

# NORTHERN TERRITORY OF AUSTRALIA

## FINES AND PENALTIES (RECOVERY) ACT

As in force at 1 March 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 March 2011

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## FINES AND PENALTIES (RECOVERY) ACT

**An Act to establish a fines recovery unit and to provide for the enforcement of fines and penalties, and for related purposes**

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Fines and Penalties (Recovery) Act*.

#### **2                      Commencement**

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

#### **3                      Application of Act**

(1) This Act applies to:

- (a) monies payable to the Territory and arising out of:
  - (i) an infringement notice issued under a law of the Territory that is prescribed in the Regulations; or
  - (ii) court proceedings (including forfeited bail and recognizances);
- (b) monies payable to a body other than the Territory arising out of an infringement notice issued under a law of the Territory (or an instrument pursuant to a law of the Territory) that is prescribed in the Regulations;
- (c) monies payable to a State or another Territory of the Commonwealth where a request has been made under Part 6; and
- (d) monies payable to a person under an order of a court in proceedings for an offence.

- (2) A court may order that this Act does not apply in circumstances provided for in the *Sentencing Act*, *Justices Act* or *Youth Justice Act* (as appropriate).

#### **4 Act binds Crown**

This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

#### **5 Definitions**

In this Act, unless the contrary intention appears:

***appropriate officer*** has the meaning in section 10.

***approved*** means approved by the Director.

***bailiff*** includes a member of the Police Force.

***complaint*** includes an information.

***Director*** means the person appointed under section 29 to be the Director of the Fines Recovery Unit and includes a person acting as the Director.

***enforcement action***, in relation to an enforcement order, means action under this Act to give effect to the enforcement order.

***enforcement agency***, in relation to an infringement notice, means:

(a) a person or body responsible for the administration of the Act;  
or

(b) a competent authority for the purposes of the law,

under which the infringement notice was issued.

***enforcement costs*** means enforcement costs within the meaning of section 41 or 53.

***enforcement order*** means a fine enforcement order or penalty enforcement order.

***fine*** has the meaning in section 6.

***fine defaulter*** means a person liable to pay an amount under an enforcement order.

***fine enforcement order*** has the meaning in section 49.



**Fines Recovery Unit** means the Fines Recovery Unit established by section 27.

**function** includes a power, an authority and a duty.

**infringement notice** has the meaning in section 9.

**law enforcement officer** means a person exercising law enforcement functions in an official capacity and includes:

- (a) the Director of Public Prosecutions or a member of the Office of the Director of Public Prosecutions;
- (b) a Crown prosecutor;
- (c) a member of the Police Force;
- (d) an employee within the meaning of the *Public Sector Employment and Management Act*;
- (e) an officer or employee of a statutory corporation;
- (f) an officer or employee of a council within the meaning of the *Local Government Act*;
- (g) an inspector under the *Animal Welfare Act*; and
- (h) an officer or employee of a kind prescribed by the Regulations.

**licence to drive** means a licence to drive granted under the *Motor Vehicles Act*.

**penalty** has the meaning in section 6.

**penalty enforcement order** has the meaning in section 36.

**post**, in relation to the service of a notice under this Act, includes to a Post Office box or other mailing address and the use of a private mail carrier.

**registered**, in relation to a vehicle, means registered under the *Motor Vehicles Act*.

**Registrar**, in relation to a court, means a Registrar or clerk of the court.

**youth** has the same meaning as in the *Youth Justice Act*.

**6        Meaning of *fine* and *penalty***

- (1) For the purposes of this Act, a fine is a monetary penalty imposed by a court for an offence and includes any of the following:
- (a) court fees or charges payable by a person under an order made by a court in proceedings for an offence;
  - (b) a levy payable under Part 6 of the *Victims of Crime Assistance Act*;
  - (c) witnesses' expenses payable by a person under an order made by a court in proceedings for an offence that were brought by a law enforcement officer;
  - (d) costs (including expenses and disbursements) payable by a person under an order made by a court in proceedings for an offence that were brought by a law enforcement officer;
  - (e) an amount of a kind prescribed by the Regulations.
- (2) For the purposes of this Act, a penalty is an amount specified in an infringement notice as being payable in respect of an offence alleged to have been committed or taken to have been committed by the person to whom the infringement notice is directed, and includes any of the following:
- (a) a levy payable under Part 6 of the *Victims of Crime Assistance Act*;
  - (b) an amount of a kind prescribed by the Regulations.
- (3) A fine or penalty does not include an amount of a kind excluded by the Regulations.
- (4) In subsection (1):
- proceedings for an offence*** includes:
- (a) proceedings for a restraining order; and
  - (b) proceedings on appeal in respect of proceedings for an offence.

## **Part 2            Infringement notices**

### **Division 1        Application of Part**

#### **7            Application of infringement notice procedure to children**

- (1) An infringement notice cannot be issued to a person who was younger than 14 years when the relevant offence is alleged to have been committed.
- (2) An infringement notice can be issued to a person who was 14 years or older when the relevant offence is alleged to have been committed despite that the Act under which the notice is issued does not specifically state that an infringement notice may be issued to a youth.

#### **8            Other provisions not affected**

This Part is in addition to and does not derogate from any Act that relates to proceedings that may be taken in respect of offences that are or may be the subject of infringement notices.

### **Division 2        Infringement notices**

#### **9            Infringement notice**

An infringement notice is a notice issued under a law of the Territory to the effect that the person to whom it is directed has committed a specified offence and that the person may expiate the offence by paying the penalty specified in the notice in the manner and within the time specified.

#### **10          Appropriate officers to issue and deal with infringement notices**

A person or a member of a class of persons:

- (a) authorised by the law providing for the issue of an infringement notice; or
- (b) specified in the Regulations for that kind of infringement notice or for all infringement notices,

is an appropriate officer to issue and deal with an infringement notice.

**11                      Appropriate officer may require name and address of person**

- (1) For the purpose of issuing an infringement notice to a person under a law of the Territory, an appropriate officer may require the person:
  - (a) to state the person's full name, date of birth and residential address; and
  - (b) to produce evidence of the person's identity.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Maximum penalty:        100 penalty units.

- (3) Despite subsection (2), a person does not commit an offence unless he or she was warned at the time the requirement was made that a failure to comply with the requirement is an offence.

**12                      Penalty under infringement notice is an amount payable**

- (1) The penalty under an infringement notice is to be taken to be an amount payable to the enforcement agency that issued the infringement notice and, subject to subsection (2), only ceases to be payable if the person elects under section 21 to be dealt with by a court or if the infringement notice is withdrawn.
- (2) The penalty under an infringement notice becomes payable to the Territory on the making of a penalty enforcement order in relation to the penalty.

**13                      Payment of amount required by infringement notice**

If the penalty under an infringement notice is paid within the period specified in the notice, the alleged offence is expiated and no further proceedings can be taken in relation to the offence unless the notice is withdrawn in accordance with the law under which the infringement notice was issued.

**14                      Failure to pay penalty under infringement notice**

If the penalty under an infringement notice is not paid within the period specified, this Act applies unless the notice is withdrawn.

## **Division 3            Courtesy letters**

### **15            Courtesy letter**

- (1) If it appears to an appropriate officer that the penalty under an infringement notice has not been paid within the period specified, the appropriate officer may serve, in accordance with section 17, a courtesy letter on the person to whom the infringement notice was directed.
- (2) A courtesy letter is not to be served if the person to whom the infringement notice was directed has elected in accordance with section 21 to have the matter dealt with by a court.

### **16            Courtesy letter to inform person**

- (1) A courtesy letter is to inform the person on whom it is served:
  - (a) that the person has until the due date specified in the letter to pay the penalty under the infringement notice together with the prescribed costs in respect of the issue of the letter;
  - (b) that payment may be made in the manner and at the place specified in the infringement notice or in accordance with any directions in the letter;
  - (c) of enforcement action that may be taken under this Act if the amount is not paid by the due date; and
  - (d) of enforcement costs that become payable under this Act if enforcement action is taken.
- (2) The due date for payment in a courtesy letter is 28 days after the date of issue of the letter.
- (3) The inclusion (or not) of additional information and directions for the assistance or guidance of the person on whom a courtesy letter is served does not affect the validity of the courtesy letter.

### **17            Service of courtesy letter**

- (1) A courtesy letter may be served personally, by post, by facsimile transmission or in any other manner prescribed by the Regulations.
- (2) The address for service of a courtesy letter includes:
  - (a) the address shown on the infringement notice or supplied by the person in connection with the service of the infringement notice;

- (b) if the infringement notice was served on the person in his or her capacity as owner of a vehicle or was served by being left on a vehicle – the address shown in the records of the Registrar of Motor Vehicles or other government Agency as the address of the owner of the vehicle at the time the infringement notice was issued;
- (c) if the infringement notice was served on the person in the capacity of having been identified as the person driving or in charge of a vehicle at the time of the alleged offence in a statutory declaration by the owner of the vehicle – the address specified in the statutory declaration; and
- (d) in the case of a corporation or government entity – the address of a place where the corporation or entity carries on business (including the business of government) and includes a registered address.

#### **18            Time for payment extended**

If a courtesy letter is served on a person, the time for paying the penalty under the relevant infringement notice (together with the prescribed costs) is extended to the due date specified in the letter.

#### **19            Effect of payment under courtesy letter**

If the penalty under an infringement notice to which a courtesy letter relates is paid (together with the prescribed costs) by the due date specified in the courtesy letter, the alleged offence is expiated and no further proceedings can be taken in relation to the offence unless the letter is withdrawn.

#### **20            Withdrawal of courtesy letter**

- (1) If the law under which an infringement notice was issued provides that the infringement notice may be withdrawn, an appropriate officer may withdraw a courtesy letter relating to the infringement notice:
  - (a) before the due date specified for payment in the letter; and
  - (b) in the same manner and circumstances as provided for the withdrawal of the infringement notice.
- (2) If a courtesy letter is withdrawn:
  - (a) the penalty under the infringement notice to which the letter relates ceases to be payable;

- (b) the prescribed costs for the issue of the courtesy letter cease to be payable;
- (c) the infringement notice to which the courtesy letter relates is to be taken to be withdrawn;
- (d) if any money has been paid under that infringement notice or the courtesy letter – the money is to be dealt with in accordance with section 111; and
- (e) further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the infringement notice was served) as if the infringement notice had not been issued.

## **Division 4                      Election to be dealt with by court**

### **21                      Alleged offender may elect to have matter dealt with by court**

- (1) A person who is alleged or is to be taken to have committed the offence to which an infringement notice relates may elect to have the matter dealt with by a court instead of under this Act.
- (2) The election is to be made by serving on the enforcement agency or other person or body specified in the infringement notice or the courtesy letter, if issued, a written statement that the person so elects.
- (3) The statement may be served at any time (including before a courtesy letter is issued) but, if a courtesy letter has been served on the person in relation to the relevant infringement notice, the statement is to be served before the due date specified in the courtesy letter.
- (4) The statement is to contain the prescribed information and may be served personally, by post, by facsimile transmission or in any other manner prescribed by the Regulations.

