

- (ii) *within 28 days after the date of the infringement notice, the person applied to the administering authority for approval to pay the fine for the offence by instalments; and*
- (b) *on the commencement, the application had not been finally dealt with.*
- (2) *The application is taken to be an application for an early referral under section 23 and the administering authority must register the unpaid amount of the fine with SPER under section 34(1)(b).*
- (3) *Subsection (4) applies if—*
 - (a) *before the commencement—*
 - (i) *a person was served with an enforcement order; and*
 - (ii) *within 28 days after the date of the enforcement order, the person applied to SPER for approval to pay the amount stated in the enforcement order by instalments; and*
 - (b) *on the commencement, the application had not been finally dealt with.*
- (4) *The application is taken to be an application for a payment plan under part 3A and the registrar may decide the application under part 3A.*

189 Continued payment under an instalment payment notice

- (1) *This section applies if—*
 - (a) *before the commencement, a person was given an instalment payment notice; and*
 - (b) *on the commencement, the person had not finished paying the amount by instalments as required by the instalment payment notice.*

- (2) *The person's obligations to pay an amount by instalments as required by the instalment payment notice are continued as if the notice were a payment plan.*
- (3) *Sections 32D and 32E apply to the instalment payment notice as if a reference in those sections to a payment plan were a reference to the instalment payment notice.*
- (4) *If the instalment payment notice is cancelled under 32E—*
 - (a) *the person is taken to be an enforcement debtor for part 5; and*
 - (b) *section 62B applies as if a reference to a payment plan in that section were a reference to the instalment payment notice.*

190 Effect of existing enforcement documents

- (1) *This section applies to an enforcement document that, if the former provisions of this Act continued to apply, would continue in effect for a period ending after the commencement.*
- (2) *The enforcement document continues in force for the period, and in the circumstances, it would continue in force under the former provisions despite any inconsistency with the provisions of this Act as in force after the amendments.*

Example—

A notice of intention to suspend a driver licence served on an enforcement debtor 2 days before the commencement continues for 12 days after the commencement and only suspends the debtor's driver licence if the debtor does not pay the unpaid amount stated in the notice within 14 days.

- (3) *However, if an enforcement document entitles a person to apply for a fine option order or a good behaviour order, the document is of no effect to that extent.*
- (4) *In this section—*

enforcement document *means any of the following served on a person before the commencement—*

- (a) *an enforcement order;*

- (b) *a fine collection notice;*
- (c) *a notice of intention to suspend a driver licence;*
- (d) *a fine option order breach notice;*
- (e) *an enforcement warrant;*
- (f) *a notice of intention to issue an immobilisation warrant;*
- (g) *an immobilisation warrant;*
- (h) *an immobilisation search warrant;*
- (i) *an arrest and imprisonment warrant.*

191 Effect of existing default certificates

- (1) *Subsection (2) applies if, before the commencement, an administering authority could have given SPER a default certificate for registration under former section 33(1) but had not done so.*
- (2) *The administering authority may register the default certificate with SPER under section 34 as if the certificate were an infringement notice default.*
- (3) *Subsection (4) applies if—*
 - (a) *before the commencement, an administering authority gave a default certificate to SPER for registration under former section 33(1); and*
 - (b) *SPER had not yet registered the default certificate at the commencement.*
- (4) *SPER may register the default certificate under section 34 as if the certificate were an infringement notice default.*

192 Continuation of particular applications

- (1) *This section applies to any of the following applications made before the commencement if the application had not been finally dealt with under this Act before the commencement—*

- (a) *an application for cancellation of an enforcement order under former section 56 (a **section 56 application**);*
- (b) *an application for a review of the revocation of a fine option order under former section 130 (a **section 130 application**).*
- (2) *Despite the amendments, a section 56 application may continue to be dealt with under the former provisions of this Act.*
- (3) *Despite the amendments, a section 130 application may continue to be dealt with under the former provisions of this Act.*

193 Continuation of particular certificate evidence

In a proceeding under this or another Act a certificate purporting to be signed by the registrar and stating any of the following matters is evidence of the matter—

- (a) a stated person applied to SPER to pay the fine under an infringement notice by instalments;
- (b) a stated person applied to SPER for conversion, of an amount payable because of a fine, to hours of unpaid community service under a fine option order;
- (c) a stated fine option order relating to a stated person was revoked on a stated day.

194 Transitional regulation-making power

- (1) A regulation (a **transitional regulation**) may make provision of a saving or transitional nature—
 - (a) for which it is necessary to make provision to allow or facilitate the change from the operation of the former provisions of this Act to the operation of the provisions of this Act as in force after the commencement; and
 - (b) for which this Act does not make provision or sufficient provision.

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- (2) A transitional regulation may have retrospective operation to not earlier than the commencement.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) A transitional regulation may only be made within 1 year after the commencement.
- (5) This section and a transitional regulation expire 2 years after the commencement.

