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K Woodward  
Acting Chief Parliamentary Counsel  
Dated 19 June 2023



TASMANIA

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## **MONETARY PENALTIES ENFORCEMENT ACT 2005**

**No. 57 of 2005**

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# **MONETARY PENALTIES ENFORCEMENT ACT 2005**

**No. 57 of 2005**

**An Act to provide for the appointment of the Director of the Monetary Penalties Enforcement Service and the collection and enforcement of payment of monetary penalties**

**[Royal Assent 9 December 2005]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Monetary Penalties Enforcement Act 2005*.

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**2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

**3. Interpretation**

In this Act, unless the contrary intention appears –

*administrative enforcement* means the imposition of an administrative sanction under Part 6;

*approved* means approved by the Director;

*Australian driver licence* has the same meaning as in the *Vehicle and Traffic Act 1999*;

*civil enforcement* means the imposition of a civil sanction under Part 7;

*Commissioner* means a Commissioner within the meaning of the *Victims of Crime Assistance Act 1976*;

*compensation order* means an order made under Division 2 of Part 9 of the *Sentencing Act 1997*;

*conveyance* includes an aircraft, vehicle or vessel;

*court* means a court as defined in section 6;

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***debt*** means any amount stated in an enforcement order that remains unpaid, including any prescribed amount imposed by or under this Act, and any other costs made recoverable under this Act;

***Director*** means the Director, Monetary Penalties Enforcement Service appointed under section 8;

***Director, Community Corrections*** means the person appointed under the *State Service Act 2000* to manage probation officers working on community corrections programs under section 88 of the *Corrections Act 1997*;

***discharge***, in respect of a monetary penalty or a debt, means –

- (a) to pay in full; or
- (b) to complete a period of community service in accordance with an MPCSO; or
- (c) to complete a period of imprisonment imposed in respect of the non-payment of the debt; or
- (d) to have the Director deem the debt to be uncollectable in accordance with section 109; or

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- (e) any combination of paragraphs (a) to (d) which fully satisfies the debt;

***driver licence*** has the same meaning as in the *Vehicle and Traffic Act 1999*;

***earnings***, in relation to an enforcement debtor, means any amount payable to the enforcement debtor by way of wages or salary and any other emolument payable in addition to wages or salary;

***enforcement costs*** means any costs incurred in enforcing payment of a monetary penalty under this Act;

***enforcement debtor*** means a person to whom an enforcement order has been issued under Part 5;

***enforcement officer*** means a person engaged under section 10(2)(a) or appointed under section 12(3);

***enforcement order*** means an enforcement order issued under Part 5;

***enforcement warrant*** means an enforcement warrant issued under Part 7;

***fee-paying public sector body*** means a public sector body referred to in section 7(1);

***fine*** means the sum of money payable by an offender under an order –

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- (a) of a court made on the offender being convicted, or found guilty, of an offence and includes –
- (i) a sum of money payable as costs; and
  - (ii) a sum of money payable under a compensation order; and
  - (iii) a sum of money payable under a compensation levy under the *Victims of Crime Compensation Act 1994*; and
  - (iv) a sum of money payable under a pecuniary penalty order made under the *Crime (Confiscation of Profits) Act 1993* –
- but does not include a restitution order; or
- (b) made by a Criminal Injuries Compensation Commissioner under section 7A of the *Victims of Crime Assistance Act 1976*;

***Government Business Enterprise*** means a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*;

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***infringement notice*** means a notice, including a traffic infringement notice, which –

- (a) is authorised by an Act; and
- (b) sets out particulars of an alleged offence; and
- (c) gives an alleged offender the option of paying the penalty set out in the notice or having the matter dealt with in court;

***issuing authority*** means a public sector body which issues an infringement notice;

***land*** has the same meaning as in the *Land Titles Act 1980*;

***licence issuer*** means a person with the statutory authority to issue a prescribed licence;

***monetary penalty*** means a fine or a penalty set out in an infringement notice and any prescribed amount and other costs recoverable under this Act;

***MPCSO*** means a Monetary Penalty Community Service Order issued under section 33;

***non-fee-paying public sector body*** means a public sector body referred to in section 7(3);

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***notice of election*** means a notice of election under section 15(1)(d) or section 17(1)(d);

***notification*** includes notice given in an electronic form approved by the Director;

***probation officer*** means a person appointed as a probation officer or an honorary probation officer under section 5 of the *Corrections Act 1997*;

***property*** means personal property comprising goods or chattels;

***protected earnings amount***, for a period for which earnings are paid, means the amount calculated by applying the protected earnings rate to that period;

***protected earnings rate*** has the meaning given by section 4 of the *Child Support (Registration and Collection) Act 1988* of the Commonwealth;

***public sector body*** means any of the following:

- (a) an Agency as defined in the *State Service Act 2000*;
- (b) a statutory board;
- (c) a holder of a statutory office;
- (ca) any person, or a person of any class of persons, authorised under

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an Act to issue or serve an infringement notice;

(d) a Government Business Enterprise under the *Government Business Enterprises Act 1995*;

(e) a council;

(f) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister;

(g) a department, authority or agency of the Commonwealth government;

(h) a prescribed body;

***Recorder*** means the Recorder of Titles appointed under section 4(1) of the *Land Titles Act 1980*;

***reciprocating court*** means a court declared under section 107 to be a reciprocating court for the purposes of this Act;

***redirection of money owing order*** means an order issued under section 84(1);

***Register*** has the same meaning as in the *Land Titles Act 1980*;

***registered land*** means land which is subject to the *Land Titles Act 1980*;

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***registered operator*** has the same meaning as in the *Vehicle and Traffic Act 1999*;

***registered proprietor*** means any person appearing by a folio of the Register, or by any registered dealing, to be the proprietor of any estate or interest in registered land;

***Registrar*** means the Registrar of Motor Vehicles appointed under section 5 of the *Vehicle and Traffic Act 1999*;

***restitution order*** means a restitution order within the meaning of the *Sentencing Act 1997*;

***search warrant*** means a search warrant under Part 7;

***specified land*** means land specified in a notice under section 68(3);

***warrant of commitment*** means a warrant of commitment under Part 8;

***warrant premises*** means –

- (a) premises in relation to which a search warrant or an enforcement warrant is in force; and
- (b) where a warrant is to be executed against property which is a conveyance, the place at which the conveyance is hangared, parked or moored.

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**4. Application of Act**

- (1) This Act does not apply to a person sentenced under the *Youth Justice Act 1997* other than to the extent that the Director may accept payment of a monetary penalty, or payment in accordance with an undertaking to pay compensation under section 16(1)(b) or (c) of the *Youth Justice Act 1997*, in whole or in part, from the person.
- (2) Notwithstanding subsection (1) of this section and section 103(3) of the *Youth Justice Act 1997*, this Act applies to a person sentenced under that Act who upon attaining 18 years of age remains in default of payment of any monetary penalty.
- (3) Nothing in subsection (1) derogates from the obligations imposed on the Director under section 19 of the *Youth Justice Act 1997* in relation to payments of compensation.

**5. Act binds Crown**

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) The Crown in any of its capacities is not liable to be prosecuted for an offence under this Act.

**6. Meaning of court**

- (1) Subject to subsection (2), “court” means a court of summary jurisdiction within the meaning of the *Justices Act 1959*.

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- (2) A court when constituted by one or more justices may only exercise the jurisdiction prescribed by rules of court made under section 144 of the *Justices Act 1959*.

**7. Fee-paying public sector bodies and non-fee-paying public sector bodies**

- (1) If a public sector body issues an infringement notice that imposes a penalty of which any part is payable otherwise than into the Public Account, the Director may charge the body a fee for the collection of the penalty.
- (2) A public sector body referred to in subsection (1) is to be known as a fee-paying public sector body.
- (3) If a public sector body issues an infringement notice that imposes a penalty which is payable wholly into the Public Account, the Director must not charge the body a fee for the collection of the penalty.
- (4) A public sector body referred to in subsection (3) is to be known as a non-fee-paying public sector body.

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**PART 2 – MONETARY PENALTIES ENFORCEMENT  
SERVICE**

**8. Appointment of Director, Monetary Penalties  
Enforcement Service**

Subject to and in accordance with the *State Service Act 2000*, the Premier may appoint a person as Director, Monetary Penalties Enforcement Service.

**9. Director to collect and enforce monetary penalties**

- (1) The Director is the sole authority for collection and enforcement of a fine, except where the fine is imposed for an offence against a law of the Commonwealth.
- (2) The Director is the sole authority for collection and enforcement of any monetary penalty imposed by an infringement notice issued by a non-fee-paying public sector body and referred to the Director.
- (3) The Director is the sole authority for enforcement of any monetary penalty imposed by an infringement notice issued by a fee-paying public sector body and, if the notice is referred to the Director by that body, the Director also becomes the sole authority for collection of money paid under the notice.
- (4) Notwithstanding subsection (1), a fee-paying public sector body may enforce payment of a fine, or part of a fine, through the Civil Division

of the Magistrates Court or the Supreme Court, if under section 109 the fine has been deemed by the Director to be uncollectable in full or in part and the uncollectable amount has been removed from any record of monies owing to the Director.

## **10. Functions and powers of Director**

- (1) The Director –
  - (a) is to perform such functions and may exercise such powers as are imposed or conferred on him or her by or under this or any other Act; and
  - (ab) is to perform such functions and may exercise such powers as are imposed or conferred on him or her as a fine enforcement officer under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth; and
  - (b) is to perform any other functions the Minister directs.
- (2) Without limiting subsection (1), the Director has the following powers:
  - (a) to engage under contract as an enforcement officer a person who has been appointed as an assistant bailiff under the *Magistrates Court (Civil Division) Act 1992*;

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- (b) to deem an unpaid monetary penalty to be uncollectable in full or in part in accordance with section 109;
  - (c) to waive or reduce a fee or charge payable under this Act.
- (3) The Director may do anything necessary or convenient to perform any of his or her functions under this Act.
  - (4) The Director has an official seal.
  - (5) The signature and seal of the Director may be in electronic form and may be applied electronically.
  - (6) A court or tribunal acting judicially is to take judicial notice of the Director's signature and seal.

**11. Delegation**

The Director may delegate any of his or her functions or powers under this Act other than this power of delegation.

**12. Staff**

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed for the purpose of enabling the Director to perform his or her functions or exercise his or her powers under this or any other Act.

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- (2) The Director may make arrangements with the Secretary of the Department for such State Service officers and State Service employees employed in the Department as may be considered necessary to be made available to enable the Director to perform his or her functions or exercise his or her powers under this or any other Act.
- (3) The Director may appoint as an enforcement officer a person who is a State Service employee or State Service officer appointed, or made available to the Director, under this section.

**13. Protection from liability**

- (1) An officer does not incur any personal liability in respect of an act done, or omitted to be done, by him or her in good faith in the performance or exercise, or purported performance or exercise, of any of his or her functions or powers under this Act.
- (2) Subsection (1) does not preclude the Crown from incurring liability that an officer would, but for that subsection, incur.
- (3) In this section, “**officer**” means –
  - (a) the Director; or
  - (b) any person appointed under section 12; or
  - (c) an enforcement officer.