### **22                      Matter to proceed**

If a person elects in accordance with section 21 to have the matter dealt with by a court, proceedings against the person in respect of the alleged offence may be taken as if an infringement notice or a courtesy letter had not been issued.

## **Part 3                    Fines imposed by courts**

### **23                    When and where fine payable**

- (1) A fine imposed by a court is to be paid within 28 days after it is imposed.
- (2) A fine imposed by a court is to be paid to the Fines Recovery Unit unless the court otherwise directs.

### **24                    Fine notification**

- (1) The Registrar or other officer of a court must cause written notice of a fine imposed on a person by the court to be served on the person as soon as practicable after the fine is imposed.
- (2) The notice may be served personally, by post, by facsimile transmission or in any other prescribed manner.
- (3) The notice may be served personally during or at the completion of the proceedings concerned if the person is present at those proceedings and available to be served.
- (4) The notice is to specify the amount payable, the due date for payment and where and to whom the fine may be paid.
- (5) The notice is to inform the person:
  - (a) of arrangements that may be made for further time to pay the fine;
  - (b) of enforcement action that may be taken under this Act if the fine is not paid by the due date; and
  - (c) of enforcement costs that become payable under this Act if enforcement action is taken.

### **25                    Application for further time to pay fine**

- (1) An application for further time to pay a fine may be made to the Fines Recovery Unit by or on behalf of a person on whom a court has imposed the fine.
- (2) More than one application may be made under this section in respect of a fine (whether or not the earlier applications were granted).
- (3) The Fines Recovery Unit may, for the purposes of dealing with an application, require the applicant to provide information or



documents in support of the application (including documents relating to the identity of the applicant and his or her financial means) and may refuse to deal with the application if the information or documents are not provided.

- (4) When dealing with an application, the Fines Recovery Unit must:
  - (a) comply with any requirements that are prescribed for the purposes of this section; and
  - (b) have regard to any relevant guidelines under section 114.
- (5) The decision of the Fines Recovery Unit on an application under this section is final and may not be appealed against, reviewed or called into question in any court or tribunal.
- (6) The Director may authorise an officer of the Fines Recovery Unit to deal with an application and to make, amend or revoke an order that allows a person further time to pay a fine.

## **26 Fines Recovery Unit may allow further time**

- (1) If an application is made under section 25, the Fines Recovery Unit may by order allow further time to pay the fine if it appears expedient to do so.
- (2) The Fines Recovery Unit may:
  - (a) extend the time for payment of the whole fine; or
  - (b) allow the fine to be paid by instalments in the amounts, and at the times, as the Unit specifies.
- (3) If an instalment of a fine is not paid by the specified date, the remaining instalments then become due and payable unless the Fines Recovery Unit orders otherwise.
- (4) An order allowing further time to pay a fine or allowing the fine to be paid by instalments may be amended or revoked by a further order made on the application of the person liable to pay the fine or on the initiative of the Fines Recovery Unit.
- (5) An order under this section allowing further time to pay a fine or allowing the fine to be paid by instalments is cancelled on the making of a fine enforcement order against the person liable to pay the fine.

## **Part 4                      Fines Recovery Unit**

### **27                      Establishment**

The Fines Recovery Unit is established as a registry of the Local Court.

### **28                      Functions**

- (1) The Fines Recovery Unit has the functions conferred or imposed on it by or under this or any other Act.
- (2) The Fines Recovery Unit has the following functions:
  - (a) the receipt and collection of fines and penalties;
  - (b) the making of orders for additional time to pay or to allow payment by instalments;
  - (c) the making of enforcement orders;
  - (d) the taking of enforcement action under this Act against fine defaulters;
  - (e) the administration of the write-off policy for outstanding fines and penalties.
- (3) The Fines Recovery Unit may act for the Territory for the purpose of recovering debts or other monies due to the Territory.
- (4) The Fines Recovery Unit may act for other bodies for the purpose of recovering amounts due to those bodies arising from the issue of an infringement notice under a prescribed law.

### **29                      Director and Deputy Director**

- (1) The Minister must appoint an employee within the meaning of the *Public Sector Employment and Management Act* to be the Director of the Fines Recovery Unit.
- (2) The Minister may appoint an employee within the meaning of the *Public Sector Employment and Management Act* to be a Deputy Director of the Fines Recovery Unit.
- (3) Each person who is the Director or a Deputy Director is a Registrar of the Local Court.
- (4) The Director may delegate any of his or her powers or functions under this Act.

**30 Management**

- (1) The Fines Recovery Unit must operate in accordance with this Act, the Regulations and guidelines in force under section 114.
- (2) The functions of the Fines Recovery Unit of making or issuing orders or warrants under this Act are to be exercised by the Director or his or her delegate who is a justice of the peace.

**31 Registration of enforcement orders**

The Fines Recovery Unit must register each enforcement order made by it and record:

- (a) the taking of enforcement action in relation to the order;
- (b) whether enforcement action taken was successful;
- (c) details of any payments made in relation to the order; and
- (d) the satisfaction of the enforcement order.

**32 Access to information**

- (1) The Fines Recovery Unit may request from an Agency information relating to the address or assets of a fine defaulter and the Agency is authorised to provide the information to the Unit.
- (2) An Agency must provide information requested under subsection (1) to the Fines Recovery Unit without charge.

**33 Officer may require name and address of person**

- (1) When dealing with a person in accordance with this Act, an officer of the Fines Recovery Unit may require the person:
  - (a) to state the person's full name, date of birth and residential address; and
  - (b) to produce evidence of the person's identity.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Maximum penalty: 100 penalty units.

- (3) Despite subsection (2), a person does not commit an offence unless he or she was warned, at the time the requirement was made, that a failure to comply with the requirement is an offence.

**34            Offence to give false or misleading information**

A person who knowingly makes a false or misleading statement to the Fines Recovery Unit commits an offence.

Maximum penalty:        If the offender is a natural person –  
200 penalty units or imprisonment for  
12 months.

                                  If the offender is a body corporate –  
1 000 penalty units.

**Part 5            Enforcement action**

**Division 1       Preliminary**

**35            Application and interpretation**

- (1) The Fines Recovery Unit may take action under this Part in relation to the enforcement of:

- (a) an outstanding fine imposed by a court; or
  - (b) an outstanding penalty under an infringement notice,
- and enforcement costs arising under this Act.

- (2) In this Part:

***outstanding fine*** means the amount of a fine that has not been paid within the time specified in section 23 or the further time allowed under section 26 by the Fines Recovery Unit.

***outstanding penalty under an infringement notice:***

- (a) means the amount of a penalty that has not been paid within the time specified in the courtesy letter sent in relation to the infringement notice; and
  - (b) includes the prescribed costs in relation to the issue of the courtesy letter.
- (3) This Part applies despite anything in the *Youth Justice Act* except that the provisions of this Part relating to the hearing or determination of an alleged offence on the annulment of a penalty enforcement order are subject to that Act.

- (4) This Part may be used to enforce the payment of an outstanding penalty under an infringement notice:
- (a) even if the law under which the infringement notice was issued does not specifically provide for enforcement of the notice; and
  - (b) despite that the law under which the infringement notice was issued contemplates that a person who fails to pay the infringement penalty is to be prosecuted for the offence specified in the infringement notice.

## **Division 2            Penalty enforcement orders**

### **36            Penalty enforcement order**

A penalty enforcement order is an order made by the Fines Recovery Unit under section 38 to enforce payment of an outstanding penalty under an infringement notice and enforcement costs.

### **37            Appropriate officer may apply for penalty enforcement order**

- (1) An appropriate officer may apply to the Fines Recovery Unit for a penalty enforcement order if:
- (a) an infringement notice has been served on a person in relation to an alleged offence;
  - (b) a courtesy letter has been served on the person in accordance with section 17;
  - (c) the due date specified in the courtesy letter has passed;
  - (d) the penalty under the infringement notice has not been paid;
  - (e) the person has not elected to be dealt with by a court in relation to the matter; and
  - (f) a complaint in relation to the offence has not been filed but, having regard to the time when the offence is alleged to have been committed, a complaint could still be filed in relation to the offence.
- (2) The application for a penalty enforcement order is to certify that the conditions specified in subsection (1) are satisfied and the certificate is prima facie evidence of the matters stated.

- (3) An application is to be made in respect of only one infringement notice and is to specify the facts that constitute the alleged offence or offences specified in the notice.

### **38                      Fines Recovery Unit to make penalty enforcement order**

- (1) If application is made under section 37 and the Fines Recovery Unit is satisfied as to the matters specified in that section, the Unit may make a penalty enforcement order in relation to the person alleged or taken to have committed the offence the subject of the infringement notice.
- (2) If more than one application for a penalty enforcement order relates to the same person, the Fines Recovery Unit may make a single penalty enforcement order or more than one order in relation to all or some of the applications.
- (3) A penalty enforcement order may be made in the absence of and without notice to the person the subject of the order.

### **39                      Effect of making penalty enforcement order**

If the Fines Recovery Unit makes a penalty enforcement order in relation to an outstanding penalty under an infringement notice or outstanding penalties under more than one infringement notice:

- (a) the person the subject of the order is not, as a result, to be taken to have been convicted of an offence to which the infringement notice relates; and
- (b) the making of the order does not affect or prejudice any civil claim, action or proceeding arising out of the same circumstances.

### **40                      Amount payable under penalty enforcement order**

A penalty enforcement order is to set out the amount required to be paid, being the amount of the penalty that remains to be paid, together with specified enforcement costs.

### **41                      Enforcement costs under penalty enforcement order**

- (1) The following amounts are enforcement costs in relation to a penalty enforcement order:
  - (a) amounts prescribed under this section in relation to the making of a penalty enforcement order and the taking of enforcement action; and

- (b) amounts payable under section 74 in respect of bailiffs' costs and expenses.
- (2) Without limiting subsection (1)(a), the following amounts are payable to the Territory:
  - (a) the amount prescribed for the making of a penalty enforcement order;
  - (b) the amount prescribed for any enforcement action taken by the Registrar of Motor Vehicles under Division 7 before payment is made under the order;
  - (c) the amount prescribed for any enforcement action taken by a bailiff or other official under Division 8 before payment is made under the order.
- (3) An amount is not payable for enforcement costs unless it is a prescribed amount or is payable under section 74.

#### **42                      Effect of payment under penalty enforcement order**

- (1) The payment of an amount payable under a penalty enforcement order is not an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same circumstances.
- (2) If the full amount payable under a penalty enforcement order is paid or recovered, no person is liable for any further proceedings for the alleged offence concerned unless the order is annulled or withdrawn under this Part.
- (3) The payment of an amount payable under a penalty enforcement order does not affect the operation of the provisions of Division 3 relating to annulment of an order or the provisions of Division 6 relating to withdrawal of an order.

### **Division 3                      Annulment of penalty enforcement orders**

#### **43                      Application for annulment of order**

- (1) An application may be made to the Fines Recovery Unit by or on behalf of a person in relation to whom a penalty enforcement order has been made under Division 2 for the annulment of the penalty enforcement order.
- (2) An application for annulment is to be made in writing in the approved form and, unless by leave of the Fines Recovery Unit, must be made within 12 months after the making of the enforcement order.