Division 8 Transitional provision for Tow Truck and Other Legislation Amendment Act 2018

195 Application of Act to particular 17 year old children

- (1) This section applies if—
 - (a) before the youth justice commencement, the registrar—
 - (i) registered a default certificate for an offence under section 33; or
 - (ii) registered the prescribed particulars of an unpaid amount under section 34; and
 - (b) immediately before the youth justice commencement—
 - (i) there was still a relevant unpaid amount for the registered default certificate or registered particulars; and
 - (ii) the person required to pay the relevant unpaid amount was 17 years old.
- (2) Despite the amendment of section 5 by the amending Acts—
 - (a) each of the following has effect—
 - (i) the registration of the default certificate or prescribed particulars;

- (ii) any current enforcement order for the relevant unpaid amount; and
 - (b) this Act applies in relation to the person and the relevant unpaid amount as if pre-amended section 5 were still in force.
- (3) To remove any doubt, it is declared that, for subsection (2)(b), a reference in pre-amended section 5 to a child within the meaning of the *Youth Justice Act 1992* is a reference to a person who has not turned 17 years.
- (4) If the date of a current enforcement order mentioned in subsection (2)(a)(ii) is less than 28 days before the youth justice commencement, this Act applies as if the date of the order were the date of commencement of this section.
- (5) In this section—

amending Acts means—

- (a) the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016*; and
- (b) the *Tow Truck and Other Legislation Amendment Act 2018*.

current enforcement order means an enforcement order that, immediately before the youth justice commencement, was in effect for a relevant unpaid amount.

pre-amended section 5 means section 5 as in force immediately before the youth justice commencement.

relevant unpaid amount, for a registered default certificate or registered particulars—

- (a) means the amount SPER is responsible for collecting because of the registration; and
- (b) includes any fees or costs payable under this Act in relation to the amount.

youth justice commencement means the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016*, schedule 1.

Schedule 2 Dictionary

section 3

account, for a financial institution, includes a withdrawable share account.

address means—

- (a) for an individual—
 - (i) the address of the place where the individual usually resides; or
 - (ii) a postal address for the individual; or
 - (iii) if a matter relates to a business owned or controlled by the individual—the address of the business; or
- (b) for a corporation—
 - (i) the head office, a registered office or a principal office of the corporation; or
 - (ii) a postal address for the corporation.

administering authority, for an infringement notice or infringement notice offence, means the entity prescribed under a regulation as the administering authority for the notice or offence.

alleged offender, for an infringement notice, means the person on whom the notice is served.

appropriately qualified public service officer means a public service officer who has the training and experience to perform an enforcement function under this Act.

approved form means a form approved under section 162 or 163.

approved sponsor see section 32F.

arrest and imprisonment warrant see section 119.

authorised person means—

- (a) for an infringement notice—a person who, under a regulation, may serve the infringement notice; or
- (b) for a withdrawal from acting under this Act—a person who, under a regulation, may effect the withdrawal.

authorised service see section 10A(2).

community service has the meaning given by the *Corrective Services Act 2006*, schedule 4.

confidential information, for part 8A, see section 134A.

conviction, for part 8, see section 131.

court debt payment notice see section 37D(2).

court registrar means—

- (a) for the Supreme Court or District Court—the registrar of the relevant court; or
- (b) for a Magistrates Court—the clerk of the relevant court.

criminal history of a person means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

customer reference number means a unique number used by the department within which the *Transport Operations (Road Use Management) Act 1995* is administered to identify a person on whom an infringement notice for an infringement notice offence involving a vehicle has been served.

cut-out rate, for a fine or unpaid amount, means—

- (a) for a court order under which an offender is required to serve a term of imprisonment for failing to pay a penalty or a forfeited recognisance under the *Penalties and Sentences Act 1992*—the rate worked out by dividing the penalty or the amount of the recognisance by the number of days of imprisonment ordered, expressed in dollars for each day; or
- (b) for a court order under which an offender is not required to serve a term of imprisonment for failing to pay a penalty under the *Penalties and Sentences Act 1992*—

the amount prescribed under a regulation for this paragraph or, if no amount is prescribed, \$75; or

- (c) for a court order under which a surety is required to serve a term of imprisonment for failing to pay an amount under the *Bail Act 1980* or the *Penalties and Sentences Act 1992*—the rate worked out by dividing the amount by the number of days of imprisonment ordered, expressed in dollars for each day; or
- (d) for a court order under which a surety is not required to serve a term of imprisonment for failing to pay an amount under the *Bail Act 1980* or the *Penalties and Sentences Act 1992*—the amount prescribed under a regulation for this paragraph or, if no amount is prescribed, \$75; or
- (e) for an infringement notice offence—the amount prescribed by regulation for this paragraph or, if no amount is prescribed, \$60.