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Part 3 – Infringement notices

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**PART 3 – INFRINGEMENT NOTICES**

*Division 1 – Infringement notices generally*

**14. Form of infringement notices**

- (1) An infringement notice is to –
- (a) specify the following:
    - (i) the offence or offences in respect of which it is served;
    - (ii) the prescribed penalty or penalties that are applicable;
    - (iii) if the notice relates to more than one offence, the total amount payable;
    - (iv) the payment procedures available;
    - (v) any other details prescribed under this Act or the Act that creates the offence; and
  - (b) inform the person on whom it is served that, if he or she wishes to have any of the offences heard and determined by a court, he or she must lodge a notice of election in accordance with this Act within 28 days of the service of the infringement notice; and
  - (c) inform the person on whom it is served that, if he or she does not lodge a notice

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of election within 28 days of the service of the infringement notice and the infringement notice is not withdrawn, he or she will be taken to be convicted of the offence or offences set out in the infringement notice and the monetary penalty set out in the infringement notice may be enforced under this Act.

(2) In subsection (1)(a)(ii) –

*prescribed penalty or penalties* means the penalty or penalties prescribed under this Act or the Act that creates the offence or offences in respect of which the infringement notice is served.

**14A. Authorised person may require name, &c.**

- (1) A person authorised by law to issue an infringement notice (the authorised person) may require a person to give his or her name, address and date of birth if the authorised person reasonably believes that the person has committed an offence for which an infringement notice may be issued.
- (2) A person must not fail or refuse to comply with a requirement under subsection (1) or, in response to such a requirement, state a name, address or date of birth that is false.

Penalty: Fine not exceeding 2 penalty units.

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**15. Options for dealing with infringement notice issued by non-fee-paying public sector body**

- (1) A person who is served with an infringement notice that was issued by a non-fee-paying public sector body must, within 28 days of the date of service of the notice, do one or more of the following:
  - (a) pay the monetary penalty in full to the Director;
  - (b) apply to the issuing authority for withdrawal of the infringement notice;
  - (c) apply to the Director for a variation of payment conditions;
  - (d) lodge with the Director a notice of election to have the offence or offences set out in the infringement notice heard and determined by a court.
- (2) An application to the Director is to be –
  - (a) in an approved form; and
  - (b) accompanied by the prescribed amount.
- (3) The Director may approve or refuse to approve an application under subsection (1)(c) and must notify the alleged offender of that approval or refusal.
- (4) If the alleged offender makes an election under subsection (1)(d), he or she must lodge with the Director a notice of election in the approved form.

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- (5) If the alleged offender is notified of the refusal of an application under subsection (1)(b), he or she may –
  - (a) pay the monetary penalty in full; or
  - (b) apply for variation of payment conditions; or
  - (c) lodge a notice of election.
- (6) If the alleged offender is notified of the refusal of an application under subsection (1)(c), he or she must pay the monetary penalty in full.
- (7) If, when the alleged offender is notified under subsection (5) or (6), the period referred to in subsection (1) has expired or will expire within 3 days, that period is extended by a further 7 days from the date the alleged offender receives the notification.

**16. Referral to Director of infringement notice served by non-fee-paying public sector body**

- (1) A non-fee-paying public sector body that serves an infringement notice must refer the notice to the Director unless exempted by the Director.
- (2) A non-fee-paying public sector body may apply in writing to the Director for an exemption from subsection (1) in relation to specific offences.
- (3) The Director may grant or refuse to grant an exemption in respect of a particular offence.

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**17. Options for dealing with infringement notice issued by fee-paying public sector body**

- (1) A person who is served with an infringement notice that was issued by a fee-paying public sector body must, within the period allowed on the notice and subject to subsection (6), do one or more of the following:
  - (a) pay the monetary penalty in full to the issuing authority;
  - (b) apply to the issuing authority for withdrawal of the infringement notice;
  - (c) apply to the issuing authority for a variation of payment conditions;
  - (d) lodge with the issuing authority a notice of election to have the offence or offences set out in the infringement notice heard and determined by a court.
- (2) A fee-paying public sector body may approve or refuse to approve an application under this section and must notify the alleged offender of that approval or refusal.
- (3) If the alleged offender makes an election under subsection (1)(d), he or she must lodge with the issuing authority a notice of election in a form specified by the issuing authority.
- (4) If the alleged offender is notified of the refusal of an application under subsection (1)(b), he or she may –

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- (a) pay the monetary penalty in full; or
  - (b) apply for variation of payment conditions; or
  - (c) lodge a notice of election.
- (5) If the alleged offender is notified of the refusal of an application under subsection (1)(c), he or she must pay the monetary penalty in full.
- (6) If, when the alleged offender is notified under subsection (4) or (5), the period referred to in subsection (1) has expired or will expire within 3 days, that period is extended by a further 7 days from the date the alleged offender receives the notification.

**18. Referral to Director of infringement notice issued by fee-paying public sector body**

- (1) A fee-paying public sector body may refer an infringement notice served by it to the Director for enforcement.
- (2) Referral of an infringement notice to the Director –
  - (a) must not be made less than 35 days after the date of issue of the notice; and
  - (b) must not be made more than 6 months after the date of issue of the notice; and
  - (c) must be accompanied by any prescribed amount.

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- (3) A fee-paying public sector body which refers an infringement notice under this section is responsible for the accuracy of the details of the notice at the time of referral.

**19. Non-application of certain sections to approved fee-paying public sector bodies**

- (1) A fee-paying public sector body, other than a council, may apply to the Director for an exemption from the application of section 9(3) and sections 17 and 18.
- (2) If the Director approves an application, the fee-paying public sector body is taken to be a non-fee-paying public sector body for the purposes of section 9(1) and sections 15 and 16.

**20. Offender taken to have been convicted**

- (1) If an alleged offender –
  - (a) pays a penalty in part or in full; or
  - (b) applies to the Director or to the issuing authority for a variation of payment conditions; or
  - (c) takes no action under section 15(1)(a), (b) or (c) or section 17(1)(a), (b) or (c) or is refused an application under section 15(1)(b) or section 17(1)(b) and does not elect to have the infringement notice heard and determined by a court within the time allowed –

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he or she is taken to have been convicted of the offence.

- (2) If a person pays a sum of money to the Director in respect of a specific infringement notice, the offender is taken to have been convicted of the offence or offences specified in that infringement notice.
- (3) A conviction under subsection (1) is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding.

**21. Election to have matter heard by court**

- (1) If an alleged offender elects to have matters relating to any offence specified in an infringement notice which has been referred to the Director heard by a court –
  - (a) the Director is to give notice of the election to the issuing authority within 7 days of receiving such notice; and
  - (b) the issuing authority is responsible for prosecuting the offences in the infringement notice; and
  - (c) the Director is not to collect or enforce payment of any monetary penalty imposed by the infringement notice.
- (2) If the issuing authority decides not to prosecute the offence in the infringement notice, it must notify the alleged offender of that decision.

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**22. Notification or referral to Director to be electronic**

Notification or referral to the Director of a matter under this Act is to be by electronic means unless otherwise agreed with the Director.

*Division 2 – Withdrawal of infringement notice*

**23. Withdrawal of infringement notice**

- (1) A fee-paying public sector body or a non-fee-paying public sector body may withdraw an infringement notice served by it at any time –
  - (a) on application by the alleged offender; or
  - (b) on its own motion.
- (2) An infringement notice may be withdrawn whether or not the person on whom it was served is taken, under section 20, to have been convicted of the offence.
- (3) If an infringement notice is withdrawn by a fee-paying public sector body or a non-fee-paying public sector body, that body is to –
  - (a) advise the alleged offender, in writing, of the withdrawal; and
  - (b) if the infringement notice has been referred to the Director, immediately notify the Director in the approved manner of the withdrawal of the infringement notice, quoting the infringement notice number; and

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- (c) in the case of the withdrawal of an infringement notice by a non-fee-paying public body, notify any relevant authority to enable the cancellation or revocation of any other penalty imposed as the result of the operation of section 20 in respect of an offence set out in the infringement notice; and
  - (d) initiate the deletion of any conviction imposed as the result of the operation of section 20 from any record held by any public sector body and the body holding the record must make that deletion.
- (4) Upon being notified of the withdrawal of an infringement notice, the Director –
- (a) is to refund any penalty amount already paid, unless the alleged offender has been, or could be, issued with an enforcement order in respect of another monetary penalty, in which case the amount already paid may be taken to be in payment or part payment of that other monetary penalty; and
  - (b) is to cancel any relevant enforcement order issued against the alleged offender; and
  - (c) is not to collect or enforce payment of any monetary penalty contained in the infringement notice.

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24. . . . .

**25. Effect of withdrawal of infringement notice**

(1) If an infringement notice is withdrawn –

- (a) any conviction in respect of that infringement notice by the operation of section 20 of this Act is revoked and is taken not to have occurred; and
- (b) any payment of all or part of a penalty imposed by the infringement notice is to be repaid in full unless the alleged offender has been, or could be, issued with an enforcement order in respect of another monetary penalty, in which case the amount already paid may be taken to be in payment or part payment of that other monetary penalty; and
- (c) any sanction imposed under Part 6 or 7 in relation to that infringement notice is revoked unless that sanction has also been imposed in respect of another undischarged monetary penalty payable by that offender for which an enforcement order has been issued; and
- (d) any demerit points that have been recorded against the alleged offender are deleted and the relevant issuing authority must make a note on any record that it keeps in relation to the person clearly indicating that the demerit points

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allocated against the person have been deleted.

- (2) Where an infringement notice served in respect of an offence has been withdrawn, no evidence of the service, acceptance or withdrawal of the notice is admissible in any proceedings for that offence except in a case where proof of service of an infringement notice is required to establish matters relevant to the operation of section 43P of the *Traffic Act 1925*.

**26. Crown not liable where infringement notice withdrawn or deemed conviction set aside**

Where an infringement notice is withdrawn by the issuing authority or a conviction under section 20 is set aside by a court, the Crown is not liable for any loss or damage arising from the issue of an enforcement order or sanction under this Act in respect of that notice.