- (3) An application may be made for the annulment of:
  - (a) a penalty enforcement order completely;
  - (b) a penalty enforcement order only to the extent of some of the infringement notices to which it refers; or
  - (c) more than one penalty enforcement order.
- (4) A person cannot make more than one application for annulment in relation to the same matter unless by leave of the Fines Recovery Unit.

#### **44                      Determination of application by Fines Recovery Unit**

- (1) If an application for annulment of a penalty enforcement order is made and the Fines Recovery Unit is satisfied that:
  - (a) the person was not aware that an infringement notice had been issued until the enforcement order was made;
  - (b) the person was hindered by accident, illness, misadventure or other cause from taking action in relation to the infringement notice; or
  - (c) in the circumstances of the case – there is other just cause why the application should be granted,the Unit must annul the order.
- (2) An application for annulment is to be dealt with by the Fines Recovery Unit in the absence of the parties unless the Unit otherwise directs.
- (3) If the Fines Recovery Unit is dealing with an application for annulment of a penalty enforcement order, the Unit may stay enforcement action under the order subject to the terms and conditions that the Unit thinks fit.
- (4) In determining an application for annulment the Fines Recovery Unit may:
  - (a) grant the application completely;
  - (b) grant the application only to the extent of some of the infringement notices to which the application order relates; or
  - (c) refuse the application.



#### **45                      Notice of determination**

- (1) The Fines Recovery Unit must give notice of the determination of an application for annulment to the applicant and the enforcement agency concerned.
- (2) The notice of determination of an application is to advise the applicant:
  - (a) if the application for annulment is refused completely or to the extent of some of the infringement notices to which the application relates:
    - (i) that the applicant may appeal the decision by making application to the Court of Summary Jurisdiction in accordance with section 46; and
    - (ii) that, on the listing of the matter with the Court of Summary Jurisdiction, any suspension under Division 7 of a licence to drive or vehicle registration is lifted pending determination of the matter unless the suspension is also in respect of another enforcement order or the application for annulment was in respect of only some of the infringement notices to which the penalty enforcement order relates; or
  - (b) if the application for annulment is granted completely or only to the extent of some of the infringement notices to which the penalty enforcement order relates:
    - (i) that the person has 10 days from the date of the notice in which to pay at the place specified the penalty under any relevant infringement notice;
    - (ii) that, if the penalty is paid within that time, the alleged offence is expiated and no further proceedings can be taken in relation to the offence; and
    - (iii) that, if the penalty is not paid within that time, the matter will be listed with the Court of Summary Jurisdiction for a hearing in relation to the alleged offence that gave rise to the relevant infringement notice.

#### **46                      Appeal against refusal of application by Fines Recovery Unit**

- (1) If the Fines Recovery Unit refuses an application for annulment, wholly or partially, the applicant may apply in the approved form to have the original application (to the extent of the refusal) determined by the Court of Summary Jurisdiction.

- (2) The Registrar of the Court of Summary Jurisdiction must list the matter for hearing and notify the applicant and the parties interested as to the date, time and place on or at which the application is to be determined.
- (3) When dealing with an application for annulment, the Court of Summary Jurisdiction may stay enforcement action under the penalty enforcement order subject to the terms and conditions that the Court thinks fit.
- (4) The Court of Summary Jurisdiction may proceed to determine an application under this section despite any omission or error in or failure of service of a notice to the parties about the time and place of the hearing of the application if:
  - (a) the Court is satisfied that the applicant and the parties interested and concerned had knowledge of the date, time and place on or at which the application was to be determined and were not prejudiced by the omission, error or failure of service; or
  - (b) the Court is satisfied that the applicant is avoiding service of the notice or cannot after reasonable search and inquiry be found.
- (5) The Court of Summary Jurisdiction is to determine the application in accordance with this Division and may make any decision that the Fines Recovery Unit could have made under section 44(4).
- (6) In this Division, if the applicant was a youth at the time the alleged offence the subject of an infringement notice to which the penalty enforcement order relates was committed, a reference to the Court of Summary Jurisdiction is to be taken to be a reference to the Youth Justice Court.

#### **47                      Effect of annulment**

- (1) If a penalty enforcement order is annulled completely:
  - (a) the order ceases to have effect;
  - (b) any enforcement action already taken is to be reversed to the extent practicable unless the same enforcement action is authorised under another penalty enforcement order or a fine enforcement order;
  - (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are to be dealt with in accordance with section 112; and

- (d) any amount that has been paid under the order is to be dealt with in accordance with section 112.
- (2) If a penalty enforcement order is annulled only to the extent of some of the infringement notices to which it applies:
  - (a) the order continues to have effect in respect of the remaining infringement notices to which it applies;
  - (b) any amount that has been paid under the order is to be applied to payment of the remaining infringement notices to which it applies and any enforcement costs in respect of that order; and
  - (c) the surplus, if any, is to be dealt with in accordance with section 112.
- (3) If the Fines Recovery Unit annuls a penalty enforcement order, whether completely or only to the extent of some of the infringement notices to which it applies:
  - (a) if the penalty under any infringement notice in relation to which the order is annulled is paid in accordance with the notice of determination of the application for annulment – the alleged offence to which the infringement notice relates is expiated and no further proceedings can be taken in relation to the offence; or
  - (b) if the penalty under any infringement notice in relation to which the order is annulled is not paid in accordance with the notice of determination of the application for annulment – the Unit must refer the matter to the Court of Summary Jurisdiction for a hearing in relation to the alleged offence that gave rise to the relevant infringement notice.

#### **48                      Proceedings for alleged offence if enforcement order annulled**

- (1) If a penalty enforcement order is annulled by a court or is annulled by the Fines Recovery Unit and referred to the Court of Summary Jurisdiction under section 47(3), the Court of Summary Jurisdiction must, either immediately or at a later sitting, hear and determine the substantive matter of the alleged offence that gave rise to the relevant infringement notice to which the penalty enforcement order related as if no penalty enforcement order had been made.
- (2) The matter is not to be heard and determined if the penalty under the relevant infringement notice is paid on the annulment of the order.

- (3) For the purposes of hearing and determining the matter, the application under section 37 for the penalty enforcement order (together with any annexure or certificate) is to be taken:

- (a) to be a complaint in relation to the alleged offence;
- (b) to have been filed when the application for the order was made; and
- (c) to have been filed by the appropriate officer who made the application,

and the person who made the application for the penalty enforcement order or an appropriate officer nominated by that person is to be taken to be the complainant.

## **Division 4            Fine enforcement orders**

### **49            Fine enforcement order**

A fine enforcement order is an order made by the Fines Recovery Unit under section 50 or 102 for the enforcement of payment of a fine imposed by a court.

### **50            Referral for fine enforcement order**

- (1) The Fines Recovery Unit may make a fine enforcement order against a person liable to pay a fine if:
- (a) the fine has not been paid by the due date; or
  - (b) the person liable to pay the fine has made arrangements for an extension of time to pay or for payment by instalments but is in default of those arrangements.
- (2) A fine enforcement order may be made in the absence of and without notice to the person the subject of the order.
- (3) A fine enforcement order may be made in respect of 2 or more outstanding fines that are payable by the same person.

### **51            Stay of enforcement pending appeal etc.**

- (1) If the person on whom a fine was imposed:
- (a) has applied for a rehearing of the matter; or
  - (b) has lodged a notice of appeal against the conviction or sentence,

the Fines Recovery Unit must not make a fine enforcement order in relation to the fine pending determination of the rehearing or appeal.

- (2) If the person on whom a fine was imposed:
  - (a) applies for a rehearing of the matter; or
  - (b) lodges a notice of appeal against the conviction or sentence,after a fine enforcement order has been made in respect of the fine, the Fines Recovery Unit must stay any enforcement action in relation to the order pending determination of the rehearing or appeal.
- (3) If the rehearing or appeal results in the conviction or finding of guilt in the matter being quashed or overturned, the Fines Recovery Unit must withdraw the enforcement order.
- (4) If the rehearing or appeal results in a fine of a different amount being imposed on the person:
  - (a) the Fines Recovery Unit must vary the enforcement order to reflect the different amount payable; and
  - (b) the stay on enforcement proceedings is removed.

## **52            Amount payable under fine enforcement order**

A fine enforcement order is to set out the amount payable, being the amount of the fine that remains to be paid together with specified enforcement costs.

## **53            Enforcement costs under fine enforcement order**

- (1) The following amounts are enforcement costs in relation to a fine enforcement order:
  - (a) amounts prescribed under this section in relation to the making of a fine enforcement order and the taking of enforcement action;
  - (b) amounts payable under section 74 in respect of bailiffs' costs and expenses.
- (2) Without limiting subsection (1)(a), the following amounts are payable to the Territory:
  - (a) the amount prescribed for the making of a fine enforcement order;

- (b) the amount prescribed for any enforcement action taken by the Registrar of Motor Vehicles under Division 7 before payment is made under the order;
  - (c) the amount prescribed for any enforcement action taken by a bailiff or other official under Division 8 before payment is made under the order.
- (3) An amount is not payable for enforcement costs unless it is a prescribed amount or is payable under section 74.

## **Division 5            Service of enforcement order**

### **54            Service on fine defaulter of notice of making of order**

As soon as practicable after an enforcement order is made, the Fines Recovery Unit must serve, in accordance with section 57, a notice on the fine defaulter that the order has been made.

### **55            Notice to inform fine defaulter**

- (1) The notice of the making of an enforcement order is to inform the fine defaulter:
- (a) that the order has been made;
  - (b) that the fine defaulter has until the final date specified in the notice to pay the fine or penalty (as the case may be) and enforcement costs specified in the notice;
  - (c) that, if the payment is not made by the final date, further enforcement action will be taken against the fine defaulter to enforce payment of the fine or penalty in accordance with this Part;
  - (d) of the enforcement actions that are provided for under this Part;
  - (e) that, if the payment is not made by the final date, further enforcement costs will be payable; and
  - (f) of the amount of those further costs (except for the costs referred to in subsection (2)) and circumstances in which they will become payable.
- (2) The notice of the making of an enforcement order may contain information relating to enforcement costs payable under section 74 if a bailiff is required to take enforcement action, but need not specify any amount in relation to those costs.

- (3) The inclusion (or not) in the notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the notice.

**56                      Final date for payment**

The final date for payment in a notice of the making of an enforcement order is 28 days after the date of the notice.

**57                      Service of notice**

- (1) Notice of the making of an enforcement order may be served personally, by post, by facsimile transmission or in any other manner prescribed by the Regulations.
- (2) The address for service of a notice of the making of a fine enforcement order includes the address for service of the person in connection with the proceedings in which the fine was imposed.
- (3) The address for service of a notice of the making of a penalty enforcement order includes:
  - (a) the address of the person shown on the infringement notice or supplied by the person in connection with the service of the infringement notice;
  - (b) if the infringement notice was served on the person in his or her capacity as owner of a vehicle or was served by being left on a vehicle – the address shown in the records of the Registrar of Motor Vehicles or other government Agency as the address of the owner of the vehicle at the time the infringement notice was served;
  - (c) if the infringement notice was served on the person in the capacity of having been identified as the person driving or in charge of a vehicle at the time of the alleged offence in a statutory declaration by the owner of the vehicle – the address specified in the statutory declaration; and
  - (d) in the case of a corporation or government entity – the address of a place where the corporation or entity carries on business (including the business of government) and includes a registered address.

