

South Australia



STATUTES AMENDMENT (FINE ENFORCEMENT) ACT 1998

No. 60 of 1998

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ANNO QUADRAGESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1998

No. 60 of 1998

An Act to amend the Correctional Services Act 1982; the Courts Administration Act 1993; the Criminal Injuries Compensation Act 1978; the Criminal Law (Sentencing) Act 1988; the Expiation of Offences Act 1996; the Magistrates Court Act 1991; the Motor Vehicles Act 1959; the Summary Procedure Act 1921; and for other purposes.

[Assented to 3 September 1998]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Fine Enforcement) Act 1998*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act specified in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF CORRECTIONAL SERVICES ACT 1982**

Amendment of s. 4—Interpretation

4. Section 4 of the principal Act is amended by inserting in subsection (1) after the definition of "child sexual offence" the following definition:

"CIC levy" means a levy imposed under the *Criminal Injuries Compensation Act 1978*;

Amendment of s. 27—Leave of absence from prison

5. Section 27 of the principal Act is amended—

(a) by inserting in subsection (2a) ", calculated in accordance with the Minister's directions," after "a specified amount per week";

- (b) by inserting in subsection (2a) ", or towards reducing the amount of any CIC levy that the prisoner is liable to pay in respect of any offence" after "while so employed".

Amendment of s. 31—Prisoner allowances and other money

6. Section 31 of the principal Act is amended by inserting after subsection (6) the following subsections:

(6a) If the manager of a correctional institution is aware, by virtue of a warrant executed against the prisoner (whether issued before or after the commencement of this subsection), that a prisoner is liable for a CIC levy imposed in respect of any offence, the manager must deduct from the prisoner's weekly income under this section an amount calculated in accordance with the Minister's directions.

(6b) Subsection (6a) does not apply in relation to a prisoner who is being detained by virtue only of a warrant of commitment issued before the commencement of this subsection solely for the enforcement of a CIC levy.

(6c) Money deducted under subsection (6a), and any money paid to the manager at any time by a prisoner in or towards satisfaction of a CIC levy, must be paid into the Criminal Injuries Compensation Fund.

PART 3 AMENDMENT OF COURTS ADMINISTRATION ACT 1993

Amendment of s. 10—Responsibilities of the Council

7. Section 10 of the principal Act is amended—

- (a) by inserting in subsection (1) "and their staff" after "those courts";
- (b) by inserting in subsection (1) "and administrative" after "to carry out their judicial".

Amendment of s. 21A—Non-judicial court staff

8. Section 21A of the principal Act is amended by inserting in subsection (1) after paragraph (a) the following paragraph:

- (ab) the Manager, Penalty Management (*see the Magistrates Court Act 1991*); and.

PART 4 AMENDMENT OF CRIMINAL INJURIES COMPENSATION ACT 1978

Amendment of s. 4—Interpretation

9. Section 4 of the principal Act is amended—

- (a) by striking out the definition of "juvenile offender";
- (b) by inserting after the definition of "victim" the following definition:

"youth" means a person who was, on the date of committing an offence, under the age of 18 years.

Amendment of s. 13—Imposition of levy

10. Section 13 of the principal Act is amended—

- (a) by striking out from subsection (4) "juvenile offender" and substituting "youth";
- (b) by inserting in subsection (6) after paragraph (a)(ii) the following subparagraph:
 - (iii) any warrant of commitment issued for the imprisonment of the defendant for the offence;;
- (c) by striking out from subsection (6) paragraph (b) and substituting the following paragraphs:
 - (b) the court may not, at the time of convicting or sentencing the defendant for the offence, reduce the levy or exonerate the defendant from liability to pay it;
 - (c) the levy is recoverable under the *Criminal Law (Sentencing) Act 1988*.;
- (d) by striking out subsection (7).

**PART 5
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988**

Amendment of s. 3—Interpretation

11. Section 3 of the principal Act is amended—

- (a) by striking out from subsection (1) the definition of "appropriate officer" and substituting the following definitions:

"the Administrator" means the person for the time being holding or acting in the office of the State Courts Administrator under the *Courts Administration Act 1993*;

"authorised officer" means—

- (a) the Sheriff; or
 - (b) the Manager, Penalty Management; or
 - (c) a Registrar of the Magistrates Court; or
 - (d) the Registrar of the Youth Court; or
 - (e) a person appointed by the Administrator under Part 9 as an authorised officer;;
- (b) by inserting in subsection (1) after the definition of "the CEO" the following definition:
 - "CIC levy" means a levy imposed under the *Criminal Injuries Compensation Act 1978*;;
 - (c) by striking out from subsection (1) the definition of "goods";

(d) by inserting in subsection (1) after the definition of "injury" the following definition:

"the Manager, Penalty Management" or **"the Manager"** means the person for the time being holding or acting in the office of Manager, Penalty Management under the *Magistrates Court Act 1991*;

(e) by striking out from the definition of "pecuniary sum" in subsection (1) "a levy imposed under the *Criminal Injuries Compensation Act 1978*" and substituting "a CIC levy";

(f) by striking out from subsection (1) the definition of "prescribed unit".

Amendment of s. 13—Order for payment of pecuniary sum not to be made in certain circumstances

12. Section 13 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) In considering whether the defendant would be able to comply with the order, the court should have regard to the fact that defendants may enter into arrangements under Division 3 of Part 9 for an extension of time to pay pecuniary sums or for payment by instalments.

Insertion of s. 14A

13. The following section is inserted after section 14 of the principal Act:

Court not to fix time for payment of pecuniary sums

14A. (1) Where a court makes an order requiring a defendant to pay a pecuniary sum, the court is not empowered to make any order relating to the time or manner in which the sum is to be paid (*for those powers see Part 9*).