*Division 3 – Variation of payment conditions*

**27. Application to Director for variation of payment conditions**

- (1) An offender may apply to the Director for a variation of payment conditions.
- (2) An application –
- (a) is to be in a manner approved by the Director; and

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- (b) may include representations from the applicant in respect of his or her ability to pay the monetary penalty; and
  - (c) subject to section 29, may include an application for an order converting an unpaid monetary penalty to a period of unpaid community service.
- (3) The Director is to take the applicant's representations into account before determining the period within which the amount is to be paid.
- (4) If the Director approves an application for a variation of payment conditions, other than an application for an MPCSO, the Director is to give the offender a variation of payment conditions notice.
- (5) On the issue of a variation of payment conditions notice, the Director is not to take any, or any further, action to enforce payment of any monetary penalty which is the subject of the notice whilst the person to whom the notice has been issued is paying in accordance with that notice.
- (5A) If, after an administrative sanction under Part 6 has been imposed on a person, a variation of payment conditions notice is issued to that person –
  - (a) that sanction remains in effect after the issue of that notice until the Director determines that he or she is satisfied that the person is, and is likely to continue, complying with that notice; and

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- (b) on the determination of the Director that he or she is satisfied that the person is, and is likely to continue, complying with that notice –
    - (i) the sanction is revoked; and
    - (ii) the Director is to give written notice of the revocation of the sanction to the person and, if appropriate, the Registrar; and
  - (c) if after making a determination that the person is, and is likely to continue, complying with that notice the Director determines that the person has contravened that notice –
    - (i) the sanction is revived; and
    - (ii) the Director is to give written notice of the revival of the sanction to the person and, if appropriate, the Registrar.
- (5B) If, after a civil sanction under Division 2 or 3 of Part 7 has been imposed on a person, a variation of payment conditions notice is issued to that person –
- (a) that sanction remains in effect after the issue of that notice; but
  - (b) on the determination of the Director that he or she is satisfied that the person is, and is likely to continue, complying with

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that notice, no action or further action is to be taken to enforce that sanction; but

- (c) if after making a determination that the person is, and is likely to continue, complying with that notice the Director determines that the person has contravened that notice, action or further action may be taken to enforce that sanction.

(5C) If –

- (a) a redirection of money owing order has been issued in respect of an enforcement debtor; and
- (b) an application for a variation of payment conditions notice is then made under this section –

that application is taken to include an application under section 85 to cancel or vary, as appropriate, the redirection of money owing order.

- (6) A variation of payment conditions notice may apply to all monetary penalties for which the applicant has applied for a variation of payment conditions under this Act.
- (7) The Director may vary a variation of payment conditions notice if he or she becomes aware of a material change in the applicant's financial circumstances and must notify the applicant of any change.

**28. Application to fee-paying public sector body for variation of payment conditions**

- (1) A person upon whom an infringement notice is served by a fee-paying public sector body may, at any time before the infringement notice is referred to the Director, apply to that fee-paying public sector body for a variation of payment conditions.
- (2) An application under subsection (1) may include representations from the applicant in respect of his or her ability to pay the monetary penalty imposed by the infringement notice.
- (3) The fee-paying public sector body to whom an application under subsection (1) is made is to take the applicant's representations into account before determining the period within which the amount is to be paid.
- (4) If the applicant fails to comply with a determination made under this section, the infringement notice may be referred to the Director for enforcement under this Act.

**29. Application for variation of payment conditions not to include MPCSO in certain circumstances**

An application for a variation of payment conditions is not to include an application for an MPCSO if –

- (a) the alleged offender has applied for, and been refused, an MPCSO in the past 12

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months, unless there has been a material change in his or her circumstances; or

- (b) a warrant of commitment for the monetary penalty has been issued.

**30. Refusal of application for MPCSO**

If an application for a variation of payment conditions includes an application for an MPCSO and the Director believes that an applicant has the financial means to pay the monetary penalty, by instalments or otherwise, the Director must refuse the application for an MPCSO.

**31. Director to refer application**

If, after considering an application for a variation of payment conditions which includes an application for an MPCSO, the Director believes that an applicant does not have the financial means to pay the monetary penalty, by instalments or otherwise, the Director must, as soon as reasonably practicable, refer the application to the Director, Community Corrections.

**32. Assessment of suitability for MPCSO**

- (1) On receiving an application referred to him or her under section 31, the Director, Community Corrections must decide whether the offender is suitable for performing community service under an MPCSO.

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- (2) Without limiting the matters the Director, Community Corrections may take into account, an offender is taken to be unsuitable for performing community service if the alleged offender has breached, in the previous 12 months, probation, parole or a community service order.
- (3) If the Director, Community Corrections decides that the offender is unsuitable for performing community service under an MPCSO, the Director, Community Corrections must give written notice of the decision to –
  - (a) the offender; and
  - (b) the Director, Monetary Penalties Enforcement Service.
- (4) If the Director, Community Corrections decides that the offender is suitable for performing community service under an MPCSO, the Director, Community Corrections must give written notice of the decision to the Director, Monetary Penalties Enforcement Service.

**33. Issue of MPCSO**

- (1) On receipt of notice under section 32(4), the Director is to issue an MPCSO.
- (2) On the issue of an MPCSO, the Director must give the offender and the Director, Community Corrections notice of –
  - (a) the making of the order; and

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- (b) its terms.
- (3) An MPCSO takes effect on its issue.
- (4) On the issue of an MPCSO, the Director is to cease, or not take, action to enforce payment of any monetary penalty to which the order relates while the offender complies with the order.

**34. Requirements of MPCSO**

- (1) An MPCSO is to require the offender to –
  - (a) report to an authorised probation officer at the place, and within the time, stated in the order; and
  - (b) perform the community service directed by an authorised probation officer –
    - (i) for the number of hours stated in the order; and
    - (ii) at the times directed by the officer; and
    - (iii) in a way satisfactory to the officer; and
    - (iv) within a year or other time allowed by an authorised probation officer; and
  - (c) comply with each reasonable direction of an authorised probation officer.

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- (2) An MPCSO must include a notice stating that failure to comply with the order may result in the cancellation of the order and the taking of other action to enforce payment of the monetary penalty which may result in the imprisonment of the offender.
- (3) An MPCSO may apply to all monetary penalties in respect of which the applicant has applied for an MPCSO under this Act.

**35. Calculation, &c., of community service for default in payment of fine**

- (1) The period of community service required to be performed under an MPCSO is to be calculated at the rate of 7 hours for each prescribed unit or part of a prescribed unit of the monetary penalty or the balance outstanding, as the case may require.
- (2) If an MPCSO is made against an offender, the offender must perform community service in accordance with the order.
- (3) If an offender performs community service under an MPCSO, the unpaid monetary penalty is reduced by one prescribed unit for each 7 hours of community service performed.
- (4) In this section –

*prescribed unit* means the prescribed unit prescribed by regulations made under the *Sentencing Act 1997* for the purposes of section 48(1) of that Act.

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36. . . . .

**37. Payments and application of payments**

- (1) Despite the issue of an MPCSO, the offender may pay the monetary penalty in full or in part to an authorised probation officer.
- (2) If part payment of the monetary penalty is made after an MPCSO is issued, the payment reduces the number of hours of community service remaining to be performed by the relevant person under the order by the proportion that the amount so paid bears to that outstanding sum, ignoring any fraction or part of an hour.

**38. Application of section 36A of *Sentencing Act 1997* to MPCSO**

Section 36A of the *Sentencing Act 1997* applies to an MPCSO as if it were a community service order imposed by a court.

*Division 4 – Hearing of offence by court*

**39. Hearing of offence by court**

- (1) Subject to subsections (2) and (3), if, within the time allowed by this Act, an alleged offender elects to have any of the offences set out in an infringement notice heard and determined by a court, the issuing authority may commence proceedings for all of the offences in that notice.

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- (2) Court proceedings for the offence or offences set out in an infringement notice may only be brought if –
- (a) the person on whom the infringement notice is served has lodged a notice of election in accordance with section 15 or 17; or
  - (b) the infringement notice is withdrawn by a non-fee-paying public sector body in order to prosecute the offence.
- (3) An alleged offender who is served with an infringement notice for an offence or offences and who –
- (a) pays the penalty for any of those offences, in whole or in part; or
  - (b) applies for a variation of payment conditions in respect of any of those offences; or
  - (c) has not, within the period allowed, lodged a notice of election in accordance with section 15 or 17 –

is not entitled to elect to have any of the offences that are set out in the infringement notice heard and determined by a court.

**40. Application to court**

- (1) A person who is taken to have been convicted by reason of section 20(1)(c) may apply to a court

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to have the conviction set aside or to have the total penalty varied.

- (2) Within 5 days of an application under subsection (1) being filed by an enforcement debtor, the court is to notify the Director of the application.
- (3) The issuing authority may consent to an application under subsection (1) to set aside the conviction.
- (4) The court may set aside the conviction if satisfied that –
  - (a) the offender has provided valid and relevant reasons why he or she did not elect to have the matter heard by a court within the time allowed by the infringement notice; and
  - (b) the offender has established a *prima facie* defence to the offences that are the subject of the infringement notice.
- (5) If the court sets aside a conviction –
  - (a) for the purposes of any time limit imposed by another Act on the taking of action in respect of the offence, the date when any limitation period for taking action commences is taken to be the date when the conviction was set aside; and
  - (b) the infringement notice is taken to have been withdrawn and any enforcement order, administrative sanction or civil

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- sanction relating only to that infringement notice is revoked; and
- (c) the issuing authority may commence proceedings to have the matter heard by a court; and
  - (d) the court is to notify the Director that the conviction has been set aside.
- (6) The court may allow an application to vary a penalty if satisfied that the offender has provided valid and relevant reasons why –
- (a) he or she did not elect to have the matter heard by a court within the time allowed by the infringement notice; and
  - (b) the penalty should be different from the penalty imposed under the infringement notice.
- (7) If the Court decides to grant an application it must set aside the total original penalty imposed by the infringement notice and substitute a new penalty.
- (8) A new penalty substituted under subsection (7) is to be in accordance with section 7 of the *Sentencing Act 1997*.

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**s. 41** Part 4 – Notification to Director of issue of fine, payment of fine and related matters

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**PART 4 – NOTIFICATION TO DIRECTOR OF ISSUE  
OF FINE, PAYMENT OF FINE AND RELATED  
MATTERS**

**41. Collection of fines**

The court is to –

- (a) refer an order imposing a fine to the Director for collection and enforcement; and
- (b) notify the Director of the date that the order setting out the fine takes effect.

**42. Options for person subject to court order imposing fine**

A person who is subject to a court order imposing a fine must, within the time specified in the order, do one of the following:

- (a) pay the monetary penalty in full to the Director;
- (b) apply to the Director for a variation of payment conditions.

**43. Director not responsible for civil enforcement**

- (1) The Director is not responsible for enforcement of an order made in, or transferred to, the Civil Division of the Magistrates Court.
- (2) . . . . .

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**43A. Payment by Director to person entitled to compensation**

On receiving an amount of compensation required to be paid under a compensation order, the Director is to pay that amount to the person entitled to the compensation under the order.

**PART 5 – ENFORCEMENT ORDERS**

*Division 1 – Issue and service of enforcement order*

**44. Default by person served with infringement notice**

The Director may issue an enforcement order in respect of an infringement notice which has been referred to the Director, if the person upon whom the infringement notice was served has not –

- (a) paid the monetary penalty in full to the Director or a fee-paying public sector body; or
- (b) been granted a variation of payment conditions including an MPCSO; or
- (c) lodged a notice of election under section 15 or 17 to have the offence heard and determined by a court.