## **Division 6            Withdrawal of order**

### **58            Withdrawal of order**

- (1) The Fines Recovery Unit may, on application or on its own initiative, withdraw an enforcement order if satisfied that the order was made in error.
- (2) A penalty enforcement order is to be withdrawn if application for its withdrawal is made by the enforcement agency that applied for the order.
- (3) An enforcement order may be withdrawn completely or only to the extent of some of the infringement notices or fines (as the case may be) to which it relates.
- (4) If an enforcement order is withdrawn completely:
  - (a) the order ceases to have effect;
  - (b) any enforcement action already taken is to be reversed to the extent practicable, unless the same enforcement action is authorised under another enforcement order;
  - (c) enforcement costs are not payable in respect of the issue of the order and, if paid, are to be dealt with under section 112; and
  - (d) any amount that has been paid under the order is to be dealt with under section 112.
- (5) If an enforcement order is withdrawn only to the extent of some of the infringement notices or fines (as the case may be) to which it applies:
  - (a) the order continues to have effect in respect of the remaining infringement notices or fines to which it applies; and
  - (b) any amount that has been paid under the order is to be applied as follows:
    - (i) first – to any enforcement costs in respect of the order;
    - (ii) second – to payment of the remaining infringement notices, or fines (as the case may be), to which the order applies;
    - (iii) the surplus, if any, is to be dealt with under section 112.



- (6) The withdrawal of an enforcement order does not prevent the making of a further enforcement order in respect of the infringement notice or fine (as the case may be).

## **Division 7                Licence to drive or vehicle registration suspension**

### **59                Fines Recovery Unit may request Registrar of Motor Vehicles to take enforcement action**

- (1) If a fine defaulter:
- (a) has not paid a fine or penalty by the final date specified in the notice of the making of the enforcement order served on the fine defaulter;
  - (b) has been granted additional time to pay by the Fines Recovery Unit but has not paid the fine or penalty by the extended due date; or
  - (c) has been allowed by the Fines Recovery Unit to pay a fine or penalty by instalments but has not paid an instalment at the time specified by the Unit for payment of that instalment,

and the fine defaulter:

- (d) is the holder of a licence to drive; or
- (e) is the registered owner (or one of the registered owners) of a motor vehicle,

the Fines Recovery Unit may request the Registrar of Motor Vehicles to take enforcement action referred to in this Division against the fine defaulter.

- (2) The Registrar of Motor Vehicles must comply with the guidelines under section 114 when taking enforcement action requested by the Fines Recovery Unit.

### **60                Suspension of licence to drive**

- (1) If the Fines Recovery Unit requests the Registrar of Motor Vehicles to take enforcement action, the Registrar must, under the *Motor Vehicles Act* and without further notice, suspend the licence to drive of the fine defaulter until the Unit advises that the enforcement order is satisfied or otherwise requests the Registrar to lift the suspension.
- (2) If the licence to drive of a person is already suspended (under this Act or another Act) at the time the Fines Recovery Unit requests the Registrar of Motor Vehicles to take enforcement action in relation to

the person and the period of that suspension comes to an end before the expiry of the licence, the Registrar must, under the *Motor Vehicles Act* and without further notice, further suspend the licence.

- (3) The Fines Recovery Unit or the Registrar of Motor Vehicles on behalf of the Unit may notify the fine defaulter of the suspension of the licence to drive, but a failure to notify the fine defaulter does not affect that action.
- (4) Despite the suspension of a licence to drive in accordance with this section, a court or the Registrar of Motor Vehicles may exercise a function under another Act to suspend or cancel the licence.

## **61                      Suspension of vehicle registration**

- (1) If the Fines Recovery Unit requests the Registrar of Motor Vehicles to take enforcement action against:
  - (a) a fine defaulter that is a body corporate; or
  - (b) a fine defaulter who does not hold a licence to drive or whose licence to drive is already suspended (under this Act or another Act),

the Registrar of Motor Vehicles may, under the *Motor Vehicles Act* and without further notice, suspend the registration of all or any vehicles of which the fine defaulter is the registered owner or one of the registered owners until the Unit advises that the enforcement order is satisfied or otherwise requests the Registrar to lift the suspension.

- (2) If the registration of a vehicle is already suspended (under this Act or another Act) at the time the Fines Recovery Unit requests the Registrar of Motor Vehicles to take enforcement action in relation to the person who is the registered owner or one of the registered owners and the period of that suspension comes to an end before the expiry of the registration, the Registrar must, under the *Motor Vehicles Act* and without further notice, further suspend the registration.
- (3) The Fines Recovery Unit or the Registrar of Motor Vehicles on behalf of the Unit may notify the fine defaulter of the suspension of the registration, but a failure to notify the fine defaulter does not affect that action.
- (4) The effect of suspension of the registration of a motor vehicle in accordance with this section is that the vehicle is to be taken to be unregistered during the period of the suspension, but the suspension has no effect in relation to compensation contributions within the meaning of the *Motor Vehicles Act*.

- (5) The Registrar of Motor Vehicles cannot cancel the registration of a vehicle while the registration of the vehicle is suspended under this section, except with the approval of the Fines Recovery Unit.

- (6) In this section:

**registered owner** includes a person nominated as an operator under section 92A of the *Motor Vehicles Act*.

## **62            Registrar of Motor Vehicles to refuse to exercise functions**

- (1) If the Registrar of Motor Vehicles is required to take enforcement action under this Division against a fine defaulter:

- (a) who does not hold a licence to drive or whose licence to drive is already suspended (under this Act or another Act); and
- (b) who is not the registered owner or one of the registered owners of a motor vehicle,

the Registrar of Motor Vehicles must not perform any of the following functions in relation to the fine defaulter:

- (c) issue a licence to drive to the fine defaulter or renew the licence to drive of the fine defaulter;
  - (d) register a vehicle in the name of the fine defaulter;
  - (e) issue a number plate to the fine defaulter;
  - (f) test the fine defaulter for the purpose of the issuing a licence to drive;
  - (g) perform any of the Registrar of Motor Vehicles' functions that are prescribed by the Regulations for the purposes of this section.
- (2) If the Registrar of Motor Vehicles refuses to perform a function, he or she must notify the fine defaulter as soon as practicable that the refusal is at the request of the Fines Recovery Unit because the person is a fine defaulter.
- (3) Subsection (2) does not apply if the Registrar of Motor Vehicles has previously notified the fine defaulter under that subsection in relation to another refusal arising from the same request from the Fines Recovery Unit.

- (4) The Fines Recovery Unit may notify the Registrar of Motor Vehicles that this section ceases to apply in relation to a fine defaulter and the Registrar of Motor Vehicles may then perform a function referred to in subsection (1) in relation to the fine defaulter.
- (5) This section applies despite any obligation on the Registrar of Motor Vehicles to perform a function that is imposed by or under any other Act.

**63                      Suspension of licence or registration may be lifted pending appeal etc.**

- (1) If a fine defaulter:
  - (a) is the subject of a penalty enforcement order and has lodged an application under Division 3 to have an application for annulment of the enforcement order determined by a court; or
  - (b) is the subject of a fine enforcement order and has lodged an appeal against the conviction or sentence in respect of which the fine was imposed,

the Fines Recovery Unit may advise the Registrar of Motor Vehicles that any suspension in accordance with this Division of the fine defaulter's licence to drive, or the registration of a vehicle, is to be lifted (unless the licence or registration is also suspended under this Act for the enforcement of another order) pending determination of the application or appeal.

- (2) If the licence or registration expired prior to the lifting of the suspension, the fine defaulter may apply to the Registrar of Motor Vehicles for a renewal of the licence or registration (as the case may be).
- (3) If the Fines Recovery Unit advises the Registrar of Motor Vehicles in accordance with this section and the licence or registration is not also suspended under another Act, the Registrar must lift the suspension or renew the licence or registration (as the case may be) despite section 62.
- (4) If a suspension is lifted under this section, the licence or registration may again be suspended in respect of another enforcement order.
- (5) If the fine defaulter is not successful in the proceedings referred to in subsection (1), the Fines Recovery Unit may request the Registrar of Motor Vehicles to again suspend the licence or registration (as the case may be).

- (6) For the purposes of subsection (5), the fine defaulter is to be taken to be unsuccessful if an appeal against the amount of a fine results in a fine of a different amount being imposed.

**64            Registrar of Motor Vehicles to cease enforcement action if requested**

- (1) The Registrar of Motor Vehicles must cease enforcement action (including removing the suspension of a licence to drive or vehicle registration) when requested to do so by the Fines Recovery Unit.
- (2) The Fines Recovery Unit:
- (a) must request the Registrar of Motor Vehicles to cease enforcement action under this Division if a fine defaulter has paid all outstanding amounts under an enforcement order or the order has otherwise been satisfied; and
  - (b) may request the Registrar of Motor Vehicles to cease enforcement action under this Division although a fine defaulter has not paid all outstanding amounts under an enforcement order.

**65            Effect of enforcement action on vehicle insurance**

- (1) A vehicle insurance policy is not affected by the suspension of the registration of the vehicle or the suspension of the licence to drive of the driver of the vehicle under this Division, and a claim under a vehicle insurance policy cannot be refused merely because of the suspension, despite anything to the contrary in a vehicle insurance policy or any other agreement.
- (2) In this section:

***vehicle insurance policy*** includes:

- (a) a policy of insurance in respect of a vehicle generally known as a comprehensive policy; and
- (b) a policy of insurance in respect of a vehicle generally known as a third party property policy.

**66            Offence to transfer registration during suspension**

- (1) A fine defaulter must not, without the approval in writing of the Fines Recovery Unit, sell or otherwise transfer an interest in a vehicle of which the fine defaulter is the registered owner or one of the registered owners while the registration of the vehicle is suspended in accordance with this Division.

Maximum penalty:        If the offender is a natural person –  
200 penalty units or imprisonment for  
12 months.

                                  If the offender is a body corporate –  
1 000 penalty units.

- (2) Nothing in this Division prevents the Registrar of Motor Vehicles from transferring the registration of a vehicle to a third party despite that the transferor is a fine defaulter and the vehicle registration has been suspended in accordance with this Division.
- (3) If the registration of a vehicle is suspended in accordance with this Division and the Registrar of Motor Vehicles transfers the registration of the vehicle to a third party, the suspension ceases to have effect.
- (4) The Registrar of Motor Vehicles is not required to transfer the registration of a vehicle to a third party if the Registrar believes that the proposed transferee is not a bona fide purchaser and the transfer is intended to defeat enforcement action taken under this Division.