debt collector means a debt collector or subagent under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*.

decision maker, for part 4, division 6, see section 56(4).

deducted amount see section 87.

driver licence has the meaning given by the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

early referral see section 34(1)(b).

early referral notice see section 37A(2).

earnings, of an enforcement debtor, means wages, salary, fees, bonuses, commission, overtime pay or other compensation for services or profit arising from office or employment, a pension, benefit or similar payment, an annuity or an amount payable instead of leave or retirement benefit owing or accruing to the enforcement debtor.

electronic communication means communication of information in the form of—

- (a) data, text or images by guided or unguided electromagnetic energy; or
- (b) sound by guided or unguided electromagnetic energy, if the sound is capable of being processed at its destination as language.

eligibility assessment, for part 3B, see section 32K(1).

employer, of an enforcement debtor, means a person (including the State) who, as principal, rather than as a servant or agent, pays, or is likely to pay, earnings to the enforcement debtor.

enforceable amount, of a person's SPER debt, means that part of the person's SPER debt for which the registrar may take enforcement action under part 5 or 6 (regardless of whether the registrar has started the action) less any amount for which recovery or enforcement action is suspended.

Example—

On application for the cancellation of an enforcement order, the decision maker may stay enforcement taken under the order. See section 56B(1).

enforcement action means action taken under this Act by the registrar or SPER to recover an amount a person must pay to SPER, including an action the registrar or SPER may take under this Act because the person failed to pay an amount to SPER.

Examples of enforcement action—

issuing an enforcement warrant, issuing a fine collection notice, issuing a notice of intention to suspend a licence or issuing an immobilisation warrant

enforcement debtor—

- (a) for part 5—see section 62A; or
- (b) generally—see section 38(2).

enforcement fee, for particular enforcement action, means the fee prescribed by regulation for the enforcement action.

enforcement officer means—

- (a) an appropriately qualified public service officer; or

- (b) the sheriff, deputy sheriff and the bailiff of a court; or
- (c) a debt collector engaged under section 10(3)(a); or
- (d) another person authorised to perform the functions, and exercise the powers, of an enforcement officer.

enforcement order see section 38.

enforcement warrant see section 63.

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the management of the corporation.

fine—

- (a) generally, includes—
 - (i) an amount stated in an infringement notice as the fine for a stated infringement notice offence and, for a particular infringement notice, the fine stated in the infringement notice; and
 - (ii) for an offence for which a fine is imposed by a court—any amount payable under an ancillary order of the court; and
- (b) for part 8—see section 131.

Examples of ancillary orders—

- 1 professional fees, witnesses' expenses and interpreters' allowances
- 2 royalties or another similar amount, including conservation value payable under the *Nature Conservation Act 1992*

fine collection notice see section 75.

government body means—

- (a) the State, another State, the Commonwealth or a local government; or
- (b) a department, service, agency, authority, commission, corporation, instrumentality, board, office or other entity established for a State government purpose; or
- (c) a part of an entity mentioned in paragraph (b).

illegal user declaration, for an offence involving a vehicle, means a statutory declaration stating facts establishing the vehicle was stolen or illegally taken at the relevant time.

immobilisation notice see section 108N.

immobilisation period see section 108O.

immobilisation search warrant see section 108L.

immobilisation warrant see section 108D.

immobilising device, for a vehicle, means—

- (a) wheel clamps; or
- (b) another device that effectively detains the vehicle.

infringement notice means a notice under section 15.

infringement notice default see section 33.

infringement notice fine, for an infringement notice offence, means the amount prescribed under a regulation to be the fine payable for the offence under an infringement notice.

infringement notice offence means an offence, other than an indictable offence or an offence against the person, prescribed under a regulation to be an offence to which this Act applies.

instalment, of a fine under an infringement notice, means the amount payable as an instalment of the fine.

interest in a managed investment scheme has the meaning given by the Corporations Act, section 9.

interfere with includes the following—

- (a) remove;
- (b) damage;
- (c) destroy;
- (d) deface.

known user declaration, for an offence involving a vehicle, means a statutory declaration stating—

- (a) if the owner is—

- (i) an individual—the owner was not in charge of the vehicle at the relevant time; or
- (ii) a corporation—the vehicle was not being used for the corporation at the relevant time; and
- (b) the name and address of the person who was in charge of the vehicle at the relevant time.

late payment penalty—

- (a) for a deducted amount—see section 87; or
- (b) for an undeducted amount—see section 88.

minimum instalment means the amount prescribed under a regulation as the minimum amount a person who may pay an amount by instalments must pay.

motor vehicle means a vehicle propelled by a motor that forms part of the vehicle, and includes a trailer attached to the vehicle.