(2) Subsection (1) does not derogate from any order of a court or an officer of a court that was in force immediately before this section came into operation.

Repeal of s. 33—Court to have regard to defendant's means

14. Section 33 of the principal Act is repealed.

Repeal of s. 35—Variation of manner of payment of fine

15. Section 35 of the principal Act is repealed.

Amendment of s. 42—Conditions of bond

16. Section 42 of the principal Act is amended by striking out from subsection (1)(g)(ii) "(in a lump sum or in instalments)".

Amendment of s. 47—Special provisions relating to community service

17. Section 47 of the principal Act is amended by striking out from subsection (1)(a) "40" and substituting "16".

Amendment of s. 50A—Variation of community service order

18. Section 50A of the principal Act is amended by striking out from subsection (1) ", the Minister for Correctional Services or an appropriate officer" and substituting "or the Minister for Correctional Services".

Amendment of s. 53—Compensation

19. Section 53 of the principal Act is amended by striking out subsection (8).

Repeal of s. 54—Variation of manner of payment of compensation

20. Section 54 of the principal Act is repealed.

Repeal of Part 8

21. Part 8 of the principal Act is repealed.

Insertion of s. 56A

22. The following section is inserted after section 56 of the principal Act:

Appointment of authorised officers

56A. (1) The Administrator may appoint members of the staff of the State Courts Administration Council as authorised officers.

(2) An appointment under subsection (1) may be made subject to conditions limiting the powers exercisable by the authorised officer.

(3) The Administrator may, by notice in writing served on an authorised officer—

- (a) vary or revoke a condition of the officer's appointment or impose a new condition; or
- (b) revoke the appointment.

Amendment of s. 58—Orders that court may make on breach of bond

23. Section 58 of the principal Act is amended—

- (a) by striking out from subsection (1)(a) "and direct the manner and time in which payment is to be made";
- (b) by striking out from subsection (1)(b) "and direct the time and manner in which payment is to be made".

Repeal of s. 59—Variation of manner of payment of sum under a bond

24. Section 59 of the principal Act is repealed.

Substitution of Division 3 of Part 9

25. Division 3 of Part 9 of the principal Act is repealed and the following Division is substituted:

DIVISION 3—ENFORCEMENT OF PECUNIARY SUMS**SUBDIVISION 1—PRELIMINARY****Interpretation**

60. (1) In this Division—

"the Court" means—

- (a) in relation to a debtor who is a youth—the Youth Court;
- (b) in any other case—the Magistrates Court;

"debtor" means the person by whom a pecuniary sum is payable;

"driver's licence" includes a learner's permit;

"penalty enforcement order" means an order under Subdivision 3 or Subdivision 6;

"the Registrar" means—

- (a) in relation to a debtor who is a youth—the Registrar of the Youth Court;
- (b) in any other case—a Registrar of the Magistrates Court;

"road" has the same meaning as in the *Motor Vehicles Act 1959*.

(2) Unless the contrary intention appears, a reference in this Division to a pecuniary sum includes a reference to the amount outstanding of such a sum or, if a number of pecuniary sums have been aggregated, the amount outstanding of the aggregated sums.

(3) To avoid doubt, a reference in this Division to a pecuniary sum is a reference to a pecuniary sum imposed by any court of criminal jurisdiction.

Pecuniary sum is payable within 28 days

61. A pecuniary sum imposed by order of a court is payable within 28 days from (and including) the day on which the order was made.

Payment of pecuniary sum to the Manager

62. (1) A pecuniary sum is payable as follows (despite the fact that the order is in favour of some person):

- (a) to the Manager; or
- (b) to any agent appointed by the Manager for the purpose.

(2) On receipt of the whole or part of a pecuniary sum, the Manager must pay the amount received as follows:

- (a) firstly, if a levy under the *Criminal Injuries Compensation Act 1978* is payable by the defendant, then into the Criminal Injuries Compensation Fund in satisfaction of that levy; and
- (b) secondly, if the sentencing court has ordered the defendant to pay any amount by way of compensation or restitution to a particular person, then to that person in satisfaction of that amount; and
- (c) thirdly, if any costs are payable to a party to the proceedings, then in satisfaction of those costs; and
- (d) fourthly, if any other money is payable under the order of the court to the complainant, then to the complainant; and
- (e) fifthly, according to the directions of any other Act or, if no other Act contains directions as to payment, then to Treasury.

Payment by credit card, etc.

63. A pecuniary sum may be paid by using a credit card, charge card or debit card if facilities for their use are available at the place at which the payment is to be made.

Arrangements may be made as to manner and time of payment

64. (1) A debtor may enter into a written arrangement with an authorised officer as to the manner and time of payment of a pecuniary sum.

(2) Arrangements under this section may include all or any of the following:

- (a) payment by instalments;
- (b) an extension of time to pay;
- (c) payment of any amount by or through some other person or agency (eg, deductions from a bank account or wages).

(3) An authorised officer should not enter into an arrangement for an extension of time to pay a pecuniary sum if the officer is of the opinion that the debtor is, without the debtor or his or her dependants suffering hardship, able to pay the sum in instalments of a reasonable amount.

(4) An arrangement under this section may be varied, in writing, by agreement between the debtor and an authorised officer.

(5) For the purposes of entering into or varying an arrangement, any number of pecuniary sums payable by the debtor may be aggregated.

(6) If a debtor fails to comply with an arrangement under this section and the failure has endured for 14 days, the arrangement terminates and the whole of the amount outstanding under the arrangement is enforceable under this Division (but nothing in this subsection prevents a further arrangement being entered into in respect of the pecuniary sum).