**Division 8            Civil enforcement**

**67            When enforcement action taken under this Division**

- (1) The Fines Recovery Unit may take enforcement action under this Division that the Director considers appropriate if:
- (a) a fine defaulter does not pay the fine or penalty by the final date specified in the notice of making of an enforcement order; and
- (b) one or more of the following apply:
- (i) the fine defaulter is not the holder of a licence to drive or the registered owner of a vehicle;
- (ii) the Director considers that enforcement action under Division 7 is not appropriate;

- (iii) enforcement action has been taken under Division 7 but 3 months have elapsed since the taking of that action.
- (2) Enforcement action that may be taken under this Division includes one or more of the following:
  - (a) issuing a property seizure order;
  - (b) issuing a garnishee order;
  - (c) registering a statutory charge on land.

## **68            Examination of fine defaulter**

- (1) The Fines Recovery Unit may, by notice in writing, request a fine defaulter to supply the relevant information for the purpose of determining appropriate enforcement action that may be taken under this Division.
- (2) If the fine defaulter does not comply with the request or if the Director is not satisfied with the response, an examination summons may be issued to the fine defaulter.
- (3) An examination summons cannot be issued to a person if, within the previous 3 months, the person has attended an examination in accordance with a summons under this section.
- (4) An examination summons may be directed to:
  - (a) if the fine defaulter is a natural person – the fine defaulter; or
  - (b) if the fine defaulter is a corporation – an officer or former officer of the corporation.
- (5) Subject to subsection (6), an examination summons is to be served personally on the person to whom it is directed.
- (6) If the Director is satisfied that it is impracticable to serve an examination summons personally, the Director may make an order for substituted service in accordance with section 69.
- (7) An examination summons is to summon the person to whom it is directed to attend:
  - (a) at the place specified in the summons; and
  - (b) on a day and at a time specified in the summons and thereafter as further required,

to be orally examined by the Director or another specified officer as to the fine defaulter's property and other means of satisfying the fine and generally as to the fine defaulter's financial circumstances.

- (8) An examination summons:
  - (a) may require the person to produce to the Director or officer any document or other thing in the person's possession or control that tends to show the fine defaulter's true financial circumstances; and
  - (b) is to notify the person to whom it is directed that a warrant will issue if the person does not attend for examination in accordance with the summons.
- (9) A person is not bound to produce any document or other thing that is not specified or sufficiently described in the examination summons or that the person would not be bound to produce on a subpoena for production in the Supreme Court.
- (10) If a person fails to attend in accordance with a summons under this section, the Fines Recovery Unit may issue a warrant for the apprehension of the person and for the person to be brought before the Director or other specified officer of the Unit for examination in accordance with this section.
- (11) A warrant of apprehension:
  - (a) is not to be issued unless the Fines Recovery Unit is satisfied that the examination summons was duly served on the person (whether personally or by substituted service);
  - (b) is to be directed to a bailiff and provided to the bailiff for execution; and
  - (c) may be executed with the assistance of a member of the Police Force.
- (12) If a person who is served with an examination summons:
  - (a) fails, without reasonable excuse, to attend in accordance with the summons;
  - (b) refuses, without reasonable excuse, to give evidence on oath after attending for examination;
  - (c) gives false information at an examination; or
  - (d) fails, without reasonable excuse, to produce any document or thing that the person is required by the summons to produce,



the Director may report the matter to the next practicable sitting of the Local Court constituted by a magistrate and the Court may deal with the matter as if it were a contempt under section 34 of the *Local Court Act*.

- (13) If an examination under this section is adjourned, the Fines Recovery Unit must notify the person to be examined of the time and place for the continuance of the adjourned examination.

## **69            Substituted service**

- (1) If the Director is satisfied that it is impracticable to serve an examination summons personally on a person to be examined, the Director may make an order for substituted service.
- (2) In deciding whether to make an order for substituted service the Director must have regard to the following matters:
- (a) whether attempts have been made to effect personal service and why the attempts were unsuccessful (in particular whether the person to be examined appears to be avoiding service);
  - (b) the reasons why personal service is considered impracticable;
  - (c) the nature of substituted service proposed;
  - (d) the reasons why the proposed method of substituted service is likely to be successful;
  - (e) whether substituted service (and in particular the method of service proposed) is appropriate in the circumstances.
- (3) If attempts at personal service have been made, an affidavit is to be made by the person who attempted service and the Director must take into account any matters deposed to in the affidavit.
- (4) If the Director makes an order for substituted service, service may be effected in the manner ordered and is to be taken to be effective service for the purposes of this Division.

## **70            Order to seize property of fine defaulter**

- (1) A property seizure order is an order made by the Fines Recovery Unit for the seizure of the personal property of a fine defaulter for the purpose of levying the amount payable by the fine defaulter against that property.

- (2) The procedure set out in Part 44 of the *Local Court Rules* (except rules 44.02 and 44.05(5)) applies to a property seizure order as if the order were a warrant of seizure and sale and the Territory is to be taken to be the judgement creditor.
- (3) A property seizure order may be made in the absence of and without notice to the fine defaulter.
- (4) A property seizure order is to be directed to a bailiff and provided to the bailiff for execution.
- (5) If a bailiff is required to execute a property seizure order and a warrant of execution issued by a court or to execute more than one property seizure order, the priority to be accorded to their execution is as follows:
  - (a) a property seizure order is to be executed before a warrant of execution (even if the warrant was issued before the order);
  - (b) property seizure orders are to be executed in the order in which they were received by the bailiff (unless the bailiff is directed by the Fines Recovery Unit to execute them in a different order).
- (6) If a property seizure order has not been executed within 12 months after it was made, the bailiff to whom the order was directed must return the order to the Fines Recovery Unit and the Unit must cancel the order, but nothing prevents the issue of a further order in the matter.
- (7) A bailiff executing a property seizure order must not take any further action in relation to executing the order if the order is cancelled under section 75.

## **71            Power of entry to execute property seizure order**

- (1) A bailiff executing a property seizure order may, at any reasonable time of the day or night, enter and remain on any premises for the purposes of executing the order.
- (2) Subsection (1) does not authorise the bailiff to enter a part of premises used only for residential purposes by a person who is not the fine defaulter (whether or not the fine defaulter also resides at the premises) without the permission of the occupier or the authority of a search warrant under this section.
- (3) The bailiff may apply to a justice for the issue of a search warrant if he or she believes on reasonable grounds that there may be property liable to seizure under the property seizure order in any premises.

- (4) A justice to whom an application is made under subsection (3) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the bailiff who is executing the property seizure order to enter the premises and seize property in the premises in accordance with that or any other property seizure order against the same fine defaulter.
- (5) A member of the Police Force:
  - (a) may accompany a bailiff executing a property seizure order or search warrant; and
  - (b) may take all reasonable steps to assist the bailiff in the exercise of the bailiff's functions under this section.
- (6) This section does not authorise a bailiff to seize property under a warrant of execution or order (other than a property seizure order) while the bailiff is on premises in pursuance only of the authority conferred by this section.
- (7) In this section:

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

## **72            Order to garnishee debts, wages or salary of fine defaulter**

- (1) A garnishee order is an order made by the Fines Recovery Unit for:
  - (a) the attachment of a debt due or accruing to a fine defaulter from a person specified in the order; or
  - (b) the continuous attachment of the wage or salary of the fine defaulter,

for the purpose of enforcing payment of the amount payable by the fine defaulter under an enforcement order.
- (2) A garnishee order may be made in the absence of and without notice to the fine defaulter.
- (3) The procedures set out in Part 48 (rules 48.06 to 48.12 inclusive) and Part 49 (rules 49.08 and 49.09) of the *Local Court Rules* apply (with the necessary changes) to a garnishee order as if the order were an attachment of earnings order or an attachment of debts order, as the case may be.

- (4) Without limiting the changes referred to in subsection (3), in the application of Parts 48 and 49 of the *Local Court Rules* to a garnishee order:
- (a) a reference to a court or Registrar is to be taken to be a reference to the Fines Recovery Unit;
  - (b) a reference to the judgment debtor is to be taken to be a reference to the fine defaulter;
  - (c) the Territory is to be taken to be the judgement creditor;
  - (d) a reference to a particular form is to be taken to be the appropriate approved form;
  - (e) the Fines Recovery Unit is to serve the appropriate notices on an employer or a garnishee; and
  - (f) rules 48.02 to 48.05 (inclusive), 49.03 and 49.07 do not apply.

### **73            Registration of enforcement order as charge on land**

- (1) If the amount required to be paid under an enforcement order or the total amount under more than one enforcement order exceeds the prescribed amount, the Fines Recovery Unit may apply to the Registrar-General for registration of the order or orders as a statutory charge within the meaning of the *Land Title Act* on land owned by the fine defaulter (including owned jointly with another person).
- (2) An application under subsection (1) is to define the land to which it relates and is to contain a copy of the enforcement order or orders that form the basis of the statutory charge.
- (3) The statutory charge is of no effect until it is registered under the *Land Title Act*.
- (4) The statutory charge ceases to have effect in relation to the land on registration of the cancellation of the charge under section 75.
- (5) No power of sale is exercisable under a statutory charge under this Division.

### **74            Bailiff's costs payable**

- (1) The costs and expenses:
  - (a) reasonably incurred by a bailiff in taking enforcement action under this Division; and

(b) approved by the Fines Recovery Unit,

are enforcement costs payable by the fine defaulter under the enforcement order.

- (2) The amount of those costs and expenses is to be determined in accordance with the scale applicable to the enforcement of judgment debts under the *Local Court Regulations* but is to be reduced by any amount prescribed under section 41(2)(c) or 53(2)(c) as payable to the Territory.
- (3) For the purposes of this section, the Fines Recovery Unit has the functions of a Registrar of the Local Court in relation to the approval of those costs and expenses.
- (4) Enforcement costs recoverable under this section are payable to the bailiff concerned and, if paid to the Territory, may be paid by the Fines Recovery Unit to the bailiff.
- (5) The Local Court may review a decision of the Fines Recovery Unit in respect of enforcement costs in the same manner as provided by rule 4.04 of the *Local Court Rules* in respect of the decision of a Registrar.

## **75            Cancellation of property seizure order, garnishee order or charge on land**

- (1) The Fines Recovery Unit must cancel a property seizure order, garnishee order or statutory charge on land under this Division:
  - (a) on the payment of the amount payable under the enforcement order concerned; or
  - (b) if a community work order is served on the fine defaulter under Division 9 in relation to the enforcement order concerned.
- (2) The Fines Recovery Unit may cancel a property seizure order, garnishee order or statutory charge on land under this Division at any time if satisfied that it is just to do so.
- (3) The cancellation of a statutory charge on land under this Division does not take effect until the Registrar-General registers the cancellation.

## **Division 9            Community work orders**

### **76            Application and interpretation**

- (1) A community work order under this Division may be made only in respect of a fine defaulter who is a natural person.

- (2) In this Division, an approved project is a project approved by a community work advisory committee established under section 94E of the *Prisons (Correctional Services) Act*.

## **77            Community work order**

- (1) If:
- (a) a fine defaulter has not paid the fine or penalty and enforcement costs as required by the notice of the enforcement order served on him or her; and
  - (b) the Director believes on reasonable grounds that enforcement action under Division 8 (whether initiated or not) will not be effective in satisfying the enforcement order,

the Fines Recovery Unit may make a community work order requiring the fine defaulter to participate in an approved project in order to work off the amount that remains unpaid.

- (2) The Fines Recovery Unit may make a community work order in the absence of and without notice to the fine defaulter.