**45. Default by person subject to order imposing fine**

- (1) The Director may issue an enforcement order if a person who has been ordered to pay a fine has not, within the period allowed –
  - (a) paid the fine in full; or
  - (b) been granted a variation of payment conditions including an MPCSO.
- (2) Before issuing an enforcement order in respect of a fine payable to a fee-paying public sector

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body, the Director may require the fee-paying public sector body to agree to pay any prescribed amount in respect of enforcement generally.

**46. Default in paying in accordance with variation of payment notice**

If a person given a variation of payment conditions notice or issued with an MPCSO fails to pay in accordance with the notice or comply with the terms of the MPCSO, the Director may –

- (a) if an enforcement order has not been issued in respect of any monetary penalty to which the notice or MPCSO applies, cancel the variation of payment conditions or MPCSO without notice to the person and issue an enforcement order; and
- (b) if an enforcement order has been issued in respect of any monetary penalty to which the notice or MPCSO applies, cancel the variation of payment conditions or MPCSO without notice to the person and enforce the penalty in accordance with Part 6, 7 or 8.

**46A. Service of enforcement order**

On the issue of an enforcement order under this Division, the Director is to serve the enforcement order on the person in respect of whom it is issued.

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***Division 2 – Enforcement orders***

**47. Contents of enforcement order**

An enforcement order is to state –

- (a) the offences and monetary penalties to which it applies; and
- (b) that failure to pay the monetary penalty within the period allowed gives the Director the authority to –
  - (i) direct the suspension of the enforcement debtor’s driver licence, vehicle registration or prescribed licence; and
  - (ii) proceed to civil enforcement that may include seizure of assets; and
- (c) that the enforcement debtor may be imprisoned for failure to pay the monetary penalty; and
- (d) that the enforcement procedures referred to in paragraphs (b) and (c) may be undertaken without further notice to the enforcement debtor.

**48. Obligations on enforcement debtor**

- (1) If an enforcement order is served on an enforcement debtor, the enforcement debtor must, within 14 days after the date of service –

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- (a) pay the monetary penalty in full to the Director; or
  - (b) apply to the Director under section 27 for a variation of payment conditions.
- (2) An enforcement debtor must not make an application under subsection (1)(b) if an application by the enforcement debtor under section 27 has been rejected by the Director in the previous 12 months, unless there has been a material change in the enforcement debtor's circumstances.

**49. Sanction may be imposed in respect of all monetary penalties**

An administrative sanction under Part 6 or civil sanction under Part 7 may be imposed in respect of the total of all undischarged monetary penalties payable by an enforcement debtor for which an enforcement order has been issued.

**50. Effect of appeal on enforcement order**

- (1) A court or the Supreme Court must notify the Director of any appeal against conviction or sentence which may affect a fine and advise the Director of the outcome of that appeal.
- (2) If the court advises the Director that an appeal has been upheld, the Director must refund to the enforcement debtor any amount paid to the Director in relation to the offence, unless the enforcement debtor has been, or could be, issued

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with an enforcement order in respect of another monetary penalty, in which case the amount already paid may be taken to be in payment or part payment of that other monetary penalty.

*Division 3 – Suspension of certain enforcement orders*

**51. Application for suspension of enforcement order**

- (1) Subject to subsection (2), an enforcement debtor may apply to the Director for the suspension of an enforcement order.
- (2) Unless otherwise approved by the Director –
  - (a) an application is to be made within the earlier of the following:
    - (i) 14 days after the debtor becomes aware of the existence of the order;
    - (ii) 6 months after the service of the order; and
  - (b) an application may only be made once in respect of a particular enforcement order.
- (3) An application is to –
  - (a) be in an approved form; and
  - (b) set out in full the reasons for the application.
- (4) The Director may consider an application in the absence of the applicant.

**52. Suspension of enforcement order**

- (1) The Director may suspend an enforcement order if satisfied that the enforcement order should be suspended.
- (2) The Director is to give the applicant notice of his or her decision to suspend or refuse to suspend the enforcement order.
- (3) The suspension of an enforcement order under this Division does not affect the original infringement notice or fine.
- (4) The suspension of an enforcement order under this Division automatically revokes any administrative sanction and suspends any civil sanction imposed under this Act and the Director must notify the relevant bodies of that revocation or suspension.

**53. Revocation of suspension of enforcement order**

- (1) An enforcement debtor must, within 28 days of the suspension of an enforcement order –
  - (a) apply to the issuing authority for withdrawal of the infringement notice; or
  - (b) pay the monetary penalty in full; or
  - (c) apply to the Director for a variation of payment conditions; or
  - (d) apply to the court under section 40.

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- (2) If an application under subsection (1)(a) is refused, the enforcement debtor may –
  - (a) pay the monetary penalty in full; or
  - (b) apply for a variation of payment conditions; or
  - (c) apply to the Court under section 40.
- (3) If an application under subsection (1)(c) is refused, the enforcement debtor must pay the monetary penalty in full.
- (4) If an application under subsection (1)(d) is refused, the enforcement debtor may –
  - (a) apply for a variation of payment conditions; or
  - (b) pay the monetary penalty in full
- (5) If, when the enforcement debtor is notified of the refusal of an application under subsection (1)(a), (c) or (d), the period referred to in that subsection has expired or will expire within 3 days, that period is extended for a further 7 days from the date the enforcement debtor receives the notification.
- (6) If no application is made within the time allowed in this section, or if all applications made under this section are refused, the Director may revoke the suspension of the enforcement order and proceed to enforce payment of the monetary penalty as if the suspension had not occurred.

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**PART 6 – ADMINISTRATIVE ENFORCEMENT**

**54. Administrative sanctions**

- (1) If a monetary penalty stated in an enforcement order remains unpaid and either a variation of payment conditions or an MPCSO has not been granted or the Director determines that the enforcement debtor is not satisfactorily complying with a variation of payment conditions, the Director may direct any or all of the following administrative sanctions:
- (a) that the enforcement debtor's driver licence be suspended;
  - (b) that the enforcement debtor's prescribed licence be suspended;
  - (c) that the enforcement debtor's vehicle registration be suspended;
  - (d) that the enforcement debtor be ineligible to be issued with a driver licence;
  - (e) that the enforcement debtor be ineligible to be the registered operator of a vehicle;
  - (f) that the enforcement debtor cease to be entitled to a visitor's exemption under section 8 of the *Vehicle and Traffic Act 1999* or an exemption under section 28 of that Act;
  - (g) that the enforcement debtor's name be published together with details of the monetary penalty.

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- (2) An enforcement debtor may be made subject to more than one administrative sanction at a time in respect of the same or different enforcement orders.

**55. Suspension of driver licence**

- (1) The Director may direct the suspension of an enforcement debtor's driver licence if –
- (a) the enforcement debtor has failed to pay the monetary penalty within the time allowed; and
  - (b) in the case of an enforcement debtor who has made an application to convert the monetary penalty to an MPCSO, the application has been refused.
- (2) If the enforcement debtor has been granted a restricted driver licence by a court pursuant to section 18 of the *Vehicle and Traffic Act 1999*, the Registrar is to notify the Director accordingly.
- (3) Subsection (1) does not apply in respect of a restricted driver licence.

**56. Registrar to suspend driver licence**

- (1) The Director is to give the Registrar written notice of the Director's direction in respect of an enforcement debtor's driver licence.

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(2) Subject to section 55(2) and (3), on receipt of a notification under subsection (1), the Registrar must –

- (a) suspend the relevant driver licence; and
- (b) whether or not the enforcement debtor holds a driver licence, record the direction in the driver licence register kept under the *Vehicle and Traffic Act 1999* –

until notified by the Director that the suspension has been revoked.

(2A) On suspending the driver licence of an enforcement debtor under subsection (2), the Registrar must give to the enforcement debtor written notice of –

- (a) that suspension; and
- (b) the day on which the suspension takes effect.

(3) The suspension of a driver licence under this section does not affect the powers that a court or the Registrar may exercise under another Act to suspend or cancel the licence.

(4) If a driver licence is suspended under this section, the licence may not be renewed or replaced, or a duplicate of the licence issued, while the suspension is in place.

(5) An enforcement debtor is ineligible to be issued with a driver licence while a direction of the

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Director in respect of the enforcement debtor's driver licence is recorded, in accordance with subsection (2), in the driver licence register kept under the *Vehicle and Traffic Act 1999*.

**57. Suspension of interstate driver licence**

If the enforcement debtor is the holder of an Australian driver licence that was not issued in this State –

- (a) the Director may direct the Registrar not to recognise the person's authority to drive; and
- (b) the enforcement debtor ceases to be entitled to a visitor's exemption for the purposes of section 8 of the *Vehicle and Traffic Act 1999*; and
- (c) the enforcement debtor, for the purposes of section 10 of the *Vehicle and Traffic Act 1999* and regulation 11 of the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000*, is taken to be ineligible to hold a driver licence under the *Vehicle and Traffic Act 1999*; and
- (d) the Registrar, upon receipt of notification by the Director under section 56(1), is to record the suspension until notified by the Director that the suspension has been revoked.

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**58. Effect of suspension of driver licence**

- (1) If a driver licence is suspended as a result of the operation of section 56 –
  - (a) the suspension does not terminate a vehicle insurance policy; and
  - (b) an insurance claim must not be refused only on the basis that the licence is so suspended.
  - (c) . . . . .
- (2) . . . . .
- (3) This section has effect notwithstanding anything to the contrary in a vehicle insurance policy or other agreement.

**59. Suspension of vehicle registration**

- (1) The Director may direct the suspension of the registration of any vehicle registered to the enforcement debtor as the registered operator if –
  - (a) the enforcement debtor has failed to pay the monetary penalty within the time allowed; and
  - (b) in the case of an enforcement debtor who has made an application to convert the monetary penalty to an MPCSO, the application has been refused.
- (2) . . . . .

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- (3) If a vehicle registration suspended under this section is transferred, the suspension ceases to have effect.
- (4) If an enforcement debtor referred to in subsection (1) is not the registered operator of a vehicle at the time of a direction under that subsection, the direction operates so as to prevent the enforcement debtor from being registered as the registered operator of a vehicle.

**60. Registrar to suspend vehicle registration**

- (1) The Director is to give the Registrar written notice of the Director's direction to suspend the registration of a vehicle registered to the enforcement debtor as the registered operator.
- (2) On receipt of a notification under subsection (1), the Registrar must suspend the registration of any vehicle registered to the enforcement debtor as the registered operator until notified by the Director that the suspension has been revoked.
- (2A) On suspending the registration of a vehicle registered to an enforcement debtor under subsection (2), the Registrar must give to the enforcement debtor written notice of –
  - (a) that suspension; and
  - (b) the day on which the suspension takes effect.
- (2B) If the registration of a vehicle is suspended under this section, the registration may not be renewed,

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or a duplicate of the certificate of registration issued, while the suspension is in place.

- (3) The suspension of registration under this section does not affect the powers that a court or the Registrar may exercise under another Act to suspend or cancel the registration.
- (4) . . . . .
- (5) If an enforcement debtor referred to in subsection (1) applies to register a different vehicle, the direction operates so as to prevent him or her from registering that vehicle.