Reminder notice

65. (1) If, at the end of the 28 day period from the making of an order imposing a pecuniary sum, the debtor has not paid the pecuniary sum or entered into an arrangement under this Subdivision in respect of the sum, an authorised officer must cause a reminder notice to be sent by post to the debtor.

(2) A reminder notice must—

- (a) be in a form approved by the Minister; and
- (b) contain information as to the enforcement action that can be taken against the debtor in the event of continued default.

(3) Subject to subsection (4), a prescribed reminder notice fee will be added to and form part of the amount in respect of which the notice is issued.

(4) An authorised officer may, in such circumstances as the officer thinks just, waive payment of a reminder notice fee.

Investigation of debtor's financial position

66. (1) An authorised officer may investigate a debtor's means of satisfying a pecuniary sum and, for that purpose, may issue a summons to the debtor, or to any other person who may be able to assist with the investigation, to appear for examination before an authorised officer or to produce documents relevant to the investigation to an authorised officer.

(2) Subject to this Act, an investigation under this section need not (but may) be carried out before a penalty enforcement order is made in relation to the debtor.

(3) A summons under subsection (1) may be served personally or by post.

(4) If a person fails to appear as required by the summons, an authorised officer may issue a warrant in a form approved by the Minister for the arrest of the person.

(5) An authorised officer may, on arresting a person pursuant to a warrant issued under subsection (4), bring the person before an authorised officer for examination as soon as reasonably practicable and, in the meantime, if necessary, cause the person to be kept in safe custody at a police station or other suitable place of detention.

Publication of names of debtors who cannot be found

67. (1) If the whereabouts of a debtor (other than a debtor who is a youth) cannot, after reasonable enquiries, be ascertained, an authorised officer may cause a notice to be published in a newspaper circulating generally throughout the State and in such other newspaper (if any) as the officer thinks fit seeking information as to the debtor's whereabouts.

(2) A notice under subsection (1)—

(a) must be in a form approved by the Minister; and

(b) must not include any information relating to the debtor other than the debtor's—

(i) actual name and any assumed name; and

(ii) last known and recent addresses; and

(iii) date of birth.

(3) However, a notice cannot be published under this section in relation to a debtor if a suppression order forbidding publication of the debtor's name was made in the proceedings in which the pecuniary sum was imposed and the order was not subsequently revoked.

Charge on land

68. (1) An authorised officer may apply to the Registrar-General in the prescribed manner to register an order of a court imposing a pecuniary sum over land owned (whether solely or jointly) by the debtor.

(2) Any fees incurred in relation to registration (or cancellation of registration) under this section are added to and form part of the pecuniary sum to which the order relates.

(3) An order registered under this section operates as a charge on the land for the amount outstanding from time to time under the order but does not give rise to a power of sale.

(4) An authorised officer will apply to the Registrar-General in the prescribed manner to have the registration of an order under this section cancelled—

- (a) on the pecuniary sum being fully satisfied; or
- (b) on revocation by the Court of the order under Subdivision 4; or
- (c) if the authorised officer considers, in the circumstances of the particular case, that it is just to do so.

SUBDIVISION 2—PROCEDURAL MATTERS

Time at which enforcement action can be taken

69. (1) If—

- (a) a debtor has not, within 14 days of (and including) the date on which a reminder notice relating to a pecuniary sum was given, paid the sum or entered into an arrangement under Subdivision 1 in respect of the sum; or
- (b) an arrangement under Subdivision 1 has terminated and the debtor has not entered into any further such arrangement in respect of the pecuniary sum,

an authorised officer may make such penalty enforcement order or orders in relation to the debtor as appear likely to result in full or substantial satisfaction of the due amount.

(2) However—

- (a) priority should, in the first instance, be given to an order for suspension of a driver's licence or for a restriction on transacting business with the Registrar of Motor Vehicles, or both; and
- (b) in deciding at any time whether to make an order for sale of property or a garnishee order, priority should be given to the former; and
- (c) an order for sale of property, a garnishee order or community service order cannot be made while a penalty enforcement order for suspension of the debtor's driver's licence is in force.

Aggregation of pecuniary sums for the purposes of enforcement

70. Any number of pecuniary sums owed by a debtor may be aggregated for the purposes of making a penalty enforcement order.

Penalty enforcement orders may be made in absence of debtor

70A. A penalty enforcement order may be made in the absence of, and without prior notice to, the debtor.

Authorised officer may be assisted by others in certain circumstances

70B. In—

- (a) serving any document on a person; or
- (b) executing an order for sale of property; or
- (c) arresting any person,

an authorised officer may be assisted by such other persons (including a member of the police force) as the officer considers necessary in the circumstances.

Costs of penalty enforcement orders

70C. The prescribed fees for issuing, serving and executing a penalty enforcement order are added to and form part of the amount in respect of which the order was made.

Cancellation of penalty enforcement orders

70D. A penalty enforcement order will be cancelled by an authorised officer on—

- (a) the debtor entering into an arrangement under Subdivision 1 in relation to the amount outstanding under the order; or
- (b) the pecuniary sum to which the order relates being fully satisfied; or
- (c) the debtor's case being remitted to the Court for reconsideration under Subdivision 4,

and may be cancelled by an authorised officer in such other circumstances as the officer considers just.

SUBDIVISION 3—PENALTY ENFORCEMENT ORDERS

Suspension of driver's licence

70E. (1) An authorised officer may make an order suspending a debtor's driver's licence for a period of 60 days, but not if the debtor is currently disqualified from holding or obtaining a licence for a period that still has 60 days or more to run.