- (3) Subject to this Division:

- (a) sections 95 and 96(1) of the *Youth Justice Act*; and
- (b) sections 37 and 39(1) of the *Sentencing Act*,

apply (with the necessary changes) to a community work order under this Division.

- (4) An appeal does not lie in respect of the making of a community work order under this Division or the failure to make such an order.

## **78            Service of order**

- (1) A community work order under this Division is to be served personally on the fine defaulter and in accordance with the Regulations.
- (2) A community work order is to be served on the fine defaulter by a bailiff.
- (3) A bailiff who serves a fine defaulter with a community work order under this Division must:
- (a) provide to the fine defaulter information relating to:
    - (i) the fine defaulter's obligations under the order; and

- (ii) the consequences that may follow if the fine defaulter fails to comply with those obligations; and
- (b) send a copy of the order to the Director of Correctional Services.

**79            Assessment of suitability of fine defaulter for participation in project**

- (1) A community work order under this Division is to require the fine defaulter to attend at a place specified in the order, within 7 days of being served with the order, for assessment by the Director of Correctional Services as to the fine defaulter's suitability for participation in an approved project.
- (2) If the Director of Correctional Services assesses the fine defaulter to be suitable to participate in an approved project, the fine defaulter is to be advised of the place and the time at which the fine defaulter must present himself or herself to perform work under the order.
- (3) If the Director of Correctional Services assesses the fine defaulter to be not suitable to participate in an approved project, the Director of Correctional Services is to report that assessment to the Fines Recovery Unit and the fine defaulter is not to be required to perform work under the order.

**80            Number of hours of work under community work order**

- (1) The number of hours of work specified in a community work order made under this Division to be performed by the fine defaulter is to be calculated at the prescribed rate for the amount of the fine or penalty, including enforcement costs, that remains unpaid.
- (2) The number of hours specified in a community work order under this Division is not to exceed 480 hours but more than one order under this Division may apply to a fine defaulter at any one time.
- (3) The number of hours specified in a community work order under this Division is additional to the number of hours of work required to be performed by any other order under this Act or another Act and a maximum total number of hours that a person can be required to perform at any one time under another Act does not apply in relation to the hours required to be worked by an order under this Division.
- (4) If a community work order is made under this Division in respect of a person who was under the age of 18 years at the time that an offence or alleged offence to which the enforcement order relates was committed, work may be performed concurrently for the

purposes of that order and for the purposes of any other community work order (whether made under this Act or another Act) that applies to the person.

**81                      Satisfaction of fine or penalty by work under community work order**

- (1) If a fine defaulter who is subject to a community work order under this Division complies with the order, the fine or penalty concerned is to be taken to be satisfied.
- (2) If a fine defaulter who is subject to a community work order under this Division performs work for part of the number of hours of work specified in the order, the fine or penalty concerned is to be taken to be partially satisfied by the amount calculated at the prescribed rate for each hour of work actually performed under the order.

**82                      Satisfaction of order by payment**

- (1) If a fine defaulter who is subject to a community work order under this Division pays the fine or penalty (including enforcement costs), the order is taken to be satisfied.
- (2) If a fine defaulter who has performed some work under a community work order pays the outstanding balance of the fine or penalty (including enforcement costs) having regard to the number of hours of work performed under the order, the order is taken to be satisfied.
- (3) A fine defaulter who intends to pay the outstanding balance or the Fines Recovery Unit acting on his or her behalf must notify the Director of Correctional Services of that intention and the Director must provide to the fine defaulter and the Unit a written statement detailing the hours for which the fine defaulter performed work under the community work order.
- (4) In calculating the outstanding amount to be paid, the Fines Recovery Unit must reduce the amount of the fine or penalty (including enforcement costs) by the prescribed rate for each hour the fine defaulter performed work under the community work order.

**83                      Suspension of orders during imprisonment or detention**

If a fine defaulter who is subject to a community work order under this Division is imprisoned or detained while the order is in force, the order is suspended during that period of imprisonment or detention and the period that the order is to be in force is extended by the period that the order is suspended.



**84            Revocation of community work order**

- (1) The Fines Recovery Unit may revoke a community work order made under this Division if it is satisfied, following a report by the Director of Correctional Services, that the fine defaulter is not capable of performing work under the order or is otherwise not suitable to be engaged in such work.
- (2) The Fines Recovery Unit must revoke a community work order made under this Division if it receives a report by the Director of Correctional Services that the fine defaulter who is subject to the order has failed, without reasonable excuse, to comply with the order or the requirements imposed with respect to the order by or under the *Sentencing Act* or *Youth Justice Act*, as the case requires.
- (3) When revoking a community work order made under this Division, the Fines Recovery Unit may also revoke any other community work orders that have been made under this Division against the fine defaulter.
- (4) The Fines Recovery Unit may revoke a community work order made under this Division in the absence of and without notice to the fine defaulter.

**85            Notice of revocation of order to be served on fine defaulter**

- (1) Notice of the revocation of a community work order is to be served on the fine defaulter.
- (2) The notice may be served personally, by post, by facsimile transmission or in any other manner prescribed by the Regulations.
- (3) The notice is to advise the fine defaulter that a warrant may be issued for the commitment of the fine defaulter to imprisonment if the outstanding amount payable under the enforcement order is not paid within the period specified in the notice.

**Division 10            Imprisonment**

**86            Imprisonment following breach of community work order**

- (1) If a community work order is revoked under Division 9, the Fines Recovery Unit may by warrant commit the fine defaulter to prison for the period of imprisonment calculated in accordance with this Division unless the fine defaulter pays the relevant outstanding amount.

- (2) A warrant cannot be issued under this Division in respect of a fine defaulter who was younger than 18 years when every relevant offence was committed or is alleged to have been committed.
- (3) A single warrant may commit the fine defaulter for 2 or more periods of imprisonment if 2 or more community work orders made under Division 9 against the fine defaulter have been revoked.

## **87            Meaning of relevant outstanding amount**

- (1) In this Division:

***relevant outstanding amount***, in relation to an enforcement order at any time, means the amount payable under the enforcement order that remains unpaid at that time.

- (2) If a fine defaulter was a youth at the time that one or more of the relevant offences were committed or alleged to have been committed, for the purposes of determining the relevant outstanding amount:
  - (a) only an amount payable in respect of any offences committed or alleged to have been committed when the fine defaulter was 18 years or over is to be taken into account; and
  - (b) enforcement costs are to be apportioned pro rata on the basis of the amounts payable for the fines and penalties imposed for the offences committed or alleged to have been committed.
- (3) In calculating the amount that remains unpaid, account is to be taken of any partial satisfaction of the fine or penalty by performing work under a community work order under Division 9 or by service of any part of the period of imprisonment under this Division.

## **88            Calculation of period of imprisonment under warrant**

The period of imprisonment for the purposes of a warrant under this Division is to be calculated on the basis of the relevant outstanding amount as follows:

- (a) one day of imprisonment for each prescribed amount (or part of the prescribed amount) of the relevant outstanding amount;
- (b) the period is not to be less than one day;
- (c) the period is not to exceed 3 months.

**89            Satisfaction of fine or penalty by imprisonment**

- (1) If a fine defaulter serves the total period of imprisonment under a warrant under this Division, all fines or penalties concerned are to be taken to be satisfied.
- (2) If a fine defaulter serves part of the period of imprisonment under a warrant under this Division, the fines or penalties concerned are to be taken to be partially satisfied by the amount calculated at the prescribed rate for each day actually served.

**90            Terms under warrants to be served cumulatively**

If a fine defaulter is committed to 2 or more terms of imprisonment by one or more warrants of commitment under this Division, the terms are to be served cumulatively not concurrently.

**91            Term may be served concurrently with other imprisonment**

A term or cumulative terms of imprisonment for which a fine defaulter has been committed by a warrant under this Division:

- (a) may be served concurrently with any incomplete sentence or sentences of imprisonment imposed on the person other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed before or at the same time as that term or terms; and
- (b) must be served cumulatively on any incomplete sentence or sentences of imprisonment imposed on the person for the default of a payment of a fine or sum of money.

**92            Execution of warrant**

- (1) If a fine defaulter who is committed to prison by a warrant under this Division is already imprisoned, the warrant may be executed by the officer in charge of the prison or a person authorised by that officer by serving a copy of the warrant on the fine defaulter.
- (2) Notice is not required to be given to a fine defaulter of the proposed execution of a warrant under this Division.
- (3) A member of the Police Force executing a warrant under this Division may, in accordance with guidelines issued under section 114 or (subject to any such guidelines) issued by the Commissioner of Police, delay the execution of the warrant to enable the fine defaulter to pay the relevant outstanding amount or seek the cancellation of the warrant.

- (4) A member of the Police Force must cease executing a warrant under this Division if the fine defaulter pays the relevant outstanding amount (whether to the member or in any other manner authorised by this Act).

**93                      Cancellation of warrant**

If the Director considers it appropriate, the Fines Recovery Unit may cancel a warrant issued under this Division:

- (a) on application by the fine defaulter; or
- (b) on the Unit's own initiative.

**94                      Discharge from custody**

If a fine defaulter has been committed to a prison by a warrant under this Division and the relevant outstanding amount (calculated in accordance with section 87) is paid, the fine defaulter is to be discharged from custody unless he or she is also committed to the prison in respect of another matter.

**Division 11              Miscellaneous**

**95                      Time to pay**

- (1) At any time after an enforcement order is made but before a community work order is issued in the matter, the fine defaulter or a person acting on the fine defaulter's behalf may apply to the Fines Recovery Unit for time to pay the amount payable under the enforcement order.
- (2) If the Fines Recovery Unit is satisfied that the application is made in good faith and it appears to be expedient to do so, the Unit may, by order, allow further time to pay.
- (3) The Fines Recovery Unit may:
  - (a) extend the time for payment of the whole amount; or
  - (b) allow the total amount to be paid by instalments in the amounts and at the times as the Unit specifies.
- (4) If an instalment of an amount payable under an enforcement order is not paid by the due date, the remaining instalments then become due and payable unless the Fines Recovery Unit otherwise orders.
- (5) If:
  - (a) an application for further time to pay is granted; and

- (b) payment of each instalment is made in accordance with the order of the Fines Recovery Unit (if applicable),

further enforcement action under this Part is suspended.

- (6) If further enforcement action is suspended:

- (a) a bailiff is not required to return any property seized under a property seizure order under Division 8;
- (b) a statutory charge on land created under that Division need not be cancelled; and
- (c) a suspension of a licence to drive or vehicle registration need not be lifted,

until the amount payable under the enforcement order is paid in full.

## **96        Unpaid fines may be written off**

- (1) The Fines Recovery Unit may write off an unpaid amount payable under an enforcement order in accordance with guidelines issued under section 114.
- (2) An unpaid amount payable under an enforcement order that is written off is to be taken to have been paid for the purpose of cancelling enforcement action under this Act.

## **97        Disposition of money paid by or recovered from fine defaulters**

- (1) Any payment made by or on behalf of a fine defaulter under an enforcement order is payable to the Fines Recovery Unit.
- (2) If a payment under an enforcement order is made to another person or body, the payment may, with the approval of the Fines Recovery Unit, be directly credited to the Central Holding Authority or another account, or retained, in accordance with this Act or any other law.