offence, for a particular infringement notice, means the offence stated in the notice.

offence involving a vehicle means an offence in which an offender and a vehicle are involved, regardless of the extent to which the vehicle is actually involved in the offence.

offender, other than for part 3, includes alleged offender.

offender levy see the *Penalties and Sentences Act 1992*, section 179C.

officer, of a corporation, includes a former officer of the corporation.

official, for part 8A, see section 134A.

owner, of a vehicle, includes the person in whose name the vehicle is registered under a registration Act.

partner includes a former partner.

payment plan, for an amount, means an arrangement for paying the amount over a period by regular instalments.

police commissioner, for part 8A, see section 134A.

postal address, of a person, means—

- (a) the address of the place where the person receives mail sent by post, other than a place at which the person usually resides or works; or
- (b) a location or other designation sufficient to identify the part of a place where the person receives mail sent by post.

Example for paragraph (b)—

a post office box or parcel locker

premises includes any structure, building, aircraft, vehicle, vessel or place, whether built on or not.

prescribed particulars, for part 4, means particulars prescribed under a regulation.

protected earnings amount, for a period for which earnings are paid, means the amount worked out by applying the protected earnings rate to the period for which the earnings are paid.

protected earnings rate has the meaning given by the *Child Support (Registration and Collection) Act 1988* (Cwlth), section 4.

quad bike means a 4-wheeled motor vehicle that is ridden in the same way as a 2-wheeled motor vehicle.

Queensland fine, for part 8, see section 131.

reciprocating court, for part 8, see section 131.

registered operator, of a vehicle—

- (a) means the registered operator of the vehicle under the *Transport Operations (Road Use Management) Act 1995* (**transport registered operator**); and
- (b) if there is not, but has been, a transport registered operator of the vehicle—includes the last transport registered operator of the vehicle.

registrar means the person employed under section 10 to be registrar.

registration Act means—

- (a) the *Transport Operations (Road Use Management) Act 1995* or another Act prescribed under a regulation that deals with the registration of vehicles; or
- (b) a law of the Commonwealth or another State that deals generally with the same subject matter as an Act mentioned in paragraph (a).

relevant offence, for part 4, division 6, see section 55.

relevant officer, for part 8, see section 131.

relevant time, for an offence involving a vehicle, means the time and date specified in the infringement notice as the time and date of the offence.

responsible operator, of a vehicle, means a person nominated as a responsible operator for the vehicle under the *Transport Operations (Road Use Management) Act 1995*, section 170.

search warrant see section 71.

securities includes—

- (a) annuities; and
- (b) debentures; and
- (c) stocks; and
- (d) bonds; and
- (e) shares; and
- (f) marketable securities; and
- (g) units of—
 - (i) shares; or
 - (ii) marketable securities; or
 - (iii) interests prescribed under a regulation.

service contract see section 10A(1).

service contractor see section 10A(1).

service subcontract see section 10B(2).

service subcontractor see section 10B(1).

SMS means short messaging service.

sold vehicle declaration, for an offence involving a vehicle, means a statutory declaration stating facts establishing the owner had sold or otherwise disposed of the vehicle before the relevant time and was not in charge of the vehicle at that time, including—

- (a) the name and address of the person to whom the vehicle was sold or disposed of; and
- (b) the date and, if relevant, time of the sale or disposal; and
- (c) if an agent made the sale or disposal for the owner, the name and address of the agent.

SPER means the registry established under part 2.

SPER debt, of a person at a particular time, means the total amount the person must pay to SPER at that time, including, for example, fines and fees payable under this Act.

State penalties enforcement register means the register kept under section 153(1).

suspend, a driver licence, includes suspend a person's eligibility to apply for or obtain a driver licence.

third person means a person, including the State, from whom a debt—

- (a) is payable to an enforcement debtor; or
- (b) is likely to become payable to an enforcement debtor.

undeducted amount see section 88.

unknown user declaration, for an offence involving a vehicle, means a statutory declaration stating—

- (a) if the owner is—
 - (i) an individual—the owner was not in charge of the vehicle at the relevant time; or
 - (ii) a corporation—the vehicle was not being used for the corporation at the relevant time; and
- (b) the person making the declaration has not been able to find out who was in charge of the vehicle at the relevant time; and

Schedule 2

- (c) the nature of the inquiries made to find out the name and address of the person in charge of the vehicle at the relevant time.

unpaid court debt see section 33A.

unpaid work means—

- (a) if a person's approved sponsor is the department in which the *Corrective Services Act 2006* is administered—the community service offered to the person by that department; or
- (b) otherwise—an activity, prescribed by regulation, that is performed by a person without pay.

vehicle includes a boat.

vehicle insurance policy see section 108(4).

WDO eligible amount see section 32F.

wheelchair see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

wheeled recreational device see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

work and development order see section 32G(1).