(2) If the debtor is currently disqualified from holding or obtaining a driver's licence and the period of disqualification has less than 60 days to run, the authorised officer may make an order suspending the debtor's driver's licence for the balance of the period of 60 days.

(3) The authorised officer will—

- (a) cause a copy of an order under this section to be served on the debtor personally or by post; and
- (b) notify the Registrar of Motor Vehicles that the order has been served.

(4) An order under this section takes effect—

- (a) in the case of an order under subsection (1)—14 days from (and including) the day on which notice is served on the debtor under subsection (3);
- (b) in the case of an order under subsection (2)—from the end of the current period of disqualification.

(5) A person must not drive a motor vehicle on a road while his or her licence is suspended under this section.

Maximum penalty: (a) \$2 500; or

- (b) disqualification from holding or obtaining a driver's licence for a period not exceeding 6 months; or
- (c) cancellation of the person's driver's licence and disqualification from obtaining such a licence for a period not exceeding 6 months.

(6) In proceedings for an offence against subsection (5), an allegation in the complaint that a copy of the order suspending the defendant's driver's licence was served personally on or posted to the defendant on a specified day is, in the absence of proof to the contrary, proof of the facts so alleged.

Restriction on transacting business with the Registrar of Motor Vehicles

70F. (1) An authorised officer may make an order restricting a debtor from transacting any business with the Registrar of Motor Vehicles.

(2) The authorised officer will—

- (a) cause a copy of an order under this section to be served on the debtor personally or by post; and
- (b) notify the Registrar of Motor Vehicles that the order has been served.

(3) An order under this section—

- (a) takes effect on notice being served on the debtor under subsection (2); and
- (b) continues in operation until cancelled.

(4) The effect of an order under this section is that, while the order is in operation, the Registrar of Motor Vehicles will not process any application made by or on behalf of the debtor, whether the application was made before or after the order took effect.

(5) However, subsection (4) does not apply in relation to an application—

- (a) to transfer the registration of a motor vehicle of which the debtor is a registered owner; or
- (b) to renew the registration of a motor vehicle of which the debtor is a joint registered owner.

Seizure and sale of land or personal property

70G. (1) An authorised officer may make an order for sale of the debtor's land or personal property to satisfy a pecuniary sum.

(2) An order under this section authorises an authorised officer, in relation to the debtor's real or personal property, to—

- (a) enter any land (using such force as may be necessary) on which the officer reasonably suspects personal property of the debtor is situated; and
- (b) seize and remove any personal property found on the land or in a public place that apparently belongs (wholly or partly) to the debtor; and

- (c) immobilise by means of wheel clamps or other means any motor vehicle seized pending its removal (but not if the vehicle is in a public place and to do so would inconvenience other persons); and
- (d) seize and remove any documents evidencing the debtor's title to any real or personal property; and
- (e) place and keep any such personal property or documents in safe custody until completion of sale; and
- (f) sell so much of the debtor's real or personal property as will satisfy, or substantially satisfy, the amount to which the order relates.

(3) However, the order—

- (a) only authorises the seizure and sale of personal property that could be taken in proceedings against the debtor under the laws of bankruptcy, as modified by regulations under this Act; and
- (b) does not authorise the sale of land unless the amount to which the order relates exceeds \$10 000; and
- (c) does not authorise the sale of land if it constitutes the debtor's principal place of residence.

(4) An authorised officer may exercise powers under an order for sale in the absence of, and without prior notice to, the debtor.

(5) When property is seized or removed, a copy of the order for sale and a notice listing the property seized—

- (a) must be given personally to the debtor or, in the absence of the debtor, to any other person apparently in charge of the premises and apparently of or over the age of 16 years; or
- (b) if paragraph (a) cannot be complied with, must be left in or attached to a conspicuous place on the land or at the premises.

(6) An authorised officer may, in appropriate cases, leave a debtor in possession of property until it is sold pursuant to the order for sale.

(7) If property that has been seized is left in the debtor's possession pending sale, the debtor must not, except with the written approval of an authorised officer, cause, permit or allow the property to be removed from the debtor's possession or to be sold or offered for sale.

Maximum penalty: \$2 500.

(8) If a motor vehicle has been seized but left in the debtor's possession pending sale, the debtor must not, except with the written approval of an authorised officer, drive the vehicle on a road.

Maximum penalty: (a) \$2 500; or

(b) disqualification from holding or obtaining a driver's licence for a period not exceeding 6 months; or

(c) cancellation of the debtor's driver's licence and disqualification from obtaining such a licence for a period not exceeding 6 months.

(9) A person must not interfere in any way—

(a) with any notice attached by an authorised officer to seized property left in a debtor's possession signifying that the property has been seized; or

(b) with the means by which a vehicle has been immobilised pursuant to this section.

Maximum penalty: \$2 500.

(10) Property seized under an order for sale cannot be sold until 14 days have elapsed from (and including) the day on which it was seized.

(11) If the debtor or any other person alleges, by notice in writing to the Manager, that any particular property is not liable to seizure and sale under this section, the sale of the property cannot proceed until the matter has, on the application of an authorised officer, been determined by the Court.

(12) For the purposes of determining an application under subsection (11), the Court may issue a summons requiring the attendance of any person the Court thinks fit.

(13) If a person (other than the debtor) claims an interest in property seized under an order for sale, the Court may, if satisfied of the validity of the claim—

(a) exclude the property from the sale; or

(b) direct the application of the proceeds of the sale of the property in such manner as the Court considers just.

(14) The sale of land or tangible property pursuant to an order for sale will be by public auction but, if no bid that the authorised officer conducting the sale considers acceptable is made at auction, the officer may proceed to sell the property by private treaty for a price not less than the highest bid.