## **98        Electronic transmission of orders and warrants**

- (1) The following orders and warrants under this Act may be transmitted electronically to the persons to whom they are given or directed:
  - (a) a request to the Registrar of Motor Vehicles under Division 7;
  - (b) a property seizure order directed to a bailiff under Division 8;
  - (c) a community work order given to a bailiff for service under Division 9;

- (d) a copy of a community work order sent to the Director of Correctional Services;
  - (e) a warrant of commitment to a prison directed to a member of the Police Force or other officer under Division 10.
- (2) For the purpose of executing an order or warrant that has been transmitted electronically, a bailiff or officer to whom the order or warrant is directed must cause a copy of the order or warrant to be converted into written form and endorsed in the manner required by the Regulations.

**99 Person executing order or warrant may demand name and address**

- (1) If a bailiff executing an order or warrant under this Part suspects on reasonable grounds that a person is the fine defaulter, he or she may require the person:
- (a) to state the person's full name and residential address; and
  - (b) to produce evidence of the person's identity.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Maximum penalty: 100 penalty units.

- (3) Despite subsection (2), a person does not commit an offence unless he or she was warned at the time the requirement was made that a failure to comply with the requirement is an offence.

**Part 6 Reciprocal enforcement of fines against bodies corporate**

**100 Definitions**

In this Part, unless the contrary intention appears:

**conviction** means a finding of guilt or order entered or made by a court (before or after the commencement of this Part) in proceedings for an offence.

**fine** includes:

- (a) a monetary penalty, monetary forfeiture and monetary compensation; and

- (b) fees, charges and costs payable by a body corporate under an order made in proceedings in which a conviction was entered in respect of the body corporate.

**Northern Territory fine** means a fine payable under a conviction of a Northern Territory court.

**reciprocating court** means a court or a court included in a class of courts declared under section 101 to be a reciprocating court or a class of reciprocating courts.

**relevant officer**, in relation to a reciprocating court, means the Registrar or other corresponding officer of the court.

## **101 Declaration of reciprocating court**

If a State or another Territory of the Commonwealth has laws providing for enforcement in that State or Territory of a Northern Territory fine against a body corporate, the Minister may by notice in the *Gazette*:

- (a) declare a court of summary jurisdiction in that State or Territory to be a reciprocating court; or
- (b) declare a class of courts of summary jurisdiction in that State or Territory to be a class of reciprocating courts.

## **102 Enforcement of fine imposed by reciprocating court**

- (1) If, under a conviction of a reciprocating court, a fine is payable by a body corporate having or appearing to have property in the Territory and the Fines Recovery Unit receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the fine accompanied by:

- (a) a copy, certified by the relevant officer to be correct, of the conviction; and
- (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid,

the Unit must register the certified copy of the conviction and note on the certified copy the date of registration.

- (2) On registration of a conviction:
  - (a) the conviction is, for the purposes of this Part, to be taken to be a conviction of a Northern Territory court; and

- (b) the Fines Recovery Unit must make a fine enforcement order under this Act for the purpose of recovering the amount certified as unpaid.
- (3) If, after a request is made under this section in respect of a fine payable under a conviction of a reciprocating court, the Fines Recovery Unit receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or in part of the amount of the fine:
  - (a) the Unit must record particulars of the payment; and
  - (b) the payment is, for the purposes of enforcement action under this Act, to be taken to be payment in pursuance of the fine enforcement order made under this section.
- (4) If the Fines Recovery Unit receives money in pursuance of a fine enforcement order made under this section, the Unit must remit the money to the relevant officer of the reciprocating court.
- (5) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court is to be taken to have been so signed unless the contrary is proved.

### **103 Enforcement of Northern Territory fine by reciprocating court**

- (1) If a State or another Territory of the Commonwealth has laws providing for enforcement in that State or Territory of a Northern Territory fine against a body corporate, the Fines Recovery Unit may make a request in writing to the relevant officer of a reciprocating court for the enforcement of the Northern Territory fine.
- (2) An amount received from a reciprocating court by the Fines Recovery Unit or the Registrar of a court in satisfaction of the whole or part of a Northern Territory fine is to be applied as if the amount had been paid to the Unit by the body corporate by which the fine was payable.

### **104 Fines Recovery Unit to notify reciprocating court of payment received**

If a request has been made of a reciprocating court under section 103 and an amount is received by the Fines Recovery Unit (otherwise than from the reciprocating court to whom the request was made) in satisfaction of the whole or part of the fine, the Unit must notify the relevant officer of the reciprocating court as soon as practicable of the amount of the payment.



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## Part 7                      Enforcement of costs and other payments

### 105              Application

(1) This Part applies to the enforcement of payment of the following (referred to in this Part as ***ancillary money orders***):

- (a) any witnesses' expenses payable by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer;
- (b) any costs (including expenses or disbursements) payable:
  - (i) by a complainant to a defendant under an order made by a court; or
  - (ii) by a person under an order made by a court in proceedings for an offence that were brought otherwise than by a law enforcement officer;
- (c) any monetary forfeiture or monetary compensation made or awarded by a court in proceedings for an offence (including an order under section 88 or 89 of the *Sentencing Act*);
- (d) any other amounts of a kind prescribed by the Regulations and payable under an order of a court,

but does not apply to the enforcement of payment of any amount that is a fine or penalty within the meaning of section 6.

(2) This Part applies to the enforcement of the payment of debts and other amounts payable to the Territory.

(3) In this section:

***proceedings for an offence*** includes:

- (a) proceedings for a restraining order; and
- (b) proceedings on appeal in respect of proceedings for an offence.

### 106              Payment of ancillary money orders

(1) Part 3 applies to the payment of:

- (a) ancillary money orders; and
- (b) debts or other amounts payable to the Territory (where the Fines Recovery Unit is acting for the Territory),

in the same way as it applies to the payment of fines.

- (2) Unless a court orders otherwise, an ancillary money order is payable to the Fines Recovery Unit and the Unit may pay out to the appropriate person or body money received under the order.
- (3) Subject to subsection (4), money received by the Fines Recovery Unit in a matter is to be allocated firstly to payment of an ancillary money order (and if more than one ancillary money order – rateably between those orders) and then to payment of any fine or penalty.
- (4) If the Fines Recovery Unit makes an enforcement order in a matter, any amount remaining unpaid under an ancillary money order may be enforced in accordance with section 107.
- (5) The Fines Recovery Unit:
  - (a) may act for the Territory to enforce payment of an ancillary money order made in favour of the Territory; and
  - (b) cannot act to enforce payment of an ancillary money order in any other case.

## **107 Enforcement as civil judgments**

- (1) Subject to section 106:
  - (a) an ancillary money order; or
  - (b) a debt or other amount payable to the Territory (where the Fines Recovery Unit is acting for the Territory),

is enforceable as if it were a judgment for the payment of that amount under the *Local Court Act*.
- (2) The order, debt or other amount may be entered in the records of the Local Court as if it were a judgment given in that Court for a debt due to the person to whom the payment is required to be made by that order, or the Territory, as the case may be.
- (3) The order, debt or other amount may be entered even though the order was made by the Court of Summary Jurisdiction or the amount to be paid exceeds the jurisdictional limit of the Local Court.
- (4) This section does not affect any other remedy for enforcement provided by any other law.

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## **Part 8                      Enforcement of forfeited bail or recognizances**

### **108                      Definitions**

In this Part, unless the contrary intention appears:

***forfeited bail undertaking*** means a bail undertaking that is referred to the Fines Recovery Unit under the *Bail Act* to be enforced under this Act.

***forfeited recognizance*** means a recognizance that is referred to the Fines Recovery Unit under the *Justices Act* to be enforced under this Act.

### **109                      Enforcement as fines**

- (1) Enforcement action under Part 5 applies to a forfeited bail undertaking or forfeited recognizance as if the amount payable were a fine imposed by a court for an offence.
- (2) The application of that Part is subject to the following:
  - (a) the Fines Recovery Unit is to make a fine enforcement order (in a form that is appropriate to the circumstances of the case) for the purposes of taking enforcement action;
  - (b) enforcement costs are not payable on the making of the order;
  - (c) all other necessary or prescribed modifications to the application of that Part apply.

## **Part 9                      Miscellaneous**

### **110                      Parent or guardian of youth to be notified**

- (1) If an appropriate officer issues a courtesy letter to a youth, he or she must take reasonable steps to ensure that a copy of the letter is delivered or sent to a parent, guardian, or other person, having the custody of the youth.
- (2) If the Fines Recovery Unit issues a notice to a youth or makes an order in relation to a youth, the Unit must take reasonable steps to ensure that a copy of the notice or a notice of the making of the order is delivered or sent to a parent, guardian, or other person, having the custody of the youth.

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**111 Allocation of surplus money**

If money has been paid to an enforcement agency in expiation of an alleged offence and the relevant infringement notice is withdrawn or the enforcement agency otherwise comes to hold surplus money in relation to an infringement notice issued to a person, the money is to be dealt with as follows:

- (a) if the same person is the subject of another infringement notice issued by the same enforcement agency and the amount payable under that infringement notice has not been paid within the period specified – the money that is being held by the enforcement agency may be credited against the amount owing for the overdue notice;
- (b) if there are more than one overdue infringement notices – the money may be credited against the oldest notice;
- (c) if there are no overdue infringement notices but the enforcement agency has issued another infringement notice that is not paid but is not overdue – the enforcement agency may hold the surplus money until the penalty under the notice is paid and, if the penalty under the unpaid notice is not paid within the period specified, may credit the money that is being held against that infringement notice when it becomes overdue;
- (d) if there are no overdue infringement notices and no infringement notices issued but unpaid – the enforcement agency that is holding the money must forward the money to the Fines Recovery Unit to be dealt with under section 112.

**112 Fines Recovery Unit to deal with surplus money**

(1) If:

- (a) money has been paid to the Fines Recovery Unit:
  - (i) by a person in full or partial satisfaction of an enforcement order, and the relevant order is withdrawn or, if the order is a penalty enforcement order, annulled); or
  - (ii) in accordance with section 111 by an enforcement agency that held surplus money in relation to a person; or
- (b) the Unit otherwise comes to hold surplus money in relation to a person,

the money is to be dealt with as follows:

- (c) if the person is the subject of an enforcement order that has not been fully satisfied – the money may be credited against the amount remaining to be paid under the order;
  - (d) if there is more than one enforcement order in relation to the same person – the money may be credited against the oldest order (if any) that can be fully satisfied by the money available, then the next such order, and so on, with the residue (if any) credited against the oldest remaining order;
  - (e) if there are no enforcement orders or, after allocation of the money under this section, no remaining orders in relation to the person – the money is to be repaid to the person.
- (2) This section applies to an order that is not fully satisfied despite that the Fines Recovery Unit may have granted the person additional time to pay or made arrangements for payment by instalments.