**61. Suspension of interstate vehicle registration**

If the Director directs the suspension of the registration of a vehicle registered to an enforcement debtor which is an interstate registered vehicle –

- (a) the enforcement debtor ceases to be entitled to an exemption for the purposes of section 28 of the *Vehicle and Traffic Act 1999*; and
- (b) the enforcement debtor’s vehicle is taken to be ineligible to be registered for the purposes of regulation 45 of the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000*; and
- (c) the Registrar, upon receipt of notification by the Director under section 60(1), is to

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record the suspension until notified by the Director that the suspension has been revoked.

**62. Effect of suspension of vehicle registration**

- (1) If a vehicle registration is suspended as a result of the operation of section 56 –
  - (a) the suspension does not terminate a vehicle insurance policy; and
  - (b) an insurance claim must not be refused only on the basis that the registration is so suspended.
- (2) This section has effect notwithstanding anything to the contrary in a vehicle insurance policy or other agreement.

**63. Suspension of prescribed licence**

- (1) The Director may direct the licence issuer to suspend a prescribed licence held by an enforcement debtor –
  - (a) if the enforcement debtor has failed to pay the monetary penalty within the time allowed; and
  - (b) in the case of an enforcement debtor who has made an application to convert the monetary penalty to an MPCSO, the application has been refused.

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- (2) If an enforcement debtor referred to in subsection (1) does not hold a prescribed licence at the time of the direction under that subsection, the direction operates so as to prevent the enforcement debtor from obtaining such a licence.

**64. Licence issuer to give effect to sanction**

- (1) On directing the suspension of a prescribed licence, the Director is to notify the licence issuer.
- (2) On receipt of a notification under subsection (1), the licence issuer must suspend the relevant licence until notified by the Director that the suspension has been revoked.
- (3) The renewal or replacement of a prescribed licence suspended under this Part does not affect the suspension.

**65. Publication of name of enforcement debtor**

- (1) The Director may authorise publication on an approved website of the name, address and driver licence number of an enforcement debtor and details of his or her monetary penalty.
- (2) If the enforcement debtor discharges the monetary penalty, the Director is to delete the name of the enforcement debtor from the website in respect of that monetary penalty.

## **PART 7 – CIVIL ENFORCEMENT**

### *Division 1 – Preliminary*

#### **66. Civil sanctions**

If any monetary penalty in respect of which an enforcement order has been issued is not discharged in accordance with this Act, the Director may, for the purpose of recovering that penalty, impose any of the following civil sanctions:

- (a) an enforcement warrant imposing a charge on land in respect of which the enforcement debtor is a registered proprietor;
- (b) an enforcement warrant enabling the seizure and sale of property in which the enforcement debtor has a legal interest;
- (c) an order for redirection of money owing to the enforcement debtor.

#### **67. Warrant to be signed and sealed**

An enforcement warrant or order for redirection of money which is issued under this Part must be signed by the Director and endorsed with the official seal and is of no effect if it is not so signed and sealed.

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***Division 2 – Enforcement warrants imposing charge on land***

**68. Enforcement warrant imposing charge on registered land**

- (1) If an enforcement debtor has unpaid monetary penalties totalling more than \$1 000, the Director may issue an enforcement warrant imposing a charge on any land of which the enforcement debtor is a registered proprietor.
- (2) Before issuing an enforcement warrant under subsection (1) in respect of any land, the Director is to serve on the enforcement debtor, and all other registered proprietors of the land, written notice that unless the debt is discharged within the time specified in the notice an enforcement warrant will be issued, without further notice.
- (3) Notice under subsection (2) is to –
  - (a) specify a period of time, being at least 10 days, within which the enforcement debtor may discharge the debt and avoid the issue of the enforcement warrant; and
  - (b) inform the enforcement debtor, and any other registered proprietor of the specified land, that an enforcement warrant issued under this Act will be registered under the *Land Titles Act 1980* as a charge against that land; and
  - (c) inform the recipients –

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- (i) that it is an offence under section 72 of this Act, punishable by a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, for them to sell, transfer or otherwise deal with, or attempt to sell, transfer or otherwise deal with, the land; and
  - (ii) that in addition to prosecution for an offence under this Act the enforcement debtor remains liable for any unpaid monetary penalty.
- (4) An enforcement warrant is to be in an approved form.
- (5) On issuing an enforcement warrant, the Director is to serve it on the enforcement debtor.
- (6) The Director may lodge a priority notice under the *Land Titles Act 1980* in respect of land of which the enforcement debtor is a registered proprietor and, for the purposes of section 52(1)(b) of that Act, the Director is taken to be a person entitled to deal with the land.
- (7) The Director is to lodge an enforcement warrant issued and served under this section with the Recorder.
- (8) The Recorder is to register an enforcement warrant lodged with the Recorder under subsection (7) on the folio of the Register stated in the enforcement warrant.

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- (9) The Director may exercise the rights and powers of a mortgagee set out in Division 5 of Part VI of the *Land Titles Act 1980* in relation to land in respect of which an enforcement warrant is issued and served under this section.
- (10) For the purpose of Division 5 of Part VI of the *Land Titles Act 1980*, an enforcement warrant registered by the Recorder under this section is taken to be a mortgage.

**69. Effect of enforcement warrant imposing charge on land**

- (1) Section 77(1) and (2) of the *Land Titles Act 1980* are taken to have been satisfied by the service of a notice under section 68(3) of this Act.
- (2) The Director may not exercise his or her powers of sale and appropriation of the proceeds of sale under section 78 of the *Land Titles Act 1980* until 21 days after the enforcement warrant is registered under that Act.

**70. Discharge of enforcement warrant issued under this Division**

- (1) The Director must discharge an enforcement warrant issued under section 68 upon the discharge of all monetary penalties for which the enforcement debtor is liable and for which an enforcement order has been issued.
- (2) The Director may discharge an enforcement warrant at any time and for any reason.

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- (3) A discharge of an enforcement warrant is to be in an approved form.
- (4) The Director is to lodge with the Recorder the discharge of an enforcement warrant.
- (5) On the lodgement with the Recorder of a discharge of an enforcement warrant, the Recorder is to discharge the enforcement warrant and remove it from the Register.

**71. No fees or duties payable**

A fee or duty that would otherwise be payable under the *Land Titles Act 1980* or the *Duties Act 2001* in respect of the issue, lodgment, execution or discharge of an enforcement warrant under this Division is, by the operation of this section, not payable.

**72. Offence of dealing with land**

A person upon whom a notice under section 68(3) has been served must not sell, transfer or otherwise deal with, or attempt to sell, transfer or otherwise deal with, the specified land.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months.

*Division 3 – Warrants to seize and sell property*

**73. Enforcement warrant to enable seizure and sale of property**

- (1) The Director may issue an enforcement warrant to enable the seizure and sale of property in which the enforcement debtor has a legal interest from premises identified in the database available to the Director as being occupied by the enforcement debtor or, if the property is a conveyance –
  - (a) the place identified in the database available to the Director as being the place where the conveyance is hangared, parked or moored; or
  - (b) a public place.
- (2) An enforcement warrant issued under subsection (1) is to be in an approved form and is to contain the following:
  - (a) the name, residential address and date of birth of the enforcement debtor or, if the enforcement debtor is not a natural person, the business or company name, the business or company address and its registration or incorporation details;
  - (b) if the enforcement debtor is the registered owner of, or is registered as having an interest in, any conveyance, identifying information about the conveyance and a description or the

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- address of where the conveyance is  
hangared, parked or moored;
- (c) a statement of the debt in respect of which the enforcement warrant is to be executed;
  - (d) if the warrant is only to be executed between particular hours or on particular days, a statement of those hours or days and, if there are no such limitations, a statement to that effect;
  - (e) a statement that the warrant is executable by all enforcement officers in Tasmania;
  - (f) a statement that the warrant authorises the enforcement officer to enter the warrant premises for the purpose of executing the warrant and to use reasonable force to effect such entry;
  - (g) a statement that an enforcement officer is entitled to recover from the proceeds of a sale any reasonable and necessary expenses incurred in executing the warrant, including towing fees, storage fees, auctioneer's fees and valuation fees;
  - (h) any other information that the Director considers may assist in recovery of the monetary penalties by execution of the warrant.
- (3) Subject to section 75, an enforcement warrant under subsection (1) authorises an enforcement

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officer, for the purpose of recovering the debt owed, to do any or all of the following:

- (a) to enter the warrant premises and to use reasonable force to effect such entry;
  - (b) to search the warrant premises for property owned by the enforcement debtor;
  - (c) to search a container or any thing found at, in or on the warrant premises;
  - (d) to seize and take possession of property found at, in, or on the warrant premises;
  - (e) to take photographs, films or audio, video or other recordings as reasonably required to establish a record of property seized or present at, in or on the warrant premises;
  - (f) require a person at, in or on, the warrant premises to state his or her full name and usual place of residence or business and to produce evidence of that person's identity to the satisfaction of the enforcement officer;
  - (g) to give directions reasonably required in connection with the exercise of a power conferred by this section or otherwise in connection with the execution of the enforcement warrant.
- (3A) The Director may cancel an enforcement warrant at any time.

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- (4) An enforcement warrant issued under this Division remains in force until such time as the enforcement debt is discharged or the warrant is cancelled.
- (5) An enforcement officer, having gained entry to a premises on the authority of an enforcement warrant, may only rely upon that authority for the purpose of executing that warrant and for no other purpose.

**74. Search warrants**

- (1) If an enforcement officer reasonably believes that there may be property in which the enforcement debtor has a legal interest, on premises other than the premises specified in an enforcement warrant, he or she may apply to a justice of the peace for the issue of a search warrant authorising the enforcement officer to enter the premises specified in the application for the purpose of executing the relevant enforcement warrant.
- (2) A person appointed under section 12 who is a justice of the peace must not issue a search warrant.
- (3) The justice of the peace may issue a search warrant only if satisfied that there are reasonable grounds for believing that there is, on the premises specified in the application, property that may be seized under an enforcement warrant.

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- (4) An enforcement officer who applies for a search warrant must at the time of making the application provide the justice of the peace before whom the application is made with a copy of the relevant enforcement warrant and a written copy of the grounds upon which the application is made.
- (5) A search warrant is to –
  - (a) be in the approved form; and
  - (b) contain a statement that the relevant enforcement officer, or all enforcement officers, may enter the premises specified on the search warrant and exercise the powers conferred by the relevant enforcement warrant; and
  - (c) contain a statement that the search warrant authorises the use of reasonable force to effect such entry; and
  - (d) if the search warrant may only be executed between particular hours or on particular days which differ from those specified in the enforcement warrant, contain a statement of those different hours or days and a statement that the search warrant specifications prevail over those in the enforcement warrant.
- (6) A search warrant may authorise an enforcement officer to enter different premises to the warrant premises specified in the relevant enforcement warrant but does not limit or extend the powers

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conferred by section 73(3) and exercisable under the enforcement warrant.