(15) Where any part of the debtor's property consists of intangible property, an authorised officer may sign any transfer or do anything else necessary to convert that property into money.

(16) The surplus proceeds from a sale pursuant to an order for sale must be returned to the debtor.

(17) Personal property seized pursuant to an order for sale but not sold must be returned to the debtor or left at the place from which it was taken.

Garnishee order

70H. (1) The Registrar may order that—

- (a) money owing or accruing to a debtor from a third person; or
- (b) money of the debtor in the hands of a third person (including money in a bank account),

be attached to satisfy a pecuniary sum owed by the debtor.

(2) An order cannot be made under subsection (1) unless—

- (a) an investigation into the financial means of the debtor has been carried out under this Division; and
- (b) the Registrar is satisfied that execution of the order will not cause the debtor or the debtor's dependants to suffer hardship.

(3) An order under this section may authorise the garnishee to retain from the money subject to the attachment a reasonable sum, fixed by the order, as compensation for the garnishee's expenses in complying with the order.

(4) The Registrar will cause a copy of an order under this section to be served on the debtor and the garnishee personally or by post.

(5) If, because a garnishee order has been made under this section in relation to an employee, the employer—

- (a) dismisses the employee; or
- (b) injures the employee in employment; or
- (c) alters the employee's position to the employee's prejudice,

the employer is guilty of an offence.

Maximum penalty: \$10 000.

**SUBDIVISION 4—RECONSIDERATION BY COURT WHERE DEBTOR
HAS NO MEANS TO PAY**

Court may remit or reduce pecuniary sum or make substitute orders

70I. (1) If the Registrar is satisfied, after an investigation of a debtor's financial means has been carried out under this Division or on such other evidence as the Registrar thinks sufficient, that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the debtor or his or her dependants suffering hardship, the Registrar may remit the matter to the Court for reconsideration under this section.

(2) If the Court before which a debtor is appearing in any proceedings under this Part is satisfied that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the debtor or his or her dependants suffering hardship, the Court may, of its own motion, proceed to reconsider the matter under this section.

(3) On reconsidering a matter under this section, the Court may, by order—

- (a) remit or reduce the pecuniary sum; or
- (b) revoke the order (or orders) imposing the pecuniary sum and—
 - (i) make an order for community service; or
 - (ii) disqualify the debtor from holding or obtaining a driver's licence for a period not exceeding 6 months; or
 - (iii) cancel the debtor's driver's licence and disqualify the debtor from obtaining such a licence for a period not exceeding 6 months; or
- (c) confirm the order imposing the pecuniary sum,

and the Court may make such ancillary orders as the Court thinks appropriate.

(4) An order under subsection (3)(b) does not affect the original recording (or not) of a conviction against the debtor or the imposition of any other penalty for the offence, or offences, to which the pecuniary sum related.

(5) In making an order for community service, the Court must take into account the amount (if any) by which the original pecuniary sum has been reduced by the debtor.

(6) If the Court remits a pecuniary sum, the order, or orders, by which the sum was imposed will be taken to be fully satisfied.

SUBDIVISION 5—REMISSION OF LEVIES WHERE DEBTOR HAS NO MEANS TO PAY

CIC levies to be remitted if unenforceable

70J. Despite the other provisions of this Division, if the Registrar, an authorised officer or the Court has determined pursuant to Subdivision 4, 6 or 7 that a debtor does not have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum that consists wholly or partly of a CIC levy or a number of CIC levies—

- (a) the Registrar, authorised officer or Court must remit the whole of the pecuniary sum, or so much of it as consists of such a levy, as the case may require; and
- (b) the debtor's liability to pay any levy or levies so remitted will be taken to be fully satisfied.

SUBDIVISION 6—ENFORCEMENT AGAINST YOUTHS**Enforcement against youths**

70K. This Division applies to a debtor who is a youth (i.e., a person who was under the age of 18 years at the time when the offence in respect of which the pecuniary sum was imposed was committed) subject to the following modifications:

- (a) if the offence in question was an expiable offence arising out of the driving or parking of a motor vehicle by the youth when the youth was of or over 16 years of age, the pecuniary sum is enforceable against the youth in accordance with the other provisions of this Division, but an additional power exists to make a community service order subject to and in accordance with this Subdivision in respect of the youth;
- (b) if the offence in question does not fall within the ambit of paragraph (a), the pecuniary sum is enforceable against the youth in accordance with the other provisions of this Division, but—
 - (i) an order for sale of property or a garnishee order cannot be made in respect of the youth; and
 - (ii) an additional power exists to make a community service order subject to and in accordance with this Subdivision in respect of the youth.

Community service orders

70L. (1) If an authorised officer is satisfied that a debtor who is a youth does not have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum without the debtor or his or her dependants suffering hardship, the officer may make a community service order in respect of the debtor.

(2) A community service order must specify—

- (a) the number of hours of community service to be performed by the debtor, computed as follows:
 - (i) if the pecuniary sum is equal to or less than the prescribed unit—8 hours are to be performed;
 - (ii) if the pecuniary sum exceeds the prescribed unit—8 hours are to be performed for each prescribed unit of the pecuniary sum and for any fraction left after dividing the sum by that unit; and
- (b) the period, not exceeding 18 months, within which the community service is to be performed.

(3) Part 6 of the *Young Offenders Act 1993* applies, with necessary modifications, in relation to an order under this section as if it were an order for community service under that Act.

(4) The pecuniary sum to which a community service order relates is reduced by one prescribed unit for each 8 hours of community service performed under the order.