### **113 Allocation of monies**

- (1) If an enforcement order is satisfied by means other than by payment of the full amount payable, or if money is to be disbursed prior to complete satisfaction of the order, any money that has been received by the Fines Recovery Unit in relation to the order is to be allocated as follows:
- (a) first – to the payment of bailiff costs and expenses under section 74;
  - (b) second – to the payment of any costs incurred by the Unit in taking enforcement action under Division 8 of Part 5;
  - (c) third – to the payment of any bailiff costs and expenses not covered by paragraph (b);
  - (d) fourth – to the payment of any prescribed amounts payable in relation to enforcement action taken by the Registrar of Motor Vehicles under Division 7 of Part 5;
  - (e) fifth – to the payment of prescribed amounts payable to the Unit for the making of the enforcement order;
  - (f) sixth – to the payment of witness expenses payable by the fine defaulter under an order of a court in proceedings for an offence that were brought by a law enforcement officer;
  - (g) seventh – to the payment of the levy payable under Part 6 of the *Victims of Crime Assistance Act*;

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- (h) eighth – to the payment of court costs (including expenses or disbursements) payable by the fine defaulter under an order of a court in proceedings for an offence that were brought by a law enforcement officer;
  - (i) the residue, if any:
    - (i) in the case of a fine enforcement order (including an order for the enforcement of a forfeited bail undertaking or recognizance) – to the payment of the fine or fines concerned; and
    - (ii) in the case of a penalty enforcement order – to the enforcement agency in payment of the prescribed costs for issuing a courtesy letter and then to payment of the penalty amount under the infringement notice or notices concerned.
- (2) If more than one enforcement agency is to receive the residue under subsection (1)(i), the available money is to be allocated between the enforcement agencies to pay the prescribed costs for each to issue courtesy letters, the remainder being allocated rateably between the agencies according to the relative penalty amounts payable under the infringement notices concerned.

#### **114 Guidelines on exercise of functions under this Act**

- (1) The Minister may issue guidelines, not inconsistent with this Act or the Regulations, with respect to the following:
- (a) the exercise by the Fines Recovery Unit of its functions under this Act (including writing off unpaid fines, the issue of enforcement orders or community work orders and the taking of other enforcement action under this Act);
  - (b) the exercise by Registrars of courts of their functions under this Act (including the determination of time for payment of fines imposed by courts);
  - (c) the exercise by the Registrar of Motor Vehicles, a bailiff and other persons of their functions under this Act in connection with the taking of enforcement action.
- (2) The Minister must give notice in the *Gazette* of the making of guidelines under this section and the notice is to state the places where a person may inspect or purchase a copy of the guidelines.
- (3) Subsection (2) does not apply to guidelines in relation to the writing off of unpaid fines or penalties.

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- (4) The guidelines are to be complied with but a failure to do so does not affect the validity of any proceedings, decision, order or warrant.

**115 Fines Recovery Unit may pay out money collected on behalf of other body**

- (1) A fine or other penalty imposed under any Act is, when recovered, payable to the Territory, unless the relevant Act or another Act provides otherwise.
- (2) If the Fines Recovery Unit is acting on behalf of an enforcement agency for the purpose of recovering an amount payable under an infringement notice, the amount payable, when recovered, may be paid to the enforcement agency less any fee for service agreed between the Fines Recovery Unit and the enforcement agency concerned.

**116 Payment of share of fine to prosecutor**

If:

- (a) an Act imposing or authorising the imposition of a fine or other penalty does not make provision for its application when paid; and
- (b) the prosecutor in the proceedings is not a law enforcement officer,

the court before which the matter is heard may direct that an amount of the fine or penalty (not exceeding one-half) is to be paid to the prosecutor and the Fines Recovery Unit may pay out money accordingly when recovered.

**117 Remission of fines or penalties**

- (1) The Administrator may remit, in whole or in part, any of the following:
- (a) a fine imposed on an offender under an Act;
- (b) a penalty incurred by an alleged offender under an Act;
- (c) enforcement costs in relation to a fine or penalty.
- (2) An amount that is remitted is to be taken to have been paid and the Fines Recovery Unit must cease enforcement action in relation to that amount.

- (3) This section extends to all fines, penalties and other amounts that a court has ordered an offender to pay (including an order for the payment of compensation by a person found guilty of an offence).

**118 Entitlement under other Act to be released from prison**

If a prisoner is serving a term of imprisonment under this Act concurrently with a term of imprisonment under another law and the prisoner becomes eligible for discharge or release from prison under the other law before the term of imprisonment under this Act expires, the person is not to be released or discharged until the term of imprisonment under this Act is completed, unless the relevant outstanding fine or penalty, calculated in accordance with section 87, is paid.

**119 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may create offences punishable by a penalty not exceeding 50 penalty units.
- (3) The Regulations may:
- (a) declare an offence to be a regulatory offence;
  - (b) provide for methods of serving notices, orders or other documents;
  - (c) prescribe the information that is to be provided in courtesy letters, notices, orders or other documents; and
  - (d) prescribe matters to which regard is to be had for the purposes of this Act.

**Part 10 Savings and transitional**

**120 Infringement notices issued before this Act commenced**

- (1) If:
- (a) an infringement notice was issued on or after 1 July 1997 but before 1 January 2000;



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- (b) the penalty has not been paid;
  - (c) the alleged offender has not elected to have the matter heard by a court; and
  - (d) the matter has not otherwise been referred to a court,

the penalty is to be taken to be a debt due and payable to the Territory or other body that issued the infringement notice and the Territory or other body (as the case may be) may sue to recover the debt in the Local Court.

- (2) An action to recover a debt referred to in subsection (1) is to be commenced within 3 years of the date of commencement of this section.
- (3) If, in relation to an infringement notice referred to in subsection (1), an order under section 60E of the *Justices Act* or a warrant under section 60H of that Act is in force at the day that this section commences, the order or warrant (as the case may be) is cancelled by force of this section.

## **121 Fines etc. imposed by court before this Act commenced**

- (1) If a person is liable to pay an amount that is due in relation to:
  - (a) a fine imposed by a court before this Act commenced; or
  - (b) a bail undertaking or a recognizance that a court has ordered be forfeited before this Act commenced,

the Registrar of the court may refer the matter to the Fines Recovery Unit.

- (2) If a matter is referred to the Fines Recovery Unit under this section, the Unit may:
  - (a) allow further time to pay the fine or allow payment by instalments and sections 25 and 26 apply to a matter referred under this section as if the matter was a fine for the purposes of those sections; or
  - (b) make a fine enforcement order under section 50 in relation to the person and Part 5 applies to the enforcement of the order,but nothing prevents the taking of action under paragraph (b) although time to pay has been allowed under paragraph (a).
- (3) If, in relation to a fine or a forfeited amount referred to in subsection (1), an order or a warrant has been issued under the

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*Justices Act*, *Youth Justice Act* or *Sentencing Act* but has not been executed, the order or warrant is cancelled on the making of a fine enforcement order in respect of the fine or amount.

- (4) If a warrant of commitment has been executed and a community work order under the *Sentencing Act* or *Youth Justice Act* is in force in relation to the matter, that Act continues to apply in respect of the community work order until the order is satisfied despite any repeal of those provisions.
- (5) If a community work order referred to in subsection (4) is revoked and a warrant of commitment is issued (or re-issued), the Director of Correctional Services must advise the Fines Recovery Unit and the Unit may make a fine enforcement order in relation to the person named in the warrant.
- (6) If the Fines Recovery Unit makes a fine enforcement order as referred to in subsection (5), the warrant is cancelled on the making of the order.

## **122 Reciprocal enforcement of fines against bodies corporate**

- (1) If, before the commencement of this Act, the Territory has received a request from the relevant officer of a reciprocating court for the purposes of Part VIA of the *Justices Act*:
  - (a) the request is to be taken to have been made under Part 6;
  - (b) the conviction is to be taken to have been registered under that Part; and
  - (c) a notification of an amount received in the matter by the reciprocating court is to be taken to have been received under that Part.
- (2) If a warrant has been issued in the matter, it is cancelled on the Fines Recovery Unit making a fine enforcement order in accordance with section 102.
- (3) If, before the commencement of this Act, the Territory has made a request of a reciprocating court under Part VIA of the *Justices Act*, the request is to be taken to have been made under section 103.
- (4) A court or class of courts declared to be a reciprocating court or class of courts for the purposes of Part VIA of the *Justices Act* is or are to be taken to be a reciprocating court or class of courts for the purposes of Part 6 until the Minister makes a declaration under section 101 with respect to the State or Territory of the court or class of courts.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>bl</b> = by-law	<b>om</b> = omitted
<b>ch</b> = Chapter	<b>pt</b> = Part
<b>div</b> = Division	<b>r</b> = regulation/rule
<b>exp</b> = expires/expired	<b>renum</b> = renumbered
<b>f</b> = forms	<b>rep</b> = repealed
<b>Gaz</b> = <i>Gazette</i>	<b>s</b> = section
<b>hdg</b> = heading	<b>sch</b> = Schedule
<b>ins</b> = inserted	<b>sdiv</b> = Subdivision
<b>lt</b> = long title	<b>SL</b> = Subordinate Legislation
<b>N/C</b> = not commenced	<b>sub</b> = substituted

### 2 LIST OF LEGISLATION

***Fines and Penalties (Recovery) Act 2001 (Act No. 59, 2001)***

Assent date	12 December 2001
Commenced	1 January 2002 ( <i>Gaz</i> G50, 19 December 2001, p 3)

***Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)***

Assent date	22 September 2005
Commenced	1 August 2006 (s 2, s 2 <i>Youth Justice Act 2005</i> (Act No. 32, 2005) and <i>Gaz</i> G30, 26 July 2006, p 3)

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

***Justice Legislation Amendment Act 2007 (Act No. 5, 2007)***

Assent date	24 April 2007
Commenced	s 37 (except amd of Criminal Code and <i>Legal Profession Act 2006</i> ): 1 May 2007 (s 2(1), s 2 <i>Victims of Crime Assistance Act 2006</i> (Act No. 15, 2006) and <i>Gaz</i> G17, 26 April 2007, p 7); rem: 24 April 2007

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date	20 May 2010
Commenced	1 July 2010 ( <i>Gaz</i> G24, 16 June 2010, p 2)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 <i>Oaths, Affidavits and Declarations Act 2010</i> (Act No. 39, 2010) and <i>Gaz</i> G7, 16 February 2011, p 4)

### 3 LIST OF AMENDMENTS

s 3	amd No. 33, 2005, s 5
s 5	amd No. 33, 2005, s 5
s 6	amd No. 5, 2007 s 37
s 7	amd No. 33, 2005, s 5
s 11	amd No. 12, 2010, s 3
ss 33 – 34	amd No. 12, 2010, s 3
s 35	amd No. 33, 2005, s 5
s 46	amd No. 33, 2005, s 5
s 66	amd No. 12, 2010, s 3
s 69	amd No. 40, 2010, s 118
s 77	amd No. 33, 2005, s 5
s 84	amd No. 33, 2005, s 5
s 87	amd No. 33, 2005, s 5
s 97	amd No. 4, 2007, s 7
s 99	amd No. 2010, s 3
s 110	amd No. 33, 2005, s 5
s 113	amd No. 5, 2007 s 37
s 121	amd No. 33, 2005, s 5