- (7) A search warrant remains in force until such time as the enforcement debt is discharged.
- (8) An enforcement officer, having gained entry to a premises on the authority of a search warrant, may only rely upon that authority for the purpose of executing that warrant and for no other purpose.

**75. Process required before entry to warrant premises**

- (1) Before entering a building on warrant premises under the authority of an enforcement warrant or a search warrant, an enforcement officer must –
  - (a) identify himself or herself to any person on the warrant premises; and
  - (b) ascertain whether or not the person on the warrant premises is the enforcement debtor; and
  - (c) show a copy of the warrant to the enforcement debtor; and
  - (d) give the enforcement debtor an opportunity to pay the enforcement debt in full, by means other than personal cheque; and
  - (e) subject to subsection (3), give the enforcement debtor and any other person on the warrant premises an opportunity

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to allow an enforcement officer entry to any building on the premises.

- (2) If a debt is not paid in full after an opportunity to do so is given in accordance with subsection (1)(d), the enforcement officer is to execute the enforcement warrant and any relevant search warrant in accordance with their terms.
- (3) An enforcement officer is not required to comply with subsection (1)(e) if he or she believes on reasonable grounds that immediate entry to any building on the warrant premises is required to ensure the effective execution of either the enforcement warrant or the search warrant.

**76. Refusal, &c., of admission of enforcement officer to warrant premises**

- (1) If an enforcement officer is satisfied that he or she is authorised under this Act to enter a building on warrant premises but such entry is refused, delayed or obstructed by the enforcement debtor or any other person, for such time that it may reasonably be inferred that the refusal, delay or obstruction is intentional, each person causing or contributing to the refusal, delay or obstruction is guilty of an offence.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months.

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- (2) A person must not obstruct an enforcement officer who is conducting a search of warrant premises.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months.

**77. Property may be excluded from operation of enforcement warrant**

- (1) Any person, other than the enforcement debtor, who claims an interest in any property that is or is about to be seized or sold under an enforcement warrant may give notice in writing to the Director, including evidence of that person's interest.
- (2) If the Director is satisfied of a person's interest under subsection (1), the property is excluded from the operation of the enforcement warrant.

**78. Occupier entitled to be present during search**

- (1) If an enforcement warrant or search warrant is being executed and the enforcement debtor or another person who apparently represents the enforcement debtor is present at the premises, the enforcement debtor or other person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the enforcement debtor or other person interferes with the search.

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**79. Powers supporting seizure**

After seizing an item, an enforcement officer may –

- (a) take possession of the item and remove it from the place where it was seized; or
- (b) leave the item at the place of seizure, but take reasonable action to restrict access to it.

**80. Seizure of property**

In executing an enforcement warrant or a search warrant under this Act, an enforcement officer must not take any item that is a prescribed item.

**81. Receipts for things seized under warrant**

- (1) If a thing is seized under an enforcement warrant or search warrant, the enforcement officer is to provide a receipt for the thing.
- (2) If 2 or more things are seized or removed, they may be covered in the one receipt.

**82. Offence to interfere with seized item**

A person must not interfere with –

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- (a) an item seized by an enforcement officer and left at the place of seizure; or
- (b) any tag or sticker placed on such an item by an enforcement officer.

Penalty: Fine not exceeding 20 penalty units.

**83. Enforcement officer to provide certificate on execution of warrant**

On executing an enforcement warrant or a search warrant, the enforcement officer is to provide the Director with a certificate in an approved form, signed by the enforcement officer, stating what was done to execute the enforcement warrant or search warrant, or what other action, if any, was taken.

***Division 4 – Redirection of money owing to enforcement debtor***

**84. Issue of order for redirection of money owing**

- (1) The Director may issue an order for the redirection of money owing.
- (2) A redirection of money owing order may be an order –
  - (a) to redirect earnings of the enforcement debtor; or
  - (b) to redirect all or part of a debt owed to the enforcement debtor.

**85. Director may cancel or vary redirection of money owing orders**

- (1) An enforcement debtor may apply to the Director for the cancellation or variation of all or part of a redirection of money owing order.
- (2) An application under subsection (1) may only be made on the grounds that –
  - (a) the applicant's circumstances have changed in a way which is relevant to the application; or
  - (b) relevant information became known to the applicant since the order was issued.
- (3) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) is to include a full account of the ground or grounds upon which the applicant relies.
- (4) If the Director is satisfied that the application so warrants, he or she may cancel or vary the relevant redirection of money owing order.
- (5) If the Director cancels or varies a redirection of money owing order, the Director is to give notice of the cancellation or variation –
  - (a) in the case of an order for redirection of the enforcement debtor's earnings, to the enforcement debtor's employer; or

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- (b) in the case of an order for redirection of a debt owed to the enforcement debtor, to the person to whom the redirection of money owing order was issued.

**86. When Director may issue order for redirection of earnings**

- (1) Subject to subsection (2), the Director may issue to the employer of an enforcement debtor an order for redirection of the enforcement debtor's earnings.
- (2) The Director may only issue an order for redirection of the enforcement debtor's earnings if he or she is satisfied of the following:
  - (a) that the person to whom it is issued is the enforcement debtor's employer;
  - (b) that the enforcement debtor will have enough money available to satisfy the unpaid amount after deducting –
    - (i) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants; and
    - (ii) any other known liabilities of the enforcement debtor;
  - (c) that the amount of earnings to be redirected would not impose unreasonable hardship on the enforcement debtor;

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- (d) that the amount of earnings to be redirected will not reduce the enforcement debtor's earnings for the period to less than the protected earnings amount.
- (3) If the Director considers it necessary or desirable to cancel or vary an order issued under this section, the Director must, as soon as is practicable, give written notice to the employer of the cancellation or variation of the order.

**87. Two or more employers of one employee**

If an enforcement debtor receives earnings from 2 or more employers, the Director may –

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

**88. Amount to be deducted**

The amount an employer must deduct from an enforcement debtor's earnings for each week under a redirection of money owing order is the weekly deduction amount specified in the notice.

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**89. Provisions for working out earnings for section 88**

- (1) This section applies for working out for the purposes of section 88 the amount of earnings an employer pays to an employee.
- (2) Any amount an employer pays to an employee for piecework is taken to have been paid to the employee for the period that started when the employee started the work and ended when the work ended.
- (3) Any amount an employer pays to an employee for services under a contract that is wholly or principally for the labour of the employee is taken to have been paid to the employee for the period that started when the employee started to provide the services and ended when the provision of the services ended.
- (4) Any amount an employer pays for other work performed or services provided, but not for a particular period, is taken to have been paid for the period of 52 weeks ending on the day before the day when the amount is paid.
- (5) If the employee is entitled to be paid an amount for a period of more than one week, the employer is taken to have paid an amount of earnings to the employee for each week or part of a week in the period, worked out by dividing the amount of earnings actually paid by the number of days in the period and multiplying the result –
  - (a) by 7 for each whole week; or

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- (b) by the number of days for each part of the week.
- (6) If an employer pays earnings for a week or part of a week in 2 or more separate amounts, the amounts must be aggregated, and the employer may make a deduction from one amount or partly from 2 or more amounts.
- (7) For this section, the amount of any earnings is taken to be the amount of the earnings after deducting any amount that the employer is required to deduct from the earnings under Part VI, Division 2, section 221C of the *Income Tax Assessment Act 1936* of the Commonwealth.

**90. Additional duties of employers**

- (1) An employer who deducts an amount from an employee's earnings under a redirection of money owing order must, within 7 days after the end of the month in which the amount is deducted or within such longer period, not being more than 21 days, as the Director allows –
  - (a) pay to the Director the amounts deducted; and
  - (b) give to the Director a return in the approved form.

Penalty: Fine not exceeding 25 penalty units or imprisonment for a term not exceeding 6 months, or both.

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- (2) An employer who does not deduct an amount from an employee's earnings under a redirection of money owing order relating to an employee in a particular month must, within 7 days after the end of the month, or within such longer period, not being more than 21 days, as the Director allows, give to the Director a return in the approved form.

Penalty: Fine not exceeding 15 penalty units.

- (3) An employer who pays earnings to an employee while a redirection of money owing order relating to the employee is in force must give to the employee a written notice stating –
- (a) the amount deducted under the notice; or
  - (b) if no deduction is made, that no deduction has been made under the notice.

Penalty: Fine not exceeding 15 penalty units.

- (4) If an employee to whom a redirection of money owing order relates stops being an employee while the notice is in force, the employer must give to the Director notice of that fact in the approved form within 7 days after the end of the month in which the employment ended or within such longer period, not being more than 21 days, as the Director allows.

Penalty: Fine not exceeding 15 penalty units.

**91. Discharge of enforcement debtor's liability to Director and employer's liability to enforcement debtor**

If an employer deducts an amount under this Division from the earnings of an enforcement debtor –

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

**92. Payment by trustees of deducted amounts**

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

**93. Employers not to prejudice employees because of action under this part**

- (1) An employer must not, because another person is an enforcement debtor –

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- (a) refuse to employ or pay earnings to the person; or
- (b) dismiss, or threaten to dismiss, the person from employment; or
- (c) terminate or threaten to terminate the payment of earnings to the person; or
- (d) prejudice or threaten to prejudice the person in the person's employment or otherwise in the receipt of earnings; or
- (e) intimidate, coerce, impose a money or other penalty on, or take any other disciplinary action against, the person.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years.

- (2) On the conviction of an employer for an offence against subsection (1), the court may, whether or not it imposes any penalty for the offence, make either or both of the following orders:
  - (a) order the offender to pay compensation to the enforcement debtor for loss or damage suffered because of the offence;
  - (b) order the taking of action to remedy or reduce the loss or damage suffered by the enforcement debtor because of the offence.

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- (3) The enforcement debtor may recover compensation ordered to be paid under subsection (2)(a) as a debt.
- (4) Subsection (2) does not limit the powers of a court under Division 2 of Part 9 of the *Sentencing Act 1997*.

**94. Employers not to disclose information, &c.**

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

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Penalty: Fine not exceeding 25 penalty units or imprisonment for a term not exceeding 6 months.

**95. Records to be kept by employers**

(1) An employer must keep written records of –

- (a) all amounts deducted or required to be deducted from earnings under a redirection of money owing order; and
- (b) other acts done, or required to be done, by the employer under this Division.

Penalty: Fine not exceeding 25 penalty units or imprisonment for a term not exceeding 6 months.

(2) The employer must –

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

Penalty: Fine not exceeding 25 penalty units or imprisonment for a term not exceeding 6 months.

(3) This section does not require a person to keep records if the Director has notified the person, in writing, that keeping the records is not required.

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- (4) In a proceeding for an offence against subsection (2)(a), it is a defence for the employer to prove that the employer did not know, and could not reasonably be expected to have known, that the record to which the proceeding relates did not correctly record and explain the matter to which the record relates.