(5) If, while a community service order is in force, part of the pecuniary sum to which it relates is paid, the number of hours of community service to be performed under the order will be reduced by a proportionate amount.

(6) If an authorised officer is satisfied—

- (a) that a debtor has, although some hours of community service remain unperformed, substantially complied with a community service order; and
- (b) that there is no apparent intention on the debtor's part to evade the obligations under the order; and
- (c) that sufficient reason exists for exercising the powers under this subsection,

the officer may cancel the remaining number of hours of community service under the order and the pecuniary sum to which the order relates will be taken to be fully satisfied.

(7) In this section—

"prescribed unit" means—

- (a) \$100; or
- (b) if some other amount is prescribed, that amount.

SUBDIVISION 7—RIGHTS OF REVIEW AND APPEAL

Review

70M. (1) The person the subject of a penalty enforcement order made by an authorised officer who is not a Registrar may apply in writing in accordance with rules of court to the Registrar for a review of the decision to make the order.

(2) On an application for review being lodged, the penalty enforcement order is suspended pending determination of the review.

(3) The Registrar may, on completing a review under this section—

- (a) confirm the decision; or
- (b) quash the decision and—
 - (i) if the Registrar thinks it appropriate to do so, make some other penalty enforcement order against the applicant; or
 - (ii) if the Registrar is satisfied that the applicant does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the applicant or the applicant's dependants suffering hardship, remit the matter to the Court for reconsideration under Subdivision 4.

Appeal

70N. (1) A debtor who is aggrieved by a decision of a Registrar—

- (a) to make a garnishee order; or
- (b) to make any other penalty enforcement order while acting as an authorised officer; or
- (c) made on a review under this Subdivision,

may appeal in accordance with rules of court to the Court against the decision.

(2) On an appeal being lodged, the operation of the decision appealed against is suspended pending determination of the appeal.

(3) On an appeal under this section the Court may—

- (a) confirm the decision; or
- (b) quash the decision and, if the Court thinks it appropriate to do so, substitute any decision that could have been made in the first instance (but in doing so, the Court must take into account any subsequent change in the debtor's circumstances); or
- (c) make any ancillary order (including an order as to costs) the Court thinks fit.

(4) A decision of the Court on an appeal under this section is not subject to appeal.

Amendment of s. 71—Community service orders may be enforced by imprisonment

26. Section 71 of the principal Act is amended—

- (a) by inserting in subsection (1) "or authorised officer" after "order of a court";
- (b) by striking out subsection (5) and substituting the following subsection:

(5) If the court is satisfied that the person has failed to comply with the order requiring performance of community service—

- (a) the court may issue a warrant of commitment for the appropriate term of imprisonment fixed in accordance with subsection (2); but
- (b) if the person is a youth, the court may, instead of taking action under paragraph (a), make an order for home detention for a period fixed on the same basis.

Insertion of s. 71B

27. The following section is inserted after section 71A of the principal Act:

Registrar may exercise jurisdiction under this Division

71B. (1) Subject to rules of court or the regulations, the powers of a court under sections 71 and 71A are exercisable by—

- (a) if the person in relation to whom the powers are to be exercised is a youth—the Registrar of the Youth Court;

(b) in any other case—a Registrar of the Magistrates Court.

(2) Subject to rules of court or the regulations, a person who is aggrieved by a decision or order of a Registrar made pursuant to subsection (1) may apply in accordance with rules of court to the court for a review of the decision or order.

(3) The court may, on completion of the review—

(a) confirm the decision or order;

(b) quash the decision or order and substitute any decision or order that could have been made in the first instance;

(c) make any ancillary order (including an order as to costs) the court thinks fit.

Substitution of s. 72

28. Section 72 of the principal Act is repealed and the following sections are substituted:

Identification of authorised officers

72. (1) An authorised officer must be issued with an identity card in a form approved by the Administrator—

(a) containing the person's name and photograph; and

(b) stating that the person is an authorised officer appointed under this Act.

(2) If the powers of an authorised officer have been limited by conditions, the identity card must contain a statement of those limitations.

(3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act or any other Act, produce his or her identity card for inspection by the person.

Hindering authorised officer or assistant

72A. (1) A person must not hinder an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act.

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

(2) An authorised officer may, without warrant, arrest a person who commits an offence under subsection (1).

(3) A person arrested under subsection (2) must be brought forthwith before a justice or other proper authority to be dealt with according to law.

Immunity of authorised officers and assistants

72B. (1) No liability attaches to an authorised officer or a person assisting an authorised officer for an honest act or omission in the exercise, or purported exercise, of a power of arrest or powers relating to the service or execution of a penalty enforcement order under Part 9.

(2) A liability that would, but for subsection (1), attach to an authorised officer or a person assisting an officer attaches instead to the Crown.

Amendment of s. 74—Evidentiary

29. Section 74 of the principal Act is amended by striking out "appropriate" and substituting "authorised".

Amendment of s. 75—Regulations

30. Section 75 of the principal Act is amended by striking out from subsection (2)(b) "appropriate" and substituting "authorised".

PART 6**AMENDMENT OF EXPIATION OF OFFENCES ACT 1996****Amendment of s. 4—Interpretation**

31. Section 4 of the principal Act is amended by inserting after the definition of "issuing authority" the following definition:

"the Manager, Penalty Management" means the person holding or acting in the office of Manager, Penalty Management under the *Magistrates Court Act 1991*;

Amendment of s. 6—Expiation notices

32. Section 6 of the principal Act is amended by striking out from subsection (1) paragraph (c) and substituting the following paragraph:

- (c) must specify that the expiation fee is to be paid within 28 days from (and including) the date of the notice; and.

