

ACTS AMENDMENT (FINES ENFORCEMENT) BILL 1999

Explanatory Notes

Part 1 – Preliminary

Clause 1 Short title

Short title of the Act

Clause 2 Commencement

The Act will come into operation on a date to be specified by way of proclamation made by the Governor in Executive Council. The reasons for this are that regulations under the *Sentencing Act 1995* will be required - specifically the form of the order to be issued by the Court needs to be developed, and secondly regulations under *Fines, Penalties and Infringement Notices Enforcement Act 1994* will be required for the purposes of 57B(7). [See clause 10]

Part 2 – Fines, Penalties and Infringement Notices Enforcement Act 1994

Clause 3 The Act amended by this Part

The amendments in this part are to the *Fines, Penalties and Infringement Notices Enforcement Act 1994*

Clause 4 Section 47 amended

Section 47(5) is repealed. This section currently defines what an order to attend for work and development is. It will now appear in the amendments as section 47B and define what an order for work and development is, when made under section 47 and the new section 47A.

Clause 5 Section 47A and 47B inserted

The proposed new Section 47A will allow the Registrar of the Fines Enforcement Registry in respect to a fine registered at the registry, to issue an order to report for work and development. Prior to issuing such an order, the Registrar must be satisfied that the offender does not have the means to pay the fine, or personal property that could be seized to satisfy the fine, and that the issuing of a licence suspension order has not, or is unlikely to, result in the fine being paid.

This provision has been included so that if an offender has a number of outstanding fines registered with the Fines Enforcement Registry, and the court subsequently makes an

order under section 57A of the *Sentencing Act 1995* in relation to a new fine [see clause 10 of the *Acts Amendment (Fines Enforcement) Bill 1999*], the Registrar can progress those fines so that all the offender's matters are dealt with at the same time.

This provision can also be used to expedite the enforcement process where it is clear from an offender's prior enforcement history, that he/she does not have the means to pay the fine, or personal property that could be seized to satisfy the fine, and that the issuing of a licence suspension order has not, or is unlikely to, result in the fine being paid.

The proposed section 47B defines what an order for work and development is, when made under section 47 and section 47A.

Clause 6 Section 48 amended

Section 48 (1) and (2) deals with the duty of the CEO to assess the suitability of an offender to be given a WDO, and that the CEO must make an order unless it is considered that the offender is physically or mentally incapable.

The proposed amendment removes the requirements of subsections (1) and (2) when the court makes a fine enforcement (WDO) order, as the offender's suitability would have been assessed at the time the order to report was made [see clause 10 of the *Acts Amendment (Fines Enforcement) Bill 1999*].

Clause 7 Section 53 amended

Section 53 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* which deals with the issuing of warrants of commitment is consequently amended as a result of the court being able to make a fine enforcement (WDO) order [see clause 10 of the *Acts Amendment (Fines Enforcement) Bill 1999*].

Part 3 - Sentencing Act 1995

Clause 8 The Act amended by this Part

The amendments proposed in this part are to the *Sentencing Act 1995*.

Clause 9 Section 57 amended

Section 57 of the *Sentencing Act 1995* defines how a fine is to be enforced. The proposed amendment to this section refers to the enforcement options in *Section 57A and 57B*. [See clause 10 of the *Acts Amendment (Fines Enforcement) Bill 1999*].

Clause 10 Section 57A and 57B inserted

The proposed new section 57A allows the Court to issue an order to report for work and development after having imposed a fine. Prior to issuing such an order, the Court must be satisfied that the offender does not have the means to pay the fine, or personal property that could be seized to satisfy the fine, and that the issuing of a licence suspension order has not, or is unlikely to, result in the fine being paid. On the record it will still be shown as a fine and not a more serious penalty, but it avoids the Court having to impose a penalty in such a way that it knows it is going to be ineffective, and provides for more effective enforcement.

This provision has been included to provide the Court with greater sentencing flexibility in those instances where a fine is the only option available.

The proposed new section 57B provides for an appeal mechanism where it is considered by the Registrar of the Fines Enforcement Registry that an order under section 57A should not have been made. If after the issue of an order under 57A(3) it becomes known to the Registrar that the offender then, or at the time of the order, has the capacity to pay, or alternatively becomes incapable of undertaking a work and development order, then the Registrar may make application to the Court to have the matter reconsidered.