**96. Access to premises, &c.**

- (1) The Director may give an enforcement officer written authority to exercise powers under this section for the purposes of enforcing this part against an employer.
- (2) The enforcement officer may not exercise powers under this section unless he or she first produces the written authority and an identity card for inspection by the employer.
- (3) An enforcement officer's powers under this section are as follows:
  - (a) to enter, at all reasonable times, premises of an employer, other than premises used exclusively as a residence, and remain on the premises for the time reasonably necessary to exercise powers under this section;
  - (b) to inspect or examine any business records relevant to the employer's obligations under this Act on the employer's premises;

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

Penalty: Fine not exceeding 20 penalty units.

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

**97. Order of payment if 2 or more amounts due**

If –

- (a) 2 or more amounts are payable to the Director by an employer under this Part; and
- (b) an employer pays an amount, or the Director credits an amount towards a debt –

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section 112 applies to the amount despite any direction of the employer to the contrary.

**98. Order to redirect debt owed to enforcement debtor**

- (1) The Director may issue a redirection of money owing order to a person other than an enforcement debtor, if that other person is indebted to the enforcement debtor, requiring that other person to pay money to the Director instead of to the enforcement debtor in order to discharge all or part of the enforcement debtor's debt to the Director.
- (2) An order made under subsection (1) takes effect upon service.
- (3) A person served with an order under subsection (1) must pay to the Director –
  - (a) the amount stated in the order; or
  - (b) if that person's debt to the enforcement debtor is less than the amount stated in the order, the full amount of that person's debt to the enforcement debtor.
- (4) The person on whom an order is served under this section must comply with the order before discharging any part of his or her indebtedness to the enforcement debtor.

Penalty: Fine not exceeding 20 penalty units.

- (5) This section does not limit the right of –

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- (a) the person on whom the order is served to dispute liability to indebtedness to the enforcement debtor; or
- (b) any person to claim an entitlement to, or interest in, all or part of the alleged debt to the enforcement debtor.

**99. Debt to enforcement debtor discharged**

A payment to the Director made in compliance with an order under section 98 is a valid discharge of the person's liability to the enforcement debtor to the extent of the amount paid.

*Division 5 – General provisions*

**100. Power of person executing enforcement warrant or search warrant**

An enforcement officer may require an enforcement debtor to provide the following information:

- (a) his or her employment details;
- (b) the details of any account held by him or her with an authorised deposit-taking institution, bank or other similar body;
- (c) the details of any other debt owed to the enforcement debtor.

**101. Offence of obstructing enforcement officer**

A person must not –

- (a) assault, resist, intimidate or wilfully obstruct an enforcement officer –
  - (i) in the execution of his or her duty; or
  - (ii) lawfully performing a duty imposed on the enforcement officer by an Act; or
  - (iii) in the exercise of a public duty or authority; or
- (b) threaten, or use abusive language to, an enforcement officer so acting; or
- (c) instigate or incite a person to do any of the things mentioned in paragraph (a) or (b).

Penalty: Fine not exceeding 25 penalty units or imprisonment for a term not exceeding 6 months, or both.

**102. Obligation to provide information**

- (1) An enforcement officer may require any person on warrant premises to provide information in accordance with this Part.
- (2) A person who is required to give any information under this Part, must not –

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- (a) fail to provide the information; or
- (b) make a statement knowing it to be false or misleading; or
- (c) omit any matter from a statement knowing that without that matter the statement is false or misleading; or
- (d) provide a document that the person knows to be false or misleading without informing the person to whom the document is provided of that knowledge.

Penalty: Fine not exceeding 20 penalty units.

- (3) An enforcement officer must inform any person required to provide information under subsection (1) that it is an offence to refuse to comply with the request, or to provide false or misleading information, or to fail to provide relevant information of which that person has knowledge.

## **PART 8 – IMPRISONMENT**

### **103. Issue of warrant of commitment**

The Director may apply to a court for a commitment order and a warrant of commitment against an enforcement debtor if –

- (a) the Director, after attempting to enforce a debt by civil enforcement or administrative enforcement, is satisfied that the unpaid amount of the monetary penalty or penalties cannot realistically be discharged in any other way authorised under this Act; and
- (b) the enforcement debtor is precluded by another section of this Act from being assessed for an MPCSO, or has been assessed as unsuitable for performing an MPCSO.

### **104. Director may suspend execution of the warrant of commitment**

The Director may suspend execution of a warrant of commitment whilst –

- (a) negotiating a variation of payment conditions with the enforcement debtor; or
- (b) an enforcement debtor who has been given a variation of payment conditions notice pays in accordance with that notice.

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**PART 9 – RECIPROCAL ENFORCEMENT**

**105. Enforcement of Tasmanian monetary penalty by reciprocating court**

- (1) The Director may give to the relevant officer of a reciprocating court a request for the enforcement of a particular Tasmanian monetary penalty for which the Director has issued an enforcement order.
- (2) An amount received from a reciprocating court in satisfaction of all or part of a Tasmanian monetary penalty is to be applied as if the amount had been paid to the Director by the person by whom the monetary penalty was payable.
- (3) If, after a request is made under subsection (1), the Director receives an amount in satisfaction of all or part of the monetary penalty from someone other than the relevant officer of the reciprocating court to whom the request was made, the Director is to, as soon as practicable, notify the relevant officer of the amount of the payment.

**106. Enforcement of monetary penalty imposed by reciprocating court**

- (1) This section applies if –
  - (a) under a conviction or order of a reciprocating court, a monetary penalty is

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- payable by a person having, or appearing to have, property in Tasmania; and
- (b) the Director receives a request from the relevant officer of the reciprocating court for the enforcement of the monetary penalty; and
  - (c) the request is accompanied by –
    - (i) a copy, certified by the relevant officer to be correct, of the conviction or order, and
    - (ii) a certificate by the relevant officer stating the amount of the monetary penalty that remains unpaid.
- (2) On receipt of the conviction or order by the Director –
- (a) the conviction or order is taken to be a monetary penalty to which this Act applies; and
  - (b) the Director must make an enforcement order under this Act for the purpose of recovering the amount stated as unpaid in the certificate relating to the conviction or order.
- (3) If, after the Director receives a request under this section in relation to a monetary penalty payable under a conviction or order of a reciprocating court, the Director receives a notification from the relevant officer of the reciprocating court of

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payment of an amount in satisfaction of all or part of the amount of the monetary penalty the payment is, for the purposes of enforcement action under this Act, taken to be a payment under an enforcement order made under this Act.

- (4) The Director must pay the amount of any fine recovered by the Director under the enforcement order into the Public Account, unless the amount must be dealt with in another way under an agreement between the Minister and the relevant Minister of the other State.
- (5) A document that appears to have been signed by the relevant officer of a reciprocating court is taken to have been signed by the relevant officer, unless the contrary is proved.

**107. Declaration of reciprocating court**

If another State has laws providing for the enforcement in that State of a Tasmanian monetary penalty, the Governor may by order declare a court that exercises criminal jurisdiction in that other State to be a reciprocating court for the purposes of this Act.

**108. Director taken to be officer of court**

For the purposes of this Part, the Director is taken to be an officer of the court.

**PART 10 – MISCELLANEOUS**

***Division 1 – Uncollectable amounts***

**109. Amount may be deemed to be uncollectable**

- (1) The Director may, in accordance with this Division, deem any monetary penalty owed by an enforcement debtor under this Act to be uncollectable in full or in part and remove the amount from any record of monies owing to the Director.
- (2) The maximum amount which may be deemed uncollectable by the Director for a single monetary penalty is the prescribed amount.
- (2A) If an enforcement debtor has become a bankrupt, within the meaning of the *Bankruptcy Act 1966* of the Commonwealth, and the amount of his or her monetary penalty is provable in bankruptcy under that Act, the Director may deem that amount uncollectable despite subsection (2).
- (3) The Director may deem a monetary penalty to be uncollectable if satisfied that an enforcement debtor –
  - (a) does not have, and is unlikely within the foreseeable future to have, the means to pay the penalty; and
  - (b) does not have, and is unlikely within the foreseeable future to have, sufficient property or any land in respect of which civil enforcement can be effected; and

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- (c) is deemed not suitable to undertake work under an MPCSO.
- (4) The Director may deem a monetary penalty to be uncollectable in any prescribed circumstances.
- (5) If the Director deems an amount to be uncollectable under this section, it does not affect any non-monetary penalty imposed for the same offence and does not annul any conviction for or finding of guilt in respect of, or delete any record of, the offence.
- (6) If the Director deems an amount to be uncollectable under this section this does not affect the ability of a plaintiff to pursue the matter through the Civil Division of the Magistrates Court or the Supreme Court.
- (7) The Minister may give the Director directions with respect to the exercise of his or her discretion under this section.

*Division 2 – Miscellaneous*

**110. Electronic transmission of particular documents**

- (1) A notice, order or warrant, or any document under this Act containing information or a request for information, that is required or permitted by this Act to be given by a person to another person may be transmitted electronically.
- (2) For serving a notice or enforcing an enforcement warrant that is transmitted electronically, the

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enforcement officer to whom it is transmitted must arrange for a copy of the notice or warrant to be converted into written form.

**111. Order of satisfaction of monetary penalties**

If an enforcement debtor pays all or part of a monetary penalty, the amount must be applied as follows:

- (a) firstly, to any amount required to be paid as fees and or costs;
- (b) secondly, to the amount of any compensation order;
- (c) thirdly, to the amount of the monetary penalty.

**112. Order of satisfaction if more than one monetary penalty payable**

If a person has been ordered to pay a fine or is taken to be convicted under section 20 in respect of 2 or more monetary penalties, any payment for a monetary penalty made by that person is to be applied against the monetary penalties in order of age with the oldest being discharged first.

**112A. Penalty may be increased if enforcement action is required**

If the Director issues an enforcement order or imposes any administrative sanction or civil

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sanction against an enforcement debtor, the monetary penalty owed by the enforcement debtor is increased by the prescribed amount.

**113. Dishonoured cheques, &c.**

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

- (3) Any charge by the financial institution to the Director for declining to authorise the payment is a cost recoverable from the debtor under this Act.

**114. Use of personal information**

If the Director obtains personal information under this Act, the Director may use that information for the purposes of this Act.

**115. Information from Commissioner of Tasmania Police**

- (1) The Commissioner of Police may, on the Director's written request, disclose to the Director information in the possession of the Police Service about a specified person for the purposes of the Director taking action against the person to enforce payment of an amount under this Act.
- (2) The Commissioner may disclose the following information:
  - (a) the person's criminal history;
  - (b) the person's address;
  - (c) any assets of the person known to the Commissioner.
- (3) Information given to the Director under this section must not be used otherwise than for the purposes of this Act.

**116. Information from public sector bodies**

- (1) The Director may, for the purpose of enforcing payment of an amount under this Act, request a public sector body to disclose the current and any previous address of a specified person, or any other information that the Director reasonably believes may assist in the recovery of such payment, as shown in any records kept by that public sector body.
- (2) A public sector body must comply with the Director's request under subsection (1) as soon as practicable after receiving the request, unless that public sector body reasonably believes that disclosure of the information is likely to endanger the person's safety.
- (3) A fee is not payable in respect of the compliance by a public sector body with a request under subsection (2).
- (4) This section does not apply to the Commissioner of Police or a department, authority or agency of the Commonwealth government.

**117. Deductions from awards made under *Victims of Crime Assistance Act 1976***

A debt owed to the Director under this Act is taken to be a pecuniary penalty imposed on a person and owing to the Crown for the purposes of section 6B(1)(a) of the *Victims of Crime Assistance Act 1976* and that amount must be deducted by the Commissioner from any award

of compensation to be made under that Act and must be paid to the Director.

**118. Change of address to be notified**

- (1) An offender who applies for a variation of payment conditions or the withdrawal of an infringement notice must –
  - (a) at the time of making the application, provide to the person to whom the application is made his or her current address for service of documents; and
  - (b) until such time as the monetary penalty has been withdrawn or paid, notify the person to whom the application is made of any change in that address.

Penalty: Fine not exceeding 10 penalty units.

- (2) A person who elects to have an offence decided by a court must, at the time of so electing –
  - (a) provide his or her current address for service of documents; and
  - (b) notify the court of any change in that address.

Penalty: Fine not exceeding 10 penalty units.

- (3) An enforcement debtor who has been served with an enforcement order must –

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- (a) inform the Director if the address shown on the enforcement order is incorrect; and
- (b) provide the Director with a current address; and
- (c) until such time as the monetary penalty has been withdrawn or paid, notify the Director of any change in that address.

Penalty: Fine not exceeding 10 penalty units.

- (4) It is a defence to a prosecution under subsection (3) for the enforcement debtor to satisfy the magistrate on the balance of probabilities that he or she did not receive the enforcement order.
- (5) Where the enforcement debtor is a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, the Director is entitled to recover from that corporation the costs of any search fees incurred in ascertaining the current correct address of the corporation.

Penalty: Fine not exceeding 10 penalty units.

- (6) In addition to any fine payable under this section, the court may order a person to pay the Director for expenses reasonably incurred in ascertaining the person's correct address.

**119. Orders, &c., to be taken to be issued by court**

For the purposes of the *Service and Execution of Process Act 1992* of the Commonwealth and

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Part 9 of this Act, an enforcement order or civil enforcement sanction issued by the Director under this Act is taken to be an order or sanction issued by a Tasmanian court of summary jurisdiction.

**120. Non-reviewable decision**

- (1) This section applies to any of the following decisions:
- (a) a decision of the Director, Community Corrections about the suitability of a person to perform community service work under an MPCSO;
  - (b) a decision of the Director to refuse an application for a variation of payment conditions;
  - (c) a decision of the Director to issue an enforcement order;
  - (ca) a decision of the Director to direct the suspension of a driver licence, prescribed licence or vehicle registration;
  - (d) a decision of the Director to issue an enforcement warrant;
  - (e) a decision of the Director to issue a redirection of money owing order;
  - (f) a decision of the Director to deem, or not to deem, a monetary penalty to be uncollectable.

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- (2) A decision to which this section applies is not a reviewable decision within the meaning of the *Judicial Review Act 2000*.

**121. Annual report**

The Director, as soon as practicable after 30 June in each year, is to publish an annual report on the operation of the Monetary Penalties Enforcement Service during the period of 12 months ending on that day.

**121A. Evidentiary certificate**

In any legal proceedings, a document purporting to be a certificate signed by the Director and relating to any one or more of the following matters is evidence of the facts stated in it:

- (a) that a person was served with an enforcement order;
- (b) that a specified communication has taken place with, or a specified document has been given to, a person, and the content of that communication or document.

**122. Savings and transitional provisions**

- (1) If a person defaults in the payment of an order imposing a fine made before the commencement of this Act, the person may be proceeded against as if the order were made after this Act commenced.

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- (1A) For the purposes of subsection (1), an undertaking to pay a prescribed penalty contained in an infringement notice that was lodged with a designated clerk of petty sessions before the commencement of this Act is taken to be an order imposing a fine made by a court before the commencement of this Act.
- (1B) A person who has been served with an infringement notice that was issued on or after 1 December 2007 and before the day on which section 1 commences and has not been withdrawn may be served with a notice from the Director advising the person that the infringement notice is to be enforced under this Act.
- (1C) When a person is served with a notice from the Director under subsection (1B), the infringement notice becomes enforceable under this Act.
- (1D) A notice from the Director under subsection (1B) must contain the following information:
- (a) the date of issue of the infringement notice to which the notice relates;
  - (b) the total amount of the penalty or penalties on that infringement notice which remains outstanding;
  - (c) the methods by which payment of that amount may be made;
  - (d) a statement that, if the person on whom the notice is served wishes to have the

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offence or offences to which the infringement notice relates heard and determined by a court, he or she must lodge a notice of election in accordance with this Act within 28 days of the service of the notice;

- (e) a statement that, if the person on whom the notice is served does not lodge a notice of election within 28 days of the service of the notice, he or she will be taken to be convicted of the offence or offences set out in the infringement notice and the amount outstanding under the infringement notice may be recovered under this Act.
- (1E) Where an infringement notice becomes enforceable under this Act by the operation of subsection (1C), any time limit imposed by another Act for taking action in respect of the offence or offences to which the infringement notice relates is to be extended by 3 months.
- (1F) If a person who is subject to an order imposing a fine made before the day on which section 1 commences applies to the Director for a variation of payment conditions in relation to that order, the order is to be dealt with under this Act as though it were an order made after that day.
- (2) A fine, in relation to which enforcement proceedings taken before the commencement of this Act were adjourned *sine die* by the court or transferred by the court on its own motion to the

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Magistrates Court (Civil Division), may at the discretion of the Director become a fine which can be enforced under this Act on the service of a notice to that effect on the person on whom the fine was imposed.

- (3) Any enforcement proceedings for the payment of a fine that were, before the commencement of this Act, transferred by the court on its own motion to the Civil Division may, at the discretion of the Director, become a debt which can be enforced under this Act once a notice to that effect is issued to the defendant.
- (4) A warrant of apprehension issued, but not executed, before the commencement of this Act is void as from that commencement.
- (5) A warrant of commitment issued under section 47 of the *Sentencing Act 1997* but suspended on conditions before the commencement of this Act may be executed at the discretion of the Director if he or she is satisfied that the conditions of suspension have been breached.

**123. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
  - (a) provide for fees and charges payable in respect of any matter under this Act; and

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- (b) provide for the recovery by an enforcement officer of any reasonable and necessary expenses incurred in executing a warrant; and
  - (c) prescribe licences that may be suspended under this Act; and
  - (d) prescribe debts that the Director may deem to be uncollectable under this Act.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Director.

**124. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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**NOTES**

The foregoing text of the *Monetary Penalties Enforcement Act 2005* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 13 June 2023 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Monetary Penalties Enforcement Act 2005</i>	No. 57 of 2005	28.4.2008
<i>Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007</i>	No. 72 of 2007	28.4.2008
<i>Monetary Penalties Enforcement (Consequential Amendments) Act 2008</i>	No. 6 of 2008	28.4.2008
<i>Monetary Penalties Enforcement (Consequential Amendments) Act (No. 2) 2008</i>	No. 27 of 2008	28.4.2008
<i>Monetary Penalties Enforcement (Miscellaneous Amendments) Act 2011</i>	No. 4 of 2011	28.4.2008 Part 3 1.6.2011 Remaining
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2013</i>	No. 20 of 2013	20.6.2013
<i>Youth Justice (Miscellaneous Amendments) Act 2013</i>	No. 27 of 2013	1.3.2014
<i>Sentencing Amendment (Fines Without Recording Convictions) Act 2017</i>	No. 2 of 2017	31.3.2017
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Justice and Related Legislation Miscellaneous Amendments Act</i>	No. 5 of 2023	13.6.2023

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Act	Number and year	Date of commencement
2023		

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**TABLE OF AMENDMENTS**

Provision affected	How affected
Section 3	Amended by No. 6 of 2008, Sched. 1, No. 27 of 2008, Sched. 1, No. 4 of 2011, s. 31, No. 4 of 2011, s. 4, No. 13 of 2012, s. 48, No. 20 of 2013, s. 59 and No. 2 of 2017, s. 12
Section 4	Amended by No. 27 of 2013, s. 53
Section 7	Amended by No. 4 of 2017, Sched. 1
Section 9	Amended by No. 4 of 2011, s. 5
Section 10	Amended by No. 4 of 2011, s. 6
Section 12	Amended by No. 4 of 2011, s. 7
Section 14	Substituted by No. 4 of 2011, s. 32
Section 14A	Inserted by No. 6 of 2008, Sched. 1
Section 15	Amended by No. 6 of 2008, Sched. 1
Section 18	Amended by No. 6 of 2008, Sched. 1
Section 23	Amended by No. 4 of 2011, s. 8
Section 24	Repealed by No. 4 of 2011, s. 9
Section 25	Amended by No. 4 of 2011, s. 10
Section 27	Amended by No. 6 of 2008, Sched. 1, No. 4 of 2011, s. 11, No. 20 of 2013, s. 60 and No. 5 of 2023, s. 16
Section 33	Amended by No. 20 of 2013, s. 61
Section 34	Amended by No. 20 of 2013, s. 62
Section 35	Amended by No. 4 of 2011, s. 12
Section 36	Amended by No. 6 of 2008, Sched. 1 Subsection (1A) inserted by No. 6 of 2008, Sched. 1 Subsection (3) inserted by No. 6 of 2008, Sched. 1 Repealed by No. 20 of 2013, s. 63
Section 40	Amended by No. 6 of 2008, Sched. 1
Section 43	Amended by No. 4 of 2011, s. 14
Section 43A	Inserted by No. 4 of 2011, s. 15
Section 45	Amended by No. 6 of 2008, Sched. 1
Section 46	Amended by No. 20 of 2013, s. 64
Section 46A	Inserted by No. 4 of 2011, s. 17
Section 50	Amended by No. 4 of 2011, s. 18
Section 54	Amended by No. 4 of 2011, s. 19
Section 56	Amended by No. 4 of 2011, s. 20
Section 58	Amended by No. 4 of 2011, s. 21
Section 59	Amended by No. 4 of 2011, s. 22
Section 60	Amended by No. 4 of 2011, s. 23
Section 68	Substituted by No. 4 of 2011, s. 24
Section 69	Amended by No. 4 of 2011, s. 25
Section 70	Amended by No. 4 of 2011, s. 26

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Part 10 – Miscellaneous

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Provision affected	How affected
Section 73	Amended by No. 20 of 2013, s. 65
Section 106	Amended by No. 4 of 2017, Sched. 1
Section 109	Amended by No. 4 of 2011, s. 27 and No. 2 of 2017, s. 13
Section 111	Amended by No. 20 of 2013, s. 66
Section 112A	Inserted by No. 6 of 2008, Sched. 1
Section 120	Amended by No. 4 of 2011, s. 28
Section 121A	Inserted by No. 4 of 2011, s. 29
Section 122	Amended by No. 72 of 2007, Sched. 1 and No. 6 of 2008, Sched. 1

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