Amendment of s. 7—Payment by card

33. Section 7 of the principal Act is amended—

- (a) by inserting ", charge card" after "a credit card";
- (b) by striking out "credit card or debit card facilities" and substituting "facilities for their use".

Amendment of s. 9—Options in cases of hardship

34. Section 9 of the principal Act is amended—

- (a) by striking out from subsection (4) paragraph (b) and substituting the following paragraph:

- (b) an extension of time (not exceeding 6 months) within which to pay the fee.;

- (b) by striking out subsections (6), (7) and (8) and substituting the following subsection:

- (6) The Registrar—

- (a) cannot make an order for relief if an enforcement order has been made under this Act in respect of the expiation notice; and
 - (b) cannot make an order for payment by instalments if the amount of the expiation fee (or the total amount of fees when aggregated) is less than \$50; and
 - (c) should not grant an extension of time to pay if the alleged offender is, without the offender or his or her dependants suffering hardship, able to pay the due amount in instalments of a reasonable amount.;

- (c) by striking out from subsection (9)(b) "payment in instalments or community service" and substituting "relief";
- (d) by striking out subsection (16);
- (e) by striking out subsection (18).

Amendment of s. 13—Enforcement procedures

35. Section 13 of the principal Act is amended—

- (a) by striking out from subsection (1) "Court" and substituting "Registrar";
- (b) by striking out from subsection (2)(b) "payment by instalments or community service under this Act" and substituting "relief";
- (c) by striking out from subsection (6)(b) ", payable immediately,".

Amendment of s. 14—Enforcement orders are not subject to appeal but may be reviewed

36. Section 14 of the principal Act is amended by striking out from subsection (3)(e) "or the performance of community service".

Amendment of s. 16—Expiation notices may be withdrawn

37. Section 16 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) However, an expiation notice cannot be withdrawn for the purposes of prosecuting the alleged offender for an offence if—

- (a) an enforcement order has been made under this Act in respect of the offence; or
- (b) —
 - (i) in the case of a notice issued before the commencement of Part 6 of the *Statutes Amendment (Fine Enforcement) Act 1998*—the period of 90 days from the date of the notice has expired;
 - (ii) in the case of a notice issued after that commencement—the period of 60 days from the date of the notice has expired.

Insertion of s. 18A

38. The following section is inserted after section 18 of the principal Act:

Exercise of Registrar's powers

18A. (1) The Manager, Penalty Management may direct that powers vested in a Registrar under this Act are exercisable by a person who is an authorised officer under the *Criminal Law (Sentencing) Act 1988*.

- (2) A direction under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and

- (c) does not derogate from the power of a Registrar to act in any matter; and
- (d) is revocable at will by the Manager.

PART 7
AMENDMENT OF THE MAGISTRATES COURT ACT 1991

Amendment of s. 12—Administrative and ancillary staff

39. Section 12 of the principal Act is amended by inserting in subsection (1) after paragraph (a) the following paragraph:

- (ab) the Manager, Penalty Management;.

Insertion of s. 13A

40. The following section is inserted after section 13 of the principal Act:

Functions of Manager, Penalty Management

13A. (1) The Manager, Penalty Management is responsible to the Principal Registrar for the administration of the laws relating to the enforcement of expiation fees and of fines and other pecuniary sums imposed by courts exercising a criminal jurisdiction.

(2) The Manager must, on or before 30 September in each year, submit a report to the Principal Registrar on—

- (a) the operation and administration of those laws during the previous financial year; and
- (b) any changes to those laws and associated procedures that may be necessary or desirable.

(3) A report submitted under subsection (2) is to form part of the annual report furnished by the State Courts Administration Council to the Attorney-General.

PART 8
AMENDMENT OF THE MOTOR VEHICLES ACT 1959

Amendment of s. 81A—Provisional licences

41. Section 81A of the principal Act is amended by inserting in subsection (1) after paragraph (c) the following paragraph:

- (caa) has had his or her licence cancelled and been disqualified from obtaining a licence by order of a court made pursuant to Part 9 of the *Criminal Law (Sentencing) Act 1988*, and has not held an unconditional licence issued under this Act since the end of the period of disqualification,.

Amendment of s. 139D—Confidentiality

42. Section 139D of the principal Act is amended by inserting after subsection (1)(e) the following paragraph:

- (ea) as may be required by authorised officers for purposes connected with tracing the whereabouts of debtors, or making penalty enforcement orders, under Part 9 of the *Criminal Law (Sentencing) Act 1988*; or.

Amendment of s. 139E—Protection from civil liability

43. Section 139E of the principal Act is amended by inserting in subsection (1) "or any other Act" after "under this Act".

PART 9

AMENDMENT OF THE SUMMARY PROCEDURE ACT 1921

Amendment of s. 62B—Powers of court on written plea of guilty

44. Section 62B of the principal Act is amended—

(a) by striking out paragraph (d) of subsection (6);

(b) by striking out from subsection (8) "allowed for" and substituting "and manner of".

Repeal of Part 4 Division 5A

45. Division 5A of Part 4 of the principal Act is repealed.

SCHEDULE
Transitional Provisions

DIVISION 1

Citation

1. In this Division, the *Criminal Law (Sentencing) Act 1988* is referred to as "the principal Act".

Application of amended principal Act

2. Subject to this Division, the principal Act, as amended by this Act, applies to all orders imposing pecuniary sums, whenever made.

Imprisonment for non-payment under repealed s. 61

3. (1) If a warrant of commitment has been issued on default by a person in payment of a pecuniary sum, but the person has not, as at the commencement of this Act, started serving the period of imprisonment to which the warrant relates—

- (a) the warrant is cancelled by virtue of this clause; and
- (b) the outstanding amount under the warrant may be enforced in accordance with the principal Act (as amended by this Act).

(2) The repeal of Division 3 of Part 9 of the principal Act does not affect the liability of any person who is, as at the commencement of this Act, serving a period of imprisonment under a warrant of commitment issued for non-payment of a pecuniary sum to complete that period of imprisonment and, for that purpose, the principal Act (as in force immediately before the commencement of this Act) continues to apply.

Orders against youths under repealed s. 61AA

4. If an order for community service, detention or home detention made under section 61AA of the principal Act in respect of a youth was in force immediately before the commencement of this Act—

- (a) the order is, if the youth has not performed any hours of service under the order or started serving the period of detention or home detention fixed by the order, cancelled by virtue of this clause and the outstanding amount under the order may be enforced in accordance with the principal Act (as amended by this Act); but
- (b) if the youth has performed some hours of service under the order or is serving the detention or home detention, the order continues in force and, for that purpose, the principal Act (as in force immediately before the commencement of this Act) continues to apply.

Suspension of driver's licence under repealed s. 61A

5. (1) If, as at the commencement of this Act, a person is disqualified from holding or obtaining a driver's licence by virtue of an order under section 61A of the principal Act (as in force immediately before that commencement) the order is, if the disqualification has endured for 60 or more days, cancelled by virtue of this clause and the outstanding amount of the pecuniary sum may be enforced in accordance with the principal Act (as amended by this Act), but an order for suspension of the person's driver's licence cannot be made.

(2) If the disqualification has endured for less than 60 days, the order by which it was imposed will be taken to be an order for suspension and disqualification under section 70E of the principal Act.

Suspension of motor vehicle registration under repealed s. 61B

6. If, as at the commencement of this Act, an order for suspension of registration of motor vehicles under section 61B of the principal Act (as in force immediately before that commencement) is in force, the order will be taken to be (and have the same effect as) an order made under section 70F of the principal Act restricting the transaction of business with the Registrar of Motor Vehicles.

Community service under repealed s. 67

7. (1) If an undertaking has been entered into by a person under section 67 of the principal Act (as in force immediately before the commencement of this Act) to work off a pecuniary sum by community service, the undertaking continues in force and, for that purpose, the principal Act (as so in force) continues to apply.

(2) However, if an undertaking that continues in force by virtue of subclause (1) is cancelled for non-compliance, the amount of the pecuniary sum outstanding at the time of cancellation is enforceable in accordance with the principal Act (as amended by this Act).

Court orders as to time and manner of payment

8. The following provisions apply in relation to an order of a court or officer of a court that is continued in force by virtue of section 14A(2) of the principal Act:

- (a) if the order is for payment of a pecuniary sum in instalments and the person the subject of the order defaults in payment of an instalment, the whole of the balance of the pecuniary sum becomes immediately payable and is enforceable under the principal Act (as amended by this Act);
- (b) if the order is for an extension of time to pay a pecuniary sum and the person the subject of the order fails to pay the sum within the specified time, the pecuniary sum is enforceable under the principal Act (as amended by this Act), but a reminder notice must be sent in accordance with section 65 of the principal Act before any enforcement action can be taken.

DIVISION 2**Citation**

9. In this Division, the *Expiation of Offences Act 1996* is referred to as "the principal Act".

Community service under repealed s. 9(4)(b)

10. If an order for community service made under section 9(4)(b) of the principal Act in respect of a person was in force immediately before the commencement of this Act, the order continues in force and, for that purpose, the principal Act (as in force immediately before the commencement of this Act) continues to apply.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor

South Australia



**TOBACCO PRODUCTS REGULATION (DISSOLUTION OF SPORTS
PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST)
AMENDMENT ACT 1998**

No. 61 of 1998

SUMMARY OF PROVISIONS

1. Short title
2. Interpretation
3. Amendment of long title
4. Amendment of s. 3—Objects of Act
5. Amendment of s. 4—Interpretation
6. Repeal of Part 4
7. Transitional provisions



ANNO QUADRAGESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1998

No. 61 of 1998

An Act to amend the Tobacco Products Regulation Act 1997.

[Assented to 3 September 1998]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Tobacco Products Regulation (Dissolution of Sports Promotion, Cultural and Health Advancement Trust) Amendment Act 1998*.

(2) The *Tobacco Products Regulation Act 1997* is referred to in this Act as "the principal Act".

Interpretation

2. In this Act—

"the Minister" means the Minister for Human Services;

"the Trust" means the South Australian Sports Promotion, Cultural and Health Advancement Trust.

Amendment of long title

3. The long title of the principal Act is amended by striking out "to continue the South Australian Sports Promotion, Cultural and Health Advancement Trust and prescribe its functions and powers;" .

Amendment of s. 3—Objects of Act

4. Section 3 of the principal Act is amended by striking out subparagraph (v) of paragraph (b), and paragraph (d).

Amendment of s. 4—Interpretation

5. Section 4 of the principal Act is amended by striking out from subsection (1) the definitions of "fund" and "Trust".

Repeal of Part 4

6. Part 4 of the principal Act is repealed.

**TOBACCO PRODUCTS REGULATION (DISSOLUTION OF
Sports Promotion, Cultural and Health
Advancement Trust) Amendment Act 1998**

No. 61 of 1998

Transitional provisions

7. (1) All moneys held in account in the Sports Promotion, Cultural and Health Advancement Fund at the Treasury immediately before the commencement of this Act are to be transferred to the Consolidated Account.

(2) All property, rights and liabilities vested in or attaching to the Trust immediately before the commencement of this Act vest in or attach to the Minister.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor