

Version No. 016
Infringements Act 2006
No. 12 of 2006

Version incorporating amendments as at 27 July 2007

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Version No. 016
Infringements Act 2006
No. 12 of 2006

Version incorporating amendments as at 27 July 2007

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to provide for a new framework for the issuing and serving of infringement notices for offences and the enforcement of infringement notices;
- (b) to amend the **Magistrates' Court Act 1989**, the **Road Safety Act 1986** and the **Subordinate Legislation Act 1994**.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2007, it comes into operation on that day.

3 Definitions

- (1) In this Act—

additional steps, in relation to an infringement offence, means any additional steps which have to be taken under the Act or other instrument creating the offence to expiate the offence to which an infringement notice relates;

S. 3(1) def. of *additional steps* amended by No. 32/2006 s. 4(1)(a).

S. 3(1) def. of
child
inserted by
No. 32/2006
s. 4(1)(d),
amended by
No. 48/2006
ss 40(1),
42(Sch.
item 18.1).

attachment of earnings order means an order made under section 123;

attachment of debts order means an order made under section 129;

child means a person who at the time of the alleged commission of an infringement offence was under the age of 18 years but of or above the age of 10 years but does not include any person who is of or above the age of 19 years when an infringement penalty is lodged under section 54 or an application is made under clause 3 of Schedule 3 to the **Children, Youth and Families Act 2005** for the registration of an infringement penalty in respect of the person;

community corrections centre means community corrections centre established under Part 9 of the **Corrections Act 1986**;

community corrections officer means community corrections officer appointed under Part 4 of the **Corrections Act 1986**;

community work permit means a permit under Division 1 of Part 12;

Court means Magistrates' Court;

director, in relation to a body corporate, includes—

- (a) a person occupying the position of director of the body corporate, by whatever name called; and
- (b) a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act;

driver licence has the same meaning as it has in section 3 of the **Road Safety Act 1986** and includes a learner permit under Part 3 of that Act;

enforcement agency, in relation to an infringement offence, means—

- (a) a person or body authorised by or under an Act to take proceedings for the infringement offence in respect of which the infringement notice or official warning was issued or served; or
- (b) a person by whom, or body by which, a person or body referred to in paragraph (a) is employed or engaged to provide services if the taking of the proceedings referred to in that paragraph would occur in the course of that employment or in the course of providing those services; or
- (c) a prescribed person or body or person or body which is a member of a prescribed class of person or body;

enforcement order means an order made under section 59;

enforcement order notice means a notice under section 60(1) of the making of an enforcement order;

execution copy, in relation to an infringement warrant, means the copy issued for the purposes of execution and includes an execution copy comprising a number of infringement warrants consolidated under section 86;

fine means an infringement penalty and any prescribed costs and includes any fee payable under section 81;

S. 3(1) def. of *fine units* repealed by No. 32/2006 s. 4(3)(a).

* * * * *

garnishee means a person from whom an infringements registrar, the sheriff, an enforcement agency or a person against whom an infringement warrant has been issued, claims that a debt is due or accruing to the person against whom an infringement warrant has been issued;

guidelines means the guidelines in force from time to time under section 5;

S. 3(1) def. of *infringement notice* amended by No. 32/2006 s. 4(1)(b).

infringement notice means a notice in respect of an infringement offence served or to be served in accordance with Part 2;

S. 3(1) def. of *infringement offence* substituted by No. 32/2006 s. 4(1)(c), amended by No. 29/2007 s. 25.

infringement offence means an offence which may be the subject of an infringement notice under—

- (a) any Act or statutory rule; or
- (b) any local law; or
- (ba) a by-law made under section 171 of the **Water Act 1989** or a by-law made under a prescribed Act; or
- (c) any Commonwealth Act or any Act of another State or Territory or any subordinate instrument under such an Act that applies as a law of Victoria;

infringement offender means a person who has been arrested under one or more infringement warrants;

S. 3(1) def. of *infringement offender* amended by No. 32/2006 s. 4(3)(b).

infringement penalty means the amount stated in an infringement notice as payable in respect of the infringement offence to which the notice relates;

infringements registrar—

- (a) means a registrar within the meaning of the **Magistrates' Court Act 1989** who is a registrar on whom functions under this Act or the **Magistrates' Court Act 1989** have been conferred in respect of any proceeding or class of proceeding or procedure under this Act; and
- (b) includes any deputy registrar employed pursuant to section 17 of that Act to whom duties, powers and functions under this Act are delegated under the **Magistrates' Court Act 1989**;

infringement warrant means a warrant issued under Part 6;

issuing officer means—

- (a) a person appointed by an enforcement agency to issue or serve an infringement notice in respect of an infringement offence; or
- (b) a prescribed person or person who is a member of a prescribed class of person;

local law means a local law made under Part 5 of the **Local Government Act 1989**;

S. 3(1) def. of *local law* inserted by No. 32/2006 s. 4(1)(d).

lodgeable infringement offence means an infringement offence prescribed under this Act to be an infringement offence which is enforceable under this Act;

motor vehicle has the same meaning as it has in the **Road Safety Act 1986**;

official warning means a warning in respect of an infringement offence served in accordance with Part 2;

outstanding fines, in relation to an infringement warrant, means the total of—

- (a) the amount specified in the infringement warrant that is unpaid; and
- (b) the costs of execution of the infringement warrant that are unpaid;

payment order means an order made under section 77;

payment plan means a payment plan under Part 3;

penalty reminder notice means a notice served under section 29;

police member means member of the force within the meaning of the **Police Regulation Act 1958**;

prescribed costs, in relation to an infringement penalty, means the sum of—

- (a) the amount of costs (if any) lodged with any outstanding amount of an infringement penalty; and
- (b) the prescribed costs of an enforcement order; and

S. 3(1) def. of
*prescribed
costs*
amended by
No. 32/2006
s. 4(2).

-
- (c) any other costs required to be charged in relation to an enforcement order under this Act or any other Act; and
 - (d) any other costs or fees prescribed in the regulations to be a prescribed cost;

public place has the same meaning as it has in section 3 of the **Summary Offences Act 1966**;

registered operator has the same meaning as it has in the **Road Safety Act 1986** and in Part 7 includes, in the case of an unregistered motor vehicle, the last registered operator;

Secretary means the Secretary to the Department of Justice;

seven-day notice means a notice served under section 88;

special circumstances, in relation to a person means—

- (a) a mental or intellectual disability, disorder, disease or illness where the disability, disorder, disease or illness results in the person being unable—
 - (i) to understand that conduct constitutes an offence; or
 - (ii) to control conduct that constitutes an offence; or
- (b) a serious addiction to drugs, alcohol or a volatile substance within the meaning of section 57 of the **Drugs, Poisons and Controlled Substances Act 1981** where the serious addiction results in the person being unable—

-
- (i) to understand that conduct constitutes an offence; or
 - (ii) to control conduct which constitutes an offence; or
 - (c) homelessness determined in accordance with the prescribed criteria (if any) where the homelessness results in the person being unable to control conduct which constitutes an offence;

vehicle has the same meaning as it has in the **Road Safety Act 1986**;

VicRoads means the Roads Corporation established under Part II of the **Transport Act 1983**.

- (2) If under the **Public Administration Act 2004** the name of the Department of Justice is changed, a reference in the definition of *Secretary* in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
- (3) Nothing in the definition of *special circumstances* is to be taken as limiting any power of the Court to consider the circumstances of any person in a proceeding before the Court under this Act or any other Act.

4 Act to be read as one with Magistrates' Court Act 1989

- (1) This Act is to be read and construed as one with the **Magistrates' Court Act 1989**.
- (2) Expressions used in this Act and in the **Magistrates' Court Act 1989** that are not defined in section 3 or elsewhere in this Act have the same meanings as in the **Magistrates' Court Act 1989**.

S. 3(3)
inserted by
No. 32/2006
s. 4(4).

5 Guidelines

- (1) The Attorney-General, after consultation with any other Minister whose area of responsibility may be affected by the guidelines, may make guidelines for or with respect to—
- (a) the offences suitable for being subject to infringement notices under this Act or any other Act or other instrument;
 - (b) the level of penalty suitable for being subject to infringement notices;
 - (c) the administration of this Act including—
 - (i) a model code of conduct to apply to issuing officers and enforcement agencies unless an enforcement agency has adopted its own code of conduct;
 - (ii) the criteria to be considered in determining whether a person is entitled to a payment plan and the management of a payment plan, including eligibility criteria;
 - (iii) internal review by an enforcement agency under this Act, including the conduct of internal reviews;
 - (iv) the use of any records kept by enforcement agencies of any infringement notices or official warnings issued or served;
 - (v) the provision of information, including statistical data, relating to infringement offences to the Attorney-General;
 - (vi) any other matter relating to the administration of this Act.

S. 5(1)(a)
amended by
No. 32/2006
s. 5(a).

S. 5(1)(c)(iv)
amended by
No. 32/2006
s. 5(b).

-
- (2) The Attorney-General—
- (a) must cause the guidelines to be published in the Government Gazette; and
 - (b) may publish the guidelines on the Internet.
- (3) The guidelines take effect on the date of publication in the Government Gazette or such later date as is specified in the guidelines.

6 Reports to Attorney-General

For the purposes of ensuring the effective administration of this Act, an enforcement agency must provide to the Attorney-General the prescribed information, including statistical data—

- (a) at the prescribed intervals; or
- (b) at such other periods as the Attorney-General by written notice to the agency may require.

7 Infringement offences to which this Act applies

- (1) This Act applies to lodgeable infringement offences, including a local law which is a parking infringement within the meaning of the **Road Safety Act 1986**.
- (2) This Part and Parts 2 and 3 and Part 13 (other than sections 165 and 166) of this Act apply to infringement offences.
- (3) Subject to anything to the contrary in the **Children, Youth and Families Act 2005** or this Act, this Part and Parts 2 and 3 and Part 13 (other than sections 164, 165 and 166) of this Act apply to infringement notices issued to or served on a child for an infringement offence.

S. 7(1)
amended by
No. 32/2006
s. 6(1).

S. 7(3)
substituted by
No. 32/2006
s. 6(2),
amended by
No. 48/2006
s. 42(Sch.
item 18.2).

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s. 7

(4) Regulations made under this Act must not prescribe an infringement offence under a local law (other than a parking infringement) to be a lodgeable infringement offence.

S. 7(4)
substituted by
No. 32/2006
s. 6(3).

* * * * *

S. 7(5)
repealed by
No. 32/2006
s. 6(4).

**PART 2—INFRINGEMENT NOTICES—
PRE-ENFORCEMENT STAGE**

Division 1—Official warnings

8 Issuing officer may serve an official warning

- (1) An issuing officer may serve a person with an official warning rather than serve an infringement notice if—
 - (a) the issuing officer believes on reasonable grounds that a person has committed an infringement offence; and
 - (b) the issuing officer is of the opinion that in all the circumstances it is appropriate to serve an official warning.
 - (2) An official warning must be in writing and contain the prescribed details.
 - (3) In making a decision under subsection (1), an issuing officer, other than a police member, must—
 - (a) observe any policy of the relevant enforcement agency in relation to the application of official warnings in respect of any infringement offence; and
 - (b) have regard to enforcement agency guidelines made by the relevant enforcement agency in relation to the application of official warnings in respect of any infringement offence.
 - (4) Nothing in this section limits an issuing officer's power to exercise his or her discretion as to whether to serve an infringement notice.
-

9 Enforcement agency guidelines and policies

An enforcement agency, other than a prescribed enforcement agency, may make and publish enforcement agency guidelines and policies in respect of the use of official warnings for infringement offences.

10 Official warning does not affect other powers

An official warning does not affect the power of an issuing officer or enforcement agency—

- (a) to commence proceedings against a person to whom an official warning was given; or
- (b) to serve an infringement notice; or
- (c) to take no further action; or
- (d) to take any other specified action permitted under this Act or the Act or other instrument which establishes the infringement offence.

S. 10(d)
amended by
No. 32/2006
s. 7.

11 Withdrawal of official warning

- (1) An issuing officer or enforcement agency must withdraw an official warning if—
 - (a) proceedings are to be commenced against the person on whom an official warning was served in respect of the infringement offence; or
 - (b) an infringement notice in respect of the infringement offence is to be served on the person on whom an official warning was served.
- (2) An official warning may be withdrawn at any time before the expiry of the prescribed period.
- (3) An official warning must be withdrawn by serving a withdrawal of an official warning on the person on whom the official warning was served.

- (4) A withdrawal of an official warning must—
- (a) be in writing; and
 - (b) contain the prescribed details.

Division 2—Infringement notices

12 Service of infringement notice

- (1) An infringement notice for an infringement offence may be served on a person—
- (a) by delivering it personally to the person; or
 - (b) by sending it by post addressed to the person at the person's last known place of residence or business; or
 - (c) if a vehicle is involved in the alleged commission of the offence, by affixing or placing the notice on that vehicle in a conspicuous manner; or
 - (d) in any other manner not specified in paragraphs (a) to (c) if the Act or other instrument which establishes the infringement offence or any other Act or other instrument provides for any other manner of service.
- (2) Subject to any evidence to the contrary and despite anything to the contrary in section 49 of the **Interpretation of Legislation Act 1984**, an infringement notice served by post in accordance with subsection (1)(b) is deemed to be served 14 days after the date of the infringement notice.
- (3) An infringement notice served on a person less than 28 days before the date specified in the infringement notice as the due date for payment of the infringement penalty is invalid.

S. 12
amended by
No. 32/2006
s. 8(2) (ILA
s. 39B(1)).

S. 12(d)
amended by
No. 32/2006
s. 8(1).

S. 12(2)
inserted by
No. 32/2006
s. 8(2).

S. 12(3)
inserted by
No. 32/2006
s. 8(2).

Note

See section 163A.

13 Forms of infringement notice

An infringement notice must—

- (a) be in writing and contain the prescribed details;
- (b) state that—
 - (i) the person is entitled to elect to have the matter of the infringement offence heard and determined in the Court; or
 - (ii) in the case of an infringement notice served on a child, is entitled to have the matter of the infringement offence dealt with by the Children's Court in accordance with the **Children, Youth and Families Act 2005**.

S. 13 substituted by No. 32/2006 s. 9.

S. 13(b)(ii) amended by No. 48/2006 s. 42(Sch. item 18.2).

14 Payment to be within time specified

An infringement penalty must be paid within the period specified in the infringement notice, being a period not less than 28 days after an infringement notice has been served.

15 Late payment

An enforcement agency may accept payment of an infringement penalty after the expiry of the time for payment stated in the infringement notice if—

- (a) the infringement notice has not been withdrawn; and
- (b) in the case of—
 - (i) a lodgeable infringement offence for which an infringement notice was served on a person other than a child, the details of the infringement penalty in respect of that offence have not been lodged with an infringements registrar under section 54; or

S. 15(b) substituted by No. 32/2006 s. 10.

s. 16

S. 15(b)(ii)
amended by
No. 48/2006
ss 40(2),
42(Sch.
item 18.3).

- (ii) an infringement offence for which an infringement notice was served on a child, the details of the infringement penalty in respect of that offence have not been registered with the Children's Court under clause 4 of Schedule 3 to the **Children, Youth and Families Act 2005**.

S. 16
(Heading)
amended by
No. 32/2006
s. 11(1).

16 Person may elect to have matter heard in Court or Children's Court

S. 16(1)
amended by
No. 32/2006
s. 11(2)(a).

- (1) A person served with an infringement notice may elect to have the matter of the infringement offence heard and determined in the Court—
 - (a) in the case of a lodgeable infringement offence, at any time before an enforcement order is made;
 - (b) in the case of any other infringement offence, at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates.

- (2) This section does not apply to infringement offences to which the following provisions apply—

S. 16(2)(a)
amended by
No. 32/2006
s. 11(2)(b).

- (a) sections 89A to 89D of the **Road Safety Act 1986**;
- (b) section 215C of the **Transport Act 1983**;
- (c) sections 61A and 61BA of the **Marine Act 1988**.

(3) Despite subsection (1), if a person served with an infringement notice is a child, that person may elect to have the matter of the infringement offence heard and determined in the Children's Court—

S. 16(3)
inserted by
No. 32/2006
s. 11(3).

(a) in the case of an infringement offence for which an infringement penalty may be registered under clause 4 of Schedule 3 to the **Children, Youth and Families Act 2005**, at any time before an enforcement order under that Schedule is made;

S. 16(3)(a)
amended by
No. 48/2006
ss 40(2),
42(Sch.
item 18.3).

(b) in the case of any other infringement offence, at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates.

17 Enforcement agency can refer matter to Court or Children's Court

S. 17
(Heading)
amended by
No. 32/2006
s. 12(1).

(1) Subject to subsection (3), an enforcement agency may refer a matter for which an infringement notice has been served to the Court—

S. 17(1)
amended by
No. 32/2006
s. 12(2).

(a) in the case of a lodgeable infringement offence, at any time before an enforcement order is made;

(b) in the case of any other infringement offence, at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates.

s. 18

(2) This section does not apply to infringement offences to which the following provisions apply—

S. 17(2)(a)
amended by
No. 32/2006
s. 12(3).

(a) sections 89A to 89D of the **Road Safety Act 1986**;

(b) section 215C of the **Transport Act 1983**;

(c) sections 61A and 61BA of the **Marine Act 1988**.

(3) In the case of an infringement notice served on a child, an enforcement agency may withdraw the infringement notice and file a charge and summons in the Children's Court for the matter to be dealt with at any time—

S. 17(3)
inserted by
No. 32/2006
s. 12(4).

S. 17(3)(a)
amended by
No. 48/2006
ss 40(2),
42(Sch.
item 18.3).

(a) in the case of an infringement offence for which an infringement penalty may be registered under clause 4 of Schedule 3 to the **Children, Youth and Families Act 2005**, before an enforcement order under that Schedule is made;

(b) in the case of any other infringement offence, before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates.

18 Withdrawal of infringement notice

(1) An enforcement agency may withdraw an infringement notice by serving a withdrawal notice on the person served with the infringement notice—

(a) in the case of a lodgeable infringement offence, at any time before an enforcement order is made; and

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|--|---|
| <p>(b) in the case of an infringement offence for which an infringement penalty may be registered under clause 4 of Schedule 3 to the Children, Youth and Families Act 2005, at any time before an enforcement order under that Schedule is made;</p> | <p>S. 18(1)(b)
substituted by
No. 32/2006
s. 13(1),
amended by
No. 48/2006
ss 40(2),
42(Sch.
item 18.3).</p> |
| <p>(c) in the case of any other infringement offence, at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates.</p> | <p>S. 18(1)(c)
inserted by
No. 32/2006
s. 13(1).</p> |
- (2) Subject to subsection (4), without limiting subsection (1), an enforcement agency may withdraw an infringement notice if the enforcement agency determines that—
- (a) an official warning should be served on the person rather than an infringement notice; or
 - (b) proceedings are to be commenced against the person in respect of the infringement offence for which the infringement notice had been served; or
 - (c) the matter should be abandoned.
- (3) Subject to subsection (4), an infringement notice may be withdrawn even if the infringement penalty and prescribed costs (if any) have been paid.
- (4) In the case of an infringement notice in respect of an infringement offence requiring additional steps to be taken, the infringement notice cannot be withdrawn for the purposes of commencing proceedings against the person in respect of the offence for which the infringement notice had been served if the person on whom the infringement notice was served—
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- (a) has paid the infringement penalty and prescribed costs (if any); and
 - (b) has taken all the required additional steps.
- (5) If an infringement notice is withdrawn, the amount of any infringement penalty and any prescribed costs paid must be refunded and—
- (a) if the penalty and costs (if any) have been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly; or
 - (b) if the penalty and costs (if any) have been paid into another fund or account, the penalty and costs (if any) are to be refunded from that fund or account.
- (6) This section does not apply to infringement offences to which the following provisions apply—
- (a) sections 89A to 89D of the **Road Safety Act 1986**;
 - (b) section 215C of the **Transport Act 1983**;
 - (c) sections 61A and 61BA of the **Marine Act 1988**.

S. 18(6)(a)
amended by
No. 32/2006
s. 13(2).

19 Form of withdrawal notice

A withdrawal notice must—

- (a) be in writing and contain the prescribed details; and

- (b) state that the enforcement agency intends to proceed in respect of the infringement offence by—
- (i) continuing proceedings and issuing a summons; or
 - (ii) issuing an official warning; or
 - (iii) taking no further action; or
 - (iv) taking any other specified action permitted under this Act or the Act or other instrument which establishes the infringement offence.

S. 19(b)(iv)
amended by
No. 32/2006
s. 14(1).

20 Effect of withdrawal

- (1) Subject to this Act, the withdrawal of an infringement notice does not affect any other procedure or action that can be taken under this Act or any other Act.
- (2) This section applies to an infringement notice—
- (a) withdrawn by withdrawal notice; or
 - (b) deemed to be withdrawn by a provision of this Act or any other Act.

S. 20(1)
amended by
No. 32/2006
s. 14(2)(a).

S. 20(2)(b)
amended by
No. 32/2006
s. 14(2)(b).

Division 3—Internal reviews

21 Application of Division

This Division does not apply to an infringement notice or an infringement offence of a kind to which any of the following provisions apply—

- (a) sections 89A to 89D of the **Road Safety Act 1986**;
- (b) section 215C of the **Transport Act 1983**;
- (c) sections 61A and 61BA of the **Marine Act 1988**.

22 Application for internal review

- (1) A person who has been served with an infringement notice or a person acting on that person's behalf with the first-mentioned person's consent, may apply to the relevant enforcement agency for review of the decision to serve the infringement notice if the person believes—
 - (a) the decision—
 - (i) was contrary to law; or
 - (ii) involved a mistake of identity; or
 - (b) that special circumstances apply to the person; or
 - (c) the conduct for which the infringement notice was served should be excused having regard to any exceptional circumstances relating to the infringement offence.
- (2) An application under subsection (1)—
 - (a) may be made—
 - (i) in the case of—
 - (A) a lodgeable infringement offence for which an infringement notice was served on a person other than a child, at any time before the details of the infringement penalty in respect of that offence are lodged with an infringements registrar under section 54; or

S. 22(2)(a)(i)
substituted by
No. 32/2006
s. 15(1).

- (B) an infringement offence for which an infringement notice was served on a child, at any time before the infringement penalty in respect of that offence is registered with the Children's Court under clause 4 of Schedule 3 to the **Children, Youth and Families Act 2005**; and
- (ii) in the case of any other infringement offence, at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates; and
- (b) must be in writing; and
- (c) must state the grounds on which the decision should be reviewed; and
- (d) must provide the applicant's current address for service of the notice under section 24(3) of the outcome of the decision; and
- (e) may only be made once in relation to any one infringement offence in respect of the applicant.

S. 22(2)(a)
(i)(B)
amended by
No. 48/2006
ss 40(2),
42(Sch.
item 18.3).

23 Request for additional information

- (1) An enforcement agency may request in writing any additional information which it requires to conduct a review under section 24 from the applicant.
- (2) If an enforcement agency makes a request under subsection (1), it must suspend the review for a period not exceeding 21 days from the date of service of the request.

S. 23(1)
amended by
No. 32/2006
s. 15(2)(a).

S. 23(2)
amended by
No. 32/2006
s. 15(2)(b).

- (3) The applicant must provide the additional information within 14 days of service of the request for additional information by the enforcement agency.
- (4) If a person fails to provide the requested information to the enforcement agency within the time specified in subsection (3), the enforcement agency must review the decision under section 24 without the additional information.

24 Review by enforcement agency

- (1) If an enforcement agency receives an application for review under section 22, the enforcement agency must—
 - (a) review the decision to serve an infringement notice on the person; and
 - (b) suspend any procedures that are being used for the enforcement of the infringement penalty in respect of the infringement offence until—
 - (i) the review is complete; and
 - (ii) the applicant is sent advice of the outcome.
- (2) An enforcement agency must ensure that a review under this section is conducted by a person who was not involved in making the decision to serve the infringement notice which is the subject of the review.
- (3) An enforcement agency must—
 - (a) review a decision—
 - (i) within the prescribed time; or

S. 24(3)
substituted by
No. 32/2006
s. 16(1).

- (ii) if an enforcement agency requests additional information under section 23, within the prescribed time referred to in subparagraph (i) plus the period not exceeding 21 days after service of the request during which the review was suspended, whether or not the additional information was received by the agency; and
- (b) within 21 days of deciding the review, serve on the applicant a written notice advising of the outcome of the review.
- (4) If an enforcement agency fails to comply with subsection (3), the infringement notice is deemed to be withdrawn.
- (5) Nothing in this section limits the power of an enforcement agency to review a decision to serve an infringement notice on any other basis.

25 What can an enforcement agency decide on review?

- (1) Subject to subsection (2), after reviewing a decision under section 24, an enforcement agency may—
 - (a) confirm the decision to serve an infringement notice;
 - (b) withdraw the infringement notice and serve an official warning in place of the infringement notice;
 - (c) withdraw the infringement notice;
 - (d) withdraw the infringement notice and refer the matter to the Court in accordance with this Part or, in the case of an infringement notice served on a child, withdraw the infringement notice and file a charge and summons in the Children's Court for the matter to be dealt with in that Court;

S. 25(1)(d)
amended by
No. 32/2006
s. 16(2).

s. 25

S. 25(1)(e)
amended by
No. 32/2006
s. 16(3).

- (e) in the case of an infringement offence involving additional steps, alter or vary those steps provided the alteration or variation is consistent with the Act or other instrument establishing the offence;
 - (f) waive all or any prescribed costs;
 - (g) approve a payment plan;
 - (h) do any combination of any of the actions referred to in paragraphs (a) to (g).
- (2) In the case of an application made under section 22(1)(b) on the grounds that special circumstances apply to the person served with the infringement notice, after reviewing a decision under section 24, an enforcement agency may—
- (a) confirm the decision to serve an infringement notice;
 - (b) withdraw the infringement notice and serve an official warning in place of the infringement notice;
 - (c) withdraw the infringement notice.
- (3) If an enforcement agency makes a decision under subsection (2)(a) confirming the decision to serve the infringement notice, the enforcement agency must refer the matter to the Court in accordance with this Part or, in the case of an infringement notice served on a child, withdraw the infringement notice and file a charge and summons in the Children's Court for the matter to be dealt with in that Court.

S. 25(3)
amended by
No. 32/2006
s. 16(4).

26 Time to pay if decision confirmed

(1) Subject to subsection (2), if an enforcement agency confirms a decision to serve an infringement notice under section 25(1)(a), the person must pay the infringement penalty and any prescribed costs by whichever of the following dates occurs latest in time—

(a) the due date specified in the infringement notice; or

(b) the due date specified in the penalty reminder notice; or

(c) within 14 days after the person has been served with written notice advising of the outcome of the review.

S. 26(1)(b)
substituted by
No. 32/2006
s. 16(5).

S. 26(1)(c)
inserted by
No. 32/2006
s. 16(5).

(2) In the case of an infringement offence involving additional steps, if an enforcement agency confirms a decision to serve an infringement notice under section 25(1)(a), the person must—

(a) pay the infringement penalty and any prescribed costs by whichever of the following dates occurs latest in time—

(i) the due date specified in the infringement notice; or

(ii) the due date specified in the penalty reminder notice; or

(iii) within 14 days after the person has been served with written notice advising of the outcome of the review; and

S. 26(2)(a)(ii)
substituted by
No. 32/2006
s. 16(6).

S. 26(2)(a)(iii)
inserted by
No. 32/2006
s. 16(6).

- (b) perform the additional steps by whichever of the following dates occurs latest in time—
- (i) the end of the remedy period specified in the infringement notice; or
 - (ii) within 14 days after the person has been sent advice of the outcome of the review.

S. 27
(Heading)
amended by
No. 32/2006
s. 17(1).
S. 27
amended by
No. 32/2006
s. 17(2).

27 Review terminated if matter goes to Court or Children's Court

If a person elects to have a matter heard and determined in the Court under this Part or, in the case of an infringement notice served on a child, heard and determined in the Children's Court while a review under this Division is in progress, the review is terminated on the person making that election.

Division 4—Penalty reminder notices

S. 28
amended by
No. 32/2006
s. 18(1).

28 Application of Division

This Division, except section 29, does not apply to an infringement notice or an infringement offence of a kind to which any of the following provisions apply—

- (a) sections 89A to 89D of the **Road Safety Act 1986**;
- (b) section 215C of the **Transport Act 1983**;
- (c) sections 61A and 61BA of the **Marine Act 1988**.

29 Penalty reminder notices

- (1) An enforcement agency may serve a penalty reminder notice on a person on whom an infringement notice was served if it appears to the enforcement agency that an infringement penalty has not been paid—

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- (a) within the period for payment specified in the infringement notice; or
 - (b) if an application for internal review under Division 3 has been made and no previous penalty reminder notice has been served in respect of the infringement notice, within the time specified in section 26.
- (2) If a payment plan applies to a person, an enforcement agency may serve a penalty reminder notice on that person if it appears to the enforcement agency that no previous penalty reminder notice has been served in respect of the infringement notice and the person has—
- (a) cancelled the payment plan; or
 - (b) removed an infringement penalty and prescribed costs in respect of an infringement offence from a payment plan; or
 - (c) is in default of a payment of the payment plan.
- (3) If a person is served with a penalty reminder notice in relation to an infringement notice, the time for payment of the infringement penalty is extended for a period specified in the penalty reminder notice, being a period not less than 28 days after the penalty reminder notice has been served.
- (4) The infringement penalty together with any prescribed costs may be paid within the extended period as if the infringement notice or law under which the notice was served also required the payment of those costs.
- (5) A penalty reminder notice must be in writing and contain the prescribed details.

S. 29(3)
amended by
No. 32/2006
s. 18(2).

s. 30

S. 30
(Heading)
amended by
No. 32/2006
s. 19(1).

30 Person may elect to have matter heard and determined in Court or Children's Court

S. 30(1)
amended by
No. 32/2006
s. 19(2).

(1) A person who has been served with a penalty reminder notice may elect to have the matter of the infringement offence heard and determined in the Court or, in the case of an infringement notice served on a child, heard and determined in the Children's Court.

S. 30(2)
amended by
No. 32/2006
s. 19(3).

(2) If a person elects to have the matter of the infringement offence heard and determined in the Court or the Children's Court, as the case requires, the person must—

S. 30(2)(a)
amended by
No. 32/2006
s. 19(3).

- (a) make a written statement to the effect that the person has elected to have the matter of the infringement offence heard and determined in the Court or the Children's Court, as the case requires; and
- (b) serve that written statement on the enforcement agency specified in the penalty reminder notice within 28 days after the penalty reminder notice was served on the person.

Division 5—Expiation and demerit schemes

31 Exceptions to expiation

Nothing in this Division affects the operation of—

- (a) sections 66, 89 and 89A to 89D of the **Road Safety Act 1986**;
- (b) section 215C of the **Transport Act 1983**;
- (c) sections 61A and 61BA of the **Marine Act 1988**.

32 Expiating the offence

- (1) Subject to subsection (2) and any other Act, if an infringement notice is not withdrawn and the infringement penalty and any prescribed costs are paid within the period specified in the notice or late payment is accepted in accordance with section 15, the person on whom the notice was served has expiated the offence by that payment.
- (2) In the case of an infringement notice involving additional steps, a person has expiated the offence when—
 - (a) the infringement penalty and any prescribed costs are paid within the period specified in the notice or late payment is accepted in accordance with section 15; and
 - (b) the additional steps are complied with as required by the Act or other instrument that creates the offence.
- (3) An infringement penalty paid under this Part must be applied in the same way as a fine paid under an order of a court made on an offender being convicted or found guilty of the offence to which the infringement penalty relates.

S. 32(2)(b)
amended by
No. 32/2006
s. 20(a).

33 Effect of expiation

- (1) Subject to this Act and any other Act, if a person has expiated an offence under section 32—
 - (a) no further proceedings may be taken against the person on whom the notice was served in respect of the offence; and
 - (b) no conviction is to be taken to have been recorded against that person for the offence.

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- (2) The payment of an infringement penalty by a person is not and must not be taken to be—
- (a) an admission of guilt in relation to the offence; or
 - (b) an admission of liability for the purpose of any civil claim or proceeding arising out of the same occurrence, and the payment does not in any way affect or prejudice any such claim or proceeding.
- (3) The payment of an infringement penalty must not be referred to in any report provided to a court for the purpose of determining sentence for any offence.

Note

The fact that an infringement notice has been served on a person for an act or omission under an Act may be used in the conduct of an inquiry or the taking of disciplinary action under that Act, if the Act so permits.

34 Demerit point schemes

Despite anything to the contrary in this Division, the expiation of an infringement offence under this Division in relation to an offence which is—

- (a) a traffic infringement within the meaning of the **Road Safety Act 1986** does not prevent the incurring of demerit points under section 25 of that Act in relation to the infringement offence; and
- (b) a transport infringement in relation to a tow-truck under the **Transport Act 1983** does not prevent the incurring of demerit points under section 181B of the **Transport Act 1983** in relation to the infringement offence.

35 Agreeing to pay by instalments has same effect as a full payment

(1) This section applies in respect of an infringement offence that would result in a person incurring demerit points under the **Road Safety Act 1986** or any other Act or other instrument in respect of which a demerit system applies if the person were convicted of the offence.

S. 35(1)
amended by
No. 32/2006
s. 20(b).

(2) For the purposes of the **Road Safety Act 1986** or any other Act or other instrument in respect of which a demerit system applies, a person is to be taken as paying the infringement penalty in respect of the offence—

S. 35(2)
amended by
No. 32/2006
s. 20(b).

(a) on making a part payment; and

(b) in the case of a person to whom a payment plan applies, on making the first payment in accordance with the payment plan, or where a subsequent infringement penalty is added to a payment plan, on the making of the next payment following that addition, irrespective, in either case, of whether the payment related to that penalty.

Division 6—Cancellation of certain infringement notices

36 Application of Division

This Division does not apply to an infringement notice to which any of the following provisions apply—

- (a) section 67 or 89B of the **Road Safety Act 1986**;
- (b) section 87A of the **Melbourne City Link Act 1995**;
- (c) section 215D of the **Transport Act 1983**;
- (d) section 61B of the **Marine Act 1988**.

37 Cancellation of infringement notice if person not aware

- (1) A person may apply to an infringements registrar to have an infringement notice in respect of a lodgeable infringement offence cancelled if—
 - (a) the service of the infringement notice was not by personal service on the person; and
 - (b) the person was not in fact aware that an infringement notice had been served on the person.
- (2) An application under subsection (1) must—
 - (a) be made within 14 days of the applicant becoming aware of the infringement notice; and
 - (b) be accompanied by a written statement setting out the grounds on which the cancellation is sought.

Note

It is an offence to give false or misleading information in a statement required by or under this Act. See section 167.

- (3) If an application is made under subsection (1), the infringements registrar must—
 - (a) stay the operation of the infringement notice; and
 - (b) refer the application to the Court for hearing and determination.
- (4) On the referral to the Court under subsection (3), the Court must cause a notice of the time and place of the hearing of the application to be given or sent to the enforcement agency and to the applicant.

38 Powers of Court to cancel

- (1) On the referral of an application under section 37 to the Court, any of the procedures set out in this Act that are being used for the enforcement of the infringement penalty are, by force of this subsection, suspended pending the determination of the application.
- (2) The Court may only cancel an infringement notice in respect of a lodgeable infringement offence if it is satisfied that, more than 14 days before making an application under subsection (1), the person was not in fact aware that the infringement notice had been served.
- (3) If the Court cancels an infringement notice under this section—
 - (a) any infringement penalty and prescribed costs that have been paid in relation to the notice must be refunded and the Consolidated Fund or any other fund specified by the relevant Act or other instrument is, to the necessary extent, appropriated accordingly; and
 - (b) any of the procedures set out in this Act that are being used for the enforcement of any infringement penalty and prescribed costs (if any) in relation to the notice must be discontinued; and
 - (c) any enforcement order in relation to the infringement penalty and prescribed costs (if any) is revoked; and
 - (d) any infringement warrant issued in relation to the fine is cancelled.

S. 38(3)(a)
amended by
No. 32/2006
s. 21(1).

s. 39

- (4) The cancellation of an infringement notice in respect of a lodgeable infringement offence under this section does not prevent the service of a new infringement notice in respect of the offence for which the cancelled infringement notice was served.

Division 7—Going to Court—pre-lodgement stage

39 Penalty to be refunded if election to go to Court is made

S. 39
amended by
No. 32/2006
s. 21(2).

If a person elects under this Part to have the matter of an infringement offence heard and determined in the Court or the Children's Court, as the case requires or an enforcement agency refers a matter to the Court under this Part or to the Children's Court, as the case requires, the amount of any infringement penalty paid by the person must be refunded and—

- (a) if the penalty had been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly; or
- (b) if the penalty had been paid into another fund or account, the penalty is to be refunded from that fund or account.

40 Decision to go to Court—lodgeable infringement offences

S. 40(1)
amended by
No. 32/2006
s. 22(1).

- (1) If a person elects under this Part to have the matter of a lodgeable infringement offence heard and determined in the Court or an enforcement agency refers a matter in respect of a lodgeable infringement offence to the Court under this Part—

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- (a) the enforcement agency must lodge with the Court the prescribed information in respect of—
- (i) the offender; and
 - (ii) the infringement offence; and
 - (iii) the enforcement agency; and
- (b) the prescribed information lodged under paragraph (a) is deemed to be a charge in relation to the offence in respect of which the infringement notice was served; and
- (c) the Court must—
- (i) allocate a time and place of the hearing of the offence; and
 - (ii) return the hearing details referred to in subparagraph (i) to the enforcement agency for service on the person who was served with the infringement notice; and
- (d) at least 14 days prior to the hearing date, the enforcement agency must serve the details referred to in paragraphs (a) and (c)(i) on the person who was served with the infringement notice.
- (2) Service under subsection (1)(d) may be by post to the person who was served with the infringement notice at the address—
- (a) provided by the person on whom the infringement notice was served; or
 - (b) on the infringement notice; or
 - (c) on the penalty reminder notice.

Note

The **Magistrates' Court Act 1989** applies to the enforcement of infringement offences that are not lodgeable infringement offences.

**Note to
s. 40(2)
amended by
No. 32/2006
s. 22(2).**

s. 41

- (3) Without limiting any other powers of the Court, the Court may proceed to hear and determine the matter of a lodgeable infringement offence even though a charge has not been served on the person who was served with the infringement notice.

Note

See also section 41 of, and clause 7 of Schedule 2 to, the **Magistrates' Court Act 1989**.

S. 40(4)
inserted by
No. 32/2006
s. 22(3),
amended by
No. 48/2006
s. 42(Sch.
item 18.4).

- (4) This section does not apply to an infringement offence alleged to have been committed by a child and the **Children, Youth and Families Act 2005** applies in respect of such an infringement offence.

41 Avoiding service

If, but for this section, the hearing of a lodgeable infringement offence by the Court may not proceed only because—

- (a) the defendant was not served with a notice of the time and place of the hearing; and
- (b) the Court—
- (i) is not satisfied that the defendant had knowledge of the time and place of the hearing; or
- (ii) is satisfied that the defendant had that knowledge, but is not satisfied that the defendant would not be prejudiced by the non-service—

S. 41(b)
substituted by
No. 32/2006
s. 23.

the hearing of the offence may proceed if the Court is satisfied that the defendant—

- (c) is avoiding service of the notice; or
- (d) cannot be found after reasonable search and inquiry.

PART 3—PAYMENT PLANS

Division 1—Establishment of the central payment plan facility

42 Central payment plan facility

The Secretary has the function of establishing and maintaining a central payment plan facility.

43 Functions of Secretary under this Part

The functions of the Secretary under this Part in establishing and maintaining a central payment plan facility are—

- (a) to manage the payment of infringement penalties and prescribed costs in respect of infringement offences by payment plans for natural persons referred to the Secretary under this Part by an enforcement agency; and
- (b) to ensure that all infringement penalties and prescribed costs in respect of infringement offences owed by a person to whom a payment plan applies which are referred by an enforcement agency to the Secretary for management by a payment plan, are accommodated in one payment plan managed by the Secretary; and
- (c) to apply the payments received under a payment plan in order of priority so that the infringement penalties and prescribed costs in relation to the oldest infringement notice to which the penalties and costs under the payment plan relate are paid out first.

44 Powers of Secretary

- (1) The Secretary has power to do anything that is necessary or convenient to be done for or in connection with carrying out the Secretary's functions under this Part.
- (2) Without limiting subsection (1), the Secretary may enter into arrangements or agreements with any person or body, with appropriate skills and experience, to act as the Secretary's agent in the carrying out of any functions under this Part.

45 Delegation

The Secretary may delegate any powers or functions under this Part other than this power of delegation to—

- (a) a person or class of persons employed under Part 3 of the **Public Administration Act 2004**;
- (b) a person or body with appropriate skills and experience, to carry out the Secretary's powers or functions.

Division 2—Payment plans

46 Payment plans available in certain circumstances

- (1) A natural person, including a child, served with an infringement notice may apply to an enforcement agency for a payment plan to pay the infringement penalty and any prescribed costs in respect of the infringement offence to which the infringement notice relates.

S. 46(1)
amended by
No. 32/2006
s. 24(1).

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- (2) An application under subsection (1) may be made—
- (a) in the case of—
- (i) a lodgeable infringement offence for which an infringement notice was served on a person other than a child, at any time before the details of the infringement penalty in respect of that offence are lodged with an infringements registrar under section 54; or
- (ii) an infringement offence for which an infringement notice was served on a child, at any time before the infringement penalty in respect of that offence is registered with the Children's Court under clause 4 of Schedule 3 to the **Children, Youth and Families Act 2005**; and
- (b) in the case of any other infringement offence, at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates, whether in the Court or the Children's Court, as the case requires.
- (3) An enforcement agency must offer a payment plan to a person who applies under subsection (1) if the person meets the eligibility criteria set out in the guidelines.
- (4) An enforcement agency may offer a payment plan to a person who applies under subsection (1) if the enforcement agency decides, in its discretion, that the person should be offered a payment plan.

S. 46(2)(a) substituted by No. 32/2006 s. 24(2).

S. 46(2)(a)(ii) amended by No. 48/2006 ss 40(2), 42(Sch. item 18.4).

S. 46(2)(b) amended by No. 32/2006 s. 24(3).

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- (5) An enforcement agency may offer a payment plan—
- (a) by arrangement and management of a payment plan for the person to whom it applies by that agency; or
 - (b) by referring the infringement penalty and prescribed costs in respect of any infringement offence to the Secretary for management by a payment plan.

47 Payment plans

- (1) A payment plan may be arranged for a natural person by an enforcement agency or the Secretary for the payment of—
 - (a) one infringement penalty and prescribed costs in respect of an infringement offence; or
 - (b) 2 or more infringement penalties and prescribed costs in respect of a number of infringement offences.
 - (2) A payment plan may provide for the payment of an infringement penalty and prescribed costs—
 - (a) by instalments; or
 - (b) by an extension of time to pay; or
 - (c) by both instalments and an extension of time to pay.
 - (3) A payment plan may comprise infringement penalties and prescribed costs in relation to both lodgeable infringement offences and other infringement offences.
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48 When does payment plan commence?

- (1) A payment plan commences when the enforcement agency or the Secretary (as the case requires) receives the first payment under the plan from the person to whom the proposed payment plan applies.
- (2) If a payment is not received in accordance with subsection (1) within the time specified in the proposed payment plan, that plan is cancelled and is of no effect.

49 Payment plans—additions, removals and cancellations

- (1) A person to whom a payment plan applies may request the addition of any infringement penalty and prescribed costs in respect of an infringement offence to that person's payment plan.
- (2) A person to whom a payment plan applies may request—
 - (a) the removal of an infringement penalty and prescribed costs in respect of an infringement offence from that person's payment plan; or
 - (b) the cancellation of the payment plan.
- (3) If an enforcement agency withdraws an infringement notice under this Act or the Act or other instrument which establishes the infringement offence in respect of which the infringement notice was served, the enforcement agency must—
 - (a) in the case of a payment plan managed by the enforcement agency, remove the infringement penalty and any prescribed costs in respect of the infringement offence in relation to the withdrawn infringement notice from a person's payment plan; and

S. 49(3)
substituted by
No. 32/2006
s. 24(4).

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- (b) in the case of a payment plan managed by the Secretary, request the Secretary to remove the infringement penalty and any prescribed costs in respect of the infringement offence in relation to the withdrawn infringement notice from a person's payment plan.
- (4) If an infringement penalty and prescribed costs are removed from a payment plan in accordance with a request of a person under subsection (2)(a) or an enforcement agency under subsection (3), or a payment plan is cancelled in accordance with subsection (2)(b), any money paid in respect of that infringement penalty and prescribed costs is—
- (a) to be allocated to the payment of the oldest infringement notice to which the infringement penalty and prescribed costs relate then remaining in the payment plan; or
 - (b) subject to subsection (5), if the removal or cancellation results in the completion of the payment plan and there is an overpayment, the person is entitled to a refund of any overpayment of money paid and—
 - (i) if the amount has been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly; or
 - (ii) if the amount has been paid into another fund or account, the amount is to be refunded from that fund or account.
- (5) A person is not entitled to a refund under subsection (4)(b) if at the time the infringement penalty and prescribed costs are removed from the payment plan or the payment plan is cancelled—
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- (a) that person has already paid in full the amount due for the infringement penalty and prescribed costs; and
 - (b) the infringement offence to which the infringement notice related has been expiated by that payment.

50 Allocation of money received under payment plan

- (1) An enforcement agency or the Secretary (as the case requires) must allocate money received under a payment plan in order of priority based on the date each infringement notice was issued in respect of the infringement penalty and any prescribed costs under the payment plan, with the infringement penalty and any prescribed costs under the oldest notice being paid out first.
 - (2) The order of priority to be applied when payments under a payment plan are allocated applies—
 - (a) to all payment plans managed by the Secretary or by an enforcement agency; and
 - (b) in the case of payment plans managed by the Secretary, regardless of the origin of the infringement penalty and any prescribed costs under the payment plan.
 - (3) If a person to whom a payment plan applies makes an overpayment by continuing payments after the payment plan is completed, the Secretary or an enforcement agency (as the case requires) must advise the person to whom the plan applies of the overpayment and may—
 - (a) if the person has other outstanding infringement penalties and any prescribed costs in respect of an infringement offence or outstanding enforcement orders in respect of a lodgeable infringement offence, offer to apply the amount of the overpayment to those outstanding infringement penalties and
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prescribed costs or any outstanding enforcement orders (as the case requires) if the person—

- (i) consents to the amount being so applied; and
 - (ii) directs the agency or Secretary to do so; or
- (b) refund the amount of the overpayment to the person and—
- (i) if the amount had been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly; or
 - (ii) if the amount had been paid into another fund or account, the amount is to be refunded from that fund or account.

51 Provision of current contact details

- (1) If an infringement penalty and prescribed costs in respect of an infringement offence are referred to the Secretary for management by a payment plan, the enforcement agency must provide the Secretary with the most up-to-date contact details of the person to whom the payment plan applies.
- (2) It is sufficient compliance with subsection (1) if, on deciding to refer management of the infringement penalty and prescribed costs by payment plan to the Secretary, an enforcement agency—
 - (a) requests the person to whom the payment plan applies to confirm the details of any address that the enforcement agency has in the agency's records for that person; and

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- (b) supplies the address confirmed in accordance with paragraph (a) to the Secretary when the agency makes a referral under subsection (1).
- (3) This section applies despite anything to the contrary in any Act or other instrument under which the enforcement agency is established or operates.
- (4) The Secretary must notify an enforcement agency which referred an infringement penalty and prescribed costs to the Secretary for management by a payment plan in respect of a person of the last known address of the person to whom the payment plan applies if that person—
- (a) defaults in payment of the plan; or
 - (b) requests the removal of an infringement penalty and prescribed costs from a payment plan under section 49(2)(a); or
 - (c) requests the cancellation of a payment plan under section 49(2)(b).

S. 51(3)
amended by
No. 32/2006
s. 24(5).

52 Defaulting on a payment plan

- (1) A person defaults in the payment of a payment plan if an enforcement agency or the Secretary (as the case requires) does not receive a payment in accordance with that plan within 14 days or a longer prescribed period (if any) after the due date of the payment.
- (2) If an enforcement agency or the Secretary does not receive a payment within the time specified in subsection (1), the agency or Secretary (as the case requires) must send a written notice to the person to whom the payment plan applies advising that person of the default.

53 Payment plans may extend period for bringing proceedings for offence

- (1) If a payment plan applies to a person, the period during which proceedings must be commenced for an infringement offence is extended as follows—
- (a) if the person to whom the payment plan applies defaults on a payment in respect of an infringement offence other than a lodgeable infringement offence, by 6 months after the date on which a person has defaulted under the payment plan;
 - (b) if a person to whom a payment plan applies removes an infringement penalty and prescribed costs in respect of an infringement offence other than a lodgeable infringement offence from the plan, by 6 months after the date on which the person has removed that infringement penalty and prescribed costs from the payment plan;
 - (c) if a person to whom a payment plan applies cancels the payment plan in respect of an infringement offence other than a lodgeable infringement offence, by 6 months after the date on which the person cancels the payment plan.

Note

See section 55 for extended period for lodging lodgeable infringement offences.

- (2) Subsection (1) has effect despite section 26(4) of the **Magistrates' Court Act 1989** or any other provision of any Act or other instrument providing for the period during which proceedings must be commenced for an offence alleged to have been committed.

S. 53(2)
amended by
No. 32/2006
s. 25(1).

**PART 4—LODGING INFRINGEMENT PENALTIES AND
ENFORCEMENT ORDERS**

Division 1—Lodgement

**54 Lodgement of infringement penalty with
infringements registrar**

- (1) An enforcement agency may lodge details of any outstanding amount of an infringement penalty in respect of a lodgeable infringement offence together with the prescribed costs (if any) with an infringements registrar if—
- (a) the infringement penalty is not less than the prescribed minimum infringement penalty amount; and
 - (b) the criteria set out in subsection (2) are satisfied.
- (2) For the purposes of subsection (1)(b), the criteria are—
- (a) a penalty reminder notice has been served on a person; and
 - (b) the period specified in the penalty reminder notice for payment under the penalty reminder notice has passed; and
 - (c) full payment of the infringement penalty and any prescribed costs have not been received by the enforcement agency; and
 - (d) the enforcement agency has not—
 - (i) filed a charge in respect of the offence alleged to have been committed; or
 - (ii) referred the matter to the Court under section 17; and

**S. 54(2)(b)
substituted by
No. 32/2006
s. 26(1).**

s. 54

S. 54(2)(e)
substituted by
No. 81/2006
s. 32(1).

(e) if the infringement notice was served under section 87 of the **Road Safety Act 1986**, the person was at the time of the infringement offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; and

S. 54(2)(f)
substituted by
No. 81/2006
s. 32(1).

(f) if the infringement notice was issued in respect of an offence to which section 66 of the **Road Safety Act 1986** applies, the person was at the time of the infringement offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the motor vehicle or trailer involved in the offence; and

S. 54(2)(g)
substituted by
No. 81/2006
s. 32(1).

(g) if the infringement notice was issued in respect of an offence against section 73(1) of the **Melbourne City Link Act 1995**, the person was at the time of the infringement offence—

(i) the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; or

(ii) the driver of that vehicle as shown in a statement or declaration supplied in accordance with section 72(3) of the **Melbourne City Link Act 1995**; and

S. 54(2)(h)
amended by
No. 32/2006
s. 26(2).

(h) if the infringement notice was issued in respect of an offence under section 204 of the **EastLink Project Act 2004**, the person was at the time of the trip to which the infringement offence relates—

(i) the owner of the vehicle within the meaning of that Act; or

- (ii) the driver of the vehicle as shown in a statement supplied under section 199 or 219 of that Act.

55 Extended period for lodgement

Details of an infringement penalty and prescribed costs in respect of a lodgeable infringement offence must be lodged—

- (a) no more than 6 months after the date of the offence alleged to have been committed; or
- (ab) if the offence has been committed against section 166(1) of the **Electoral Act 2002**, no more than 6 months after the date of service of the infringement notice in respect of that offence under section 167 of that Act; or
- (ac) if the offence has been committed against section 40(1A) of the **Local Government Act 1989**, no more than 6 months after the date of service of the infringement notice in respect of that offence under section 40(3) of that Act; or
- (b) if a person to whom a payment plan applies defaults on a payment, no more than 6 months after the date on which the person has defaulted under the payment plan; or
- (c) if a person to whom a payment plan applies removes an infringement penalty and prescribed costs in respect of a lodgeable infringement offence from the plan, no more than 6 months after the date on which the person has removed that infringement penalty and prescribed costs from the payment plan; or

S. 55(ab)
inserted by
No. 79/2006
s. 24.

S. 55(ac)
inserted by
No. 79/2006
s. 24.

Infringements Act 2006
No. 12 of 2006

Part 4—Lodging Infringement Penalties and Enforcement Orders

s. 55

S. 55(d)
substituted by
No. 32/2006
s. 27(1).

- (d) if a payment plan is cancelled—
- (i) by the person to whom the payment plan applies, no more than 6 months after the person cancels the plan; or
 - (ii) under section 48(2), no more than 6 months after the date on which the payment plan is cancelled under that section; or

S. 55(f)
amended by
No. 32/2006
s. 27(2).

- (e) if an enforcement order is revoked under section 66(4)(b), no more than 6 months after the date of revocation of that order; or
- (f) if an infringement notice is cancelled under this Act or any other Act or other instrument and a new infringement notice is issued or served in accordance with section 38(4) or any corresponding provision of another Act or other instrument, no more than 6 months after the date of cancellation of the cancelled infringement notice; or
- (g) if an infringement notice is reviewed under Division 3 of Part 2, no more than 6 months after the date of service of the advice of the outcome on the applicant under section 24(3); or

S. 55(h)
amended by
Nos 32/2006
s. 27(3),
81/2006
s. 32(2).

- (h) if a person has nominated another person for an offence committed under the **Road Safety Act 1986**, the **Melbourne City Link Act 1995** or the **EastLink Project Act 2004**, no more than 6 months after the date of service of the infringement notice on the nominated person; or

- (i) subject to paragraph (h), if an offence has been committed under section 204 of the **EastLink Project Act 2004**, no more than 6 months after the date of service of the infringement notice under section 210(1) of that Act; or
- (j) subject to paragraph (h), if the offence has been committed under section 73 of the **Melbourne City Link Act 1995**, no more than 6 months after the date of service of the infringement notice under section 80(1) of that Act.

S. 55(i)
inserted by
No. 32/2006
s. 27(4).

S. 55(j)
inserted by
No. 32/2006
s. 27(4).

56 Extension of period for bringing prosecution for summary offences

S. 56
amended by
No. 32/2006
s. 25(2).

Section 55 has effect despite section 26(4) of the **Magistrates' Court Act 1989** or any other provision of any Act or other instrument providing for the period during which proceedings must be commenced for an offence alleged to have been committed.

57 Reliance on lodged material

An infringements registrar is entitled—

- (a) to rely on the accuracy of the material provided by an enforcement agency when the details of an infringement penalty and prescribed costs (if any) in respect of a lodgeable infringement offence are lodged under section 54; and
- (b) to assume that the details are true and correct.

58 Agency may request enforcement order not be made

At any time before an enforcement order is made, an enforcement agency may request an infringements registrar not to make an enforcement order in respect of details of any outstanding amount of an infringement penalty and prescribed costs (if any) in respect of a lodgeable infringement offence lodged under section 54.

Division 2—Enforcement orders

59 Enforcement orders

- (1) If an infringements registrar has not received a request under section 58 from an enforcement agency, the infringements registrar may make an enforcement order that the person pay to the Court the outstanding amount of the infringement penalty and the prescribed costs in respect of a lodgeable infringement offence.
- (2) An enforcement order is deemed to be an order of the Court.

60 Enforcement order notice

- (1) On the making of an enforcement order, an infringements registrar must cause an enforcement order notice to be sent to the person against whom the order is made.

Note

See Part 13 for service requirements.

- (2) An infringements registrar may send an enforcement order notice to—
 - (a) the person's address; or
 - (b) any alternative address for the person as provided in the details lodged under section 54.

- (3) An enforcement order notice must be in writing and state—
- (a) that an infringement warrant will be issued if the person against whom the enforcement order is made defaults for a period of more than 28 days in the payment of the fine or, in the case of a natural person, any instalment under a payment order; and
 - (b) a summary of any other enforcement action which may be taken under this Act; and
 - (c) a summary of the options available to the person under this Act; and
 - (d) any other prescribed details.
- (4) An enforcement order notice may include a statement of any outstanding enforcement orders in relation to the person, but failure to include such a statement or complete details of any outstanding enforcement orders in such a statement does not invalidate the enforcement order notice.

S. 60(4)
amended by
No. 32/2006
s. 28(1).

61 Effect of enforcement order

- (1) If an enforcement order is made in relation to a lodgeable infringement offence alleged to have been committed by a person—
- (a) subject to sections 89 and 89A to 89D of the **Road Safety Act 1986**, section 215C of the **Transport Act 1983** or sections 61A and 61BA of the **Marine Act 1988** (as the case requires), the person is not to be taken to have been convicted of the offence; and
 - (b) subject to sections 89 and 89A to 89D of the **Road Safety Act 1986**, section 215C of the **Transport Act 1983** or sections 61A and 61BA of the **Marine Act 1988** (as the case requires), the person is not liable to any

S. 61(1)(b)
amended by
No. 32/2006
s. 28(2).

further proceedings for the offence alleged to have been committed; and

- (c) the making of the enforcement order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence; and
- (d) payment in accordance with the enforcement order is not an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

S. 61(2)
amended by
No. 32/2006
s. 28(3).

- (2) Any amount recovered as a result of the making of an enforcement order must be paid into the Consolidated Fund unless the relevant Act or other instrument that creates the infringement offence directs that the amount be paid into another fund.
- (3) Despite anything to the contrary in this section, the making of an enforcement order in relation to an offence which is a traffic infringement within the meaning of the **Road Safety Act 1986** does not prevent the incurring of demerit points under section 25 of that Act in relation to the infringement.
- (4) Despite anything to the contrary in this section, the making of an enforcement order—
 - (a) may be recorded for the purposes of a heavy vehicle registration suspension scheme within the meaning of section 89(7) of the **Road Safety Act 1986**; and
 - (b) does not prevent the suspension of the registration of a vehicle under that scheme.

62 Expiry of enforcement orders

- (1) An enforcement order expires—
- (a) if a payment order is made in relation to the enforcement order or 2 or more enforcement orders as the case may be—
 - (i) on the payment in full of the fine or fines (as the case may be); or
 - (ii) if one or more payments are made under the payment order but the fine or fines (as the case may be) are not paid in full, 5 years after the receipt of the last payment; or
 - (iii) in any other case, 5 years after the making of the payment order;
 - (b) if an infringement warrant has been issued in respect of the enforcement order, on that warrant becoming void under Part 6;
 - (c) if an application is made to an infringements registrar under section 68(1) for revocation of the enforcement order, 5 years after the application is made;
 - (d) if a declaration has been made under section 91, 5 years after the declaration is made;
 - (e) if a person applies for an extension of time to deal with an infringement notice under section 87A of the **Melbourne City Link Act 1995** or section 67 or 89B of the **Road Safety Act 1986**, 5 years after the date that the application was made;
 - (f) in any other case, 5 years after the enforcement order was made.
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- (2) If both subsections (1)(a) and (1)(b) apply, the enforcement order expires on the infringement warrant becoming void under Part 6.
- (3) If an enforcement order expires as a result of this section, any amount still outstanding in respect of the fine for which the enforcement order was made ceases to be enforceable or recoverable.
- (4) This section does not apply to an enforcement order in respect of which a warrant has been issued under the Service and Execution of Process Act 1992 of the Commonwealth.

63 Reinstatement after enforcement order has expired

- (1) An infringements registrar may reinstate an enforcement order that has expired—
 - (a) on the infringements registrar's own motion;
or
 - (b) on the application of the enforcement agency.
- (2) Despite section 62(3), if an enforcement order is reinstated, the fine in respect of which it was made becomes enforceable or recoverable as if there had been no expiry.
- (3) Section 62(1) does not apply to a re-instated enforcement order.
- (4) A reinstated enforcement order expires 5 years after it was reinstated.

Division 3—Revocation of enforcement orders

63A Application of Division

- (1) Subject to subsection (2), this Division does not apply to an infringement notice or an infringement offence of a kind to which any of the following provisions apply—

S. 63A
inserted by
No. 32/2006
s. 29.

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- (a) sections 89A to 89D of the **Road Safety Act 1986**;
 - (b) section 215C of the **Transport Act 1983**;
 - (c) sections 61A and 61BA of the **Marine Act 1988**.
- (2) An enforcement agency may apply for a revocation of an enforcement order under this Division in respect of an infringement notice or an infringement offence of a kind referred to in subsection (1).

64 Infringements registrar may revoke enforcement order and refer matter to Court

- (1) Subject to subsection (4), an infringements registrar, if satisfied that a matter would be more appropriately dealt with by the Court may, on his or her own motion—
- (a) revoke an enforcement order; and
 - (b) refer the matter of the infringement offence to the Court for hearing and determination.
- (2) If an infringements registrar revokes an enforcement order under this section, he or she must notify the enforcement agency and the person against whom the enforcement order was made—
- (a) that the enforcement order has been revoked; and
 - (b) that the matter of the infringement offence has been referred to the Court for hearing and determination.
- (3) A notification under subsection (2) must include the reasons why the enforcement order was revoked.

- (4) An infringements registrar must not make an order under this section if any of the following has occurred—
- (a) property has been seized under an infringement warrant other than a seizure of a kind referred to in section 89;
 - (b) a declaration under section 91 has been made;
 - (c) a notice under section 101(2) has been served on a person;
 - (d) an attachment of earnings order or an attachment of debts order has been made;
 - (e) an order under section 136 that land is subject to a charge has been made;
 - (f) a person is arrested in accordance with Part 12.

65 Applications for revocation of enforcement orders

- (1) Subject to subsection (2), the following persons may apply to an infringements registrar at the venue of the Court at which an enforcement order was made for the revocation of the enforcement order—
- (a) an enforcement agency; or
 - (b) a person against whom an enforcement order has been made; or
 - (c) without limiting paragraph (b), a person acting on behalf of a person with special circumstances against whom an enforcement order has been made.

Note

special circumstances is defined in section 3.

S. 65(1)(c)
substituted by
No. 32/2006
s. 30(1).

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- (2) An application under subsection (1) cannot be made if—
- (a) property has been seized under an infringement warrant other than a seizure of a kind referred to in section 89;
 - (b) a declaration under section 91 has been made;
 - (c) a notice under section 101(2) has been served on a person;
 - (d) an attachment of earnings order or an attachment of debts order has been made;
 - (e) an order under section 136 that land is subject to a charge has been made;
 - (f) a person is arrested in accordance with Part 12.
- (3) An application under subsection (1) must—
- (a) be filed with an infringements registrar; and
 - (b) if filed by the person against whom the enforcement order has been made or a person acting on that person's behalf in accordance with subsection (1)(c), be accompanied by a written statement setting out the grounds on which the revocation is sought.

Note

It is an offence to give false or misleading information in a statement required by or under this Act. See section 167.

66 Powers to revoke enforcement orders

- (1) If an enforcement agency applies under section 65 for the revocation of an enforcement order—
- (a) an infringements registrar must revoke the enforcement order; and

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- (b) the enforcement order ceases to have effect on its revocation.
- (2) If a person against whom an enforcement order has been made or a person acting on that person's behalf in accordance with section 65(1)(c) applies under section 65 for revocation of the enforcement order and an infringements registrar is satisfied that there are sufficient grounds for revocation—
- (a) the infringements registrar must revoke the enforcement order; and
- (b) an enforcement order ceases to have effect on its revocation.
- (3) On an application referred to in subsection (2), if an infringements registrar is not satisfied that there are sufficient grounds for revocation of an enforcement order, the infringements registrar must notify the applicant that the enforcement order has not been revoked because of insufficient grounds to justify its revocation.
- (4) An infringements registrar may—
- (a) adjourn an application for revocation of an enforcement order; or
- (b) if the infringement offence involves a motor vehicle and the infringements registrar is satisfied that the applicant was not the driver of the vehicle at the time of the offence and the applicant has nominated another driver—
- (i) revoke the enforcement order; and
- (ii) cancel the infringement notice.
- (5) If an infringements registrar revokes an enforcement order, the infringements registrar must notify the enforcement agency, the person against whom the order was made and if an application was made under section 65(1)(c), the person who applied on behalf of the person
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S. 66(5)
amended by
No. 32/2006
s. 30(2).

against whom the enforcement order was made
that—

- (a) the enforcement order has been revoked; and
 - (b) the matter of the infringement offence has been referred to the Court for hearing and determination.
- (6) An infringements registrar must not revoke an enforcement order under this section if a previous application has been made for the revocation of the enforcement order.
- (7) Nothing in this section limits the power of an infringements registrar or the Court to revoke an enforcement order on any other basis.

S. 66(7)
inserted by
No. 32/2006
s. 30(3).

67 Powers to vary costs or fees

- (1) On considering an application under section 65(1)(b), an infringements registrar, if satisfied that there are not sufficient grounds to revoke the enforcement order but that there are sufficient grounds to vary the prescribed costs or vary the prescribed fees on any infringement warrant, the infringements registrar must vary the costs or the fees, as the case requires.
- (2) If an infringements registrar varies costs or fees under subsection (1), he or she must notify the applicant that the amount of the infringement penalty together with costs or fees (as the case requires) as varied must be paid within 28 days after the date of the notice.
- (3) This section does not apply to an application made under section 65(1) by a person to whom special circumstances apply or a person acting on that person's behalf in accordance with section 65(1)(c).

68 Referral to Court of application for revocation

- (1) A person who receives a notice under section 66(3) or 67(2) may apply to an infringements registrar to have the application for revocation of an enforcement order referred to the Court.
- (2) If an infringements registrar receives an application under subsection (1)—
 - (a) within 28 days after the date of the notice, the infringements registrar must refer the matter to the Court;
 - (b) more than 28 days and less than 3 months after the date of the notice, the infringements registrar may refer the matter to the Court.
- (3) An application under subsection (1) cannot be made more than 3 months after the date of the notice under section 66(3) or 67(2) (as the case requires).

69 Enforcement agency may request non-prosecution of offence

- (1) An enforcement agency may request an infringements registrar not to refer a matter to the Court under this Part by written notice filed with an infringements registrar within 21 days after service of a notice referred to in section 64(2) or 66(5) as the case requires.
- (2) If an enforcement agency files a notice under subsection (1), the infringements registrar must—
 - (a) if the enforcement order has not been revoked—
 - (i) revoke the enforcement order and, on its revocation, the enforcement order ceases to have effect; and
 - (ii) not refer the matter to the Court; or

- (b) if the enforcement order has been revoked, not refer the matter to the Court.
- (3) An infringements registrar must notify the person against whom the enforcement order had been made—
 - (a) of the revocation of the enforcement order, if it was revoked under subsection (2)(a)(i); and
 - (b) that the matter will not be referred to the Court.

Division 4—Going to Court under this Part

70 Fine to be refunded if matter referred to Court

If a matter is referred to the Court under this Part or an order is made under section 72(1), the amount of any fine paid by the person must be refunded and—

- (a) if the amount of the fine had been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly; or
- (b) if the amount of the fine had been paid into another fund or account, the fine is to be refunded from that fund or account.

S. 70
amended by
No. 32/2006
s. 39(1).

71 Decision to go to Court

- (1) If a matter is referred to the Court under this Part or an order is made under section 72(1)—
 - (a) unless a request has been received from an enforcement agency under section 69, an infringements registrar must lodge with the Court the prescribed information in respect of—
 - (i) the offender; and

S. 71
amended by
No. 32/2006
s. 39(1).

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- (ii) the infringement offence; and
 - (iii) the enforcement agency; and
- (b) the prescribed information lodged under paragraph (a) is deemed to be a charge in relation to the offence that was lodged with the infringements registrar under section 54; and
- (c) the Court must—
- (i) allocate a time and place of the hearing of the offence; and
 - (ii) at least 14 days prior to the hearing date, cause the hearing details referred to in subparagraph (i) and the prescribed information lodged under paragraph (a) to be served on the enforcement agency and the person who was served with the enforcement order notice.
- (2) Without limiting any other powers of the Court, the Court may proceed to hear and determine the matter of a lodgeable infringement offence even though a charge has not been served on the person who was served with the infringement notice.

Note

See also section 41 of, and clause 7 of Schedule 2 to, the **Magistrates' Court Act 1989**.

72 Hearing by the Court

- (1) If a matter has been referred to the Court as a result of the making of an application under section 68(1), the Court may—
- (a) revoke the enforcement order, which ceases to have effect on that revocation; and
 - (b) proceed to hear and determine the matter of the infringement offence.

- (2) If the Court does not revoke an enforcement order under subsection (1), the Court must refer the matter back to an infringements registrar for enforcement in accordance with this Act.

Note

See also section 41 of, and clause 7 of Schedule 2 to, the **Magistrates' Court Act 1989**.

73 Avoiding service

If, but for this section, the hearing of a lodgeable infringement offence in accordance with section 71 may not proceed only because—

- (a) the defendant was not served with a notice of the time and place of the hearing; and
- (b) the Court—
 - (i) is not satisfied that the defendant had knowledge of the time and place of the hearing; or
 - (ii) is satisfied that the defendant had that knowledge, but is not satisfied that the defendant would not be prejudiced by the non-service—

the hearing of the offence may proceed if the Court is satisfied that the defendant—

- (c) is avoiding service of the notice; or
- (d) cannot be found after reasonable search and inquiry.

74 Application for re-hearing

- (1) If the Court determines a matter under section 72(2) against a person who did not appear at the hearing, that person may apply to the Court for an order that the determination under section 72(2) be set aside and that the application be re-heard.

S. 73(b)
substituted by
No. 32/2006
s. 31.

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- (2) On an application under this section, the Court may set aside the determination under section 72(2) subject to any terms and conditions that it thinks just and re-hear the matter.
 - (3) On the lodging of a notice under section 75, the determination under section 72(2) is stayed until the application for re-hearing has been heard.
 - (4) If an applicant under this section fails to appear at the time fixed for the hearing of the application and the application is struck out, the applicant can re-apply only if the applicant first obtains the leave of the Court.

75 Notice of intention to apply for re-hearing

- (1) A notice of intention to apply for a re-hearing must—
 - (a) state why the person against whom the determination under section 72(2) was made did not appear at the hearing; and
 - (b) be lodged with the registrar at the venue of the Court at which the determination under section 72(2) was made and a copy of the notice served on—
 - (i) the infringements registrar; and
 - (ii) the enforcement agency.
 - (2) The applicant must serve a copy of the notice of intention at least 14 days before the date of the re-hearing.
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PART 5—PAYMENT ORDERS

76 Applying for payment order

- (1) Subject to subsection (4), a natural person (other than a director to whom a declaration under section 91 applies) against whom an enforcement order is made may apply to an infringements registrar for a payment order.
- (2) An application for a payment order may be made—
 - (a) in person; or
 - (b) in writing; or
 - (c) in any other manner approved by an infringements registrar.
- (3) An application for a payment order must provide—
 - (a) the name and current address of the applicant; and
 - (b) a statement setting out the financial circumstances of the applicant; and
 - (c) the reasons for making the application.
- (4) An application under this section must not be made if any of the following has occurred—
 - (a) property has been seized under an infringement warrant other than a seizure of a kind referred to in section 89;
 - (b) a notice under section 101(2) has been served on a person;
 - (c) an attachment of earnings order or an attachment of debts order has been made;

- (d) an order under section 136 that land is subject to a charge has been made;
- (e) a person is arrested in accordance with Part 12.

77 Infringements registrar may make payment order

- (1) On considering an application for a payment order, an infringements registrar may do one or more of the following—
 - (a) make an order allowing additional time for the payment of the fine or the balance of the fine;
 - (b) make an order directing payment of the fine to be made by instalments;
 - (c) make an order directing payment of the fine or instalments to be made at the time or times specified by an infringements registrar;
 - (d) adjourn the application;
 - (e) approach relevant financial institutions to establish the veracity of the financial circumstances outlined by the applicant.
- (2) A payment order may include any outstanding costs that the sheriff has incurred in carrying out any sanction under this Act.
- (3) At any time after the issue of an infringement warrant against a natural person (other than a director to whom a declaration under section 91 applies), if an infringements registrar makes a payment order in respect of the fine and recalls and cancels the warrant, the infringements registrar must include in the amount of the fine the fee payable under section 81 in respect of the cancelled warrant.

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- (4) Despite anything to the contrary in this Act, an infringements registrar may determine not to include the fee referred to in subsection (3) in the amount of the fine if satisfied that there are sufficient grounds for not including that fee.
- (5) While a payment order is in force and is being complied with—
- (a) the enforcement order operates subject to it; and
 - (b) the execution of the enforcement order is stayed and—
 - (i) an infringements registrar may recall any infringement warrant issued in respect of the order; or
 - (ii) any infringement warrant issued in respect of the order remains issued until recalled but is not to be enforced.
- (6) If an infringements registrar has granted an application for a payment order and the infringements registrar subsequently discovers that the applicant supplied false or misleading information in the application about the applicant's financial circumstances, the infringements registrar may—
- (a) set aside the payment order; and
 - (b) issue an infringement warrant against the person or release the stay on the execution of the warrant imposed under subsection (5)(b), as the case requires.

78 Consequences of default under a payment order

- (1) If an infringements registrar has made a payment order and a person defaults under that payment order for a period of more than 28 days, the infringements registrar may issue another infringement warrant against the person.
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- (2) If an infringements registrar issues an infringement warrant under subsection (1), another seven-day notice must be served on the person before the infringement warrant can be executed unless a seven-day notice in respect of the fine to which the payment order applies has been served on the person at any time in the 6 month period prior to the default of the person.

79 Allocation of money under payment order

- (1) An infringements registrar must allocate money received under a payment order in order of priority based on the date of the making of an enforcement order with the fine under the oldest enforcement order being paid out first.
- (2) The order of priority to be applied when payments under a payment order are allocated applies—
- (a) to all payment orders managed by an infringements registrar; and
 - (b) regardless of the origin of the infringement notices to which the payment order applies.
- (3) If a person to whom a payment order applies overpays the amount to which the payment order applies by continuing payments after the payment order is satisfied, an infringements registrar may—
- (a) refund the amount of the overpayment to the person and—
 - (i) the Consolidated Fund is hereby appropriated accordingly; or
 - (ii) if the amount had been paid into another fund or account, the amount is to be refunded from that fund or account; or
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- (b) if the person has other outstanding enforcement orders that were not subject to the payment order, apply the amount of overpayment to those outstanding enforcement orders if the person consents to the amount being so applied.
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PART 6—INFRINGEMENT WARRANTS

80 Issue of infringement warrants

- (1) An infringements registrar must issue an infringement warrant against a person to whom an enforcement order notice is sent (including a director to whom a declaration under section 91 applies) if the person for a period of more than 28 days—
 - (a) defaults in the payment of the outstanding amount of the fine; or
 - (b) in the case of a natural person other than a director to whom a declaration under section 91 applies, defaults in the payment of a payment under a payment order.
- (2) An infringements registrar who issues an infringement warrant against a natural person, including a director to whom a declaration under section 91 applies, may endorse the warrant with a direction that the person arrested must be released on bail as specified in the endorsement.
- (3) An endorsement under subsection (2) must fix the amounts in which the principal and the sureties, if any, are to be bound and the amount of any money or the value of any security to be deposited.

81 Fees to be included

- (1) On the issue of an infringement warrant, the prescribed fee—
 - (a) is payable by the person against whom the infringement warrant is issued; and
 - (b) may be included in the amounts named in the infringement warrant.

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- (2) Any fee prescribed under this Act in respect of the execution of an infringement warrant forms part of the lawful costs of execution of the warrant.

82 What does an infringement warrant authorise?

- (1) An infringement warrant—
- (a) authorises the person to whom it is directed to break, enter and search any residential or business property occupied by the person named in the infringement warrant for any personal property of that person;
 - (b) directs and authorises the person to whom it is directed—
 - (i) to seize the personal property of the person named in the infringement warrant; and
 - (ii) if the amounts named in the infringement warrant together with all lawful costs of execution are not paid, to sell the personal property seized;
 - (c) in the case of an infringement warrant issued against a natural person, including a director to whom a declaration under section 91 applies, if the person executing the infringement warrant cannot find sufficient personal property of the person named in the infringement warrant on which to levy the amounts named in the infringement warrant together with all lawful costs of execution—
 - (i) authorises the person to whom it is directed to break, enter and search for that person in any place where the person named in the infringement warrant is suspected to be; and
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S. 82(1)(c)(ii)
substituted by
No. 32/2006
s. 32(1).

- (ii) subject to any endorsement under section 80(2), directs and authorises the person to whom it is directed to arrest the person named in the infringement warrant and—
 - (A) deal with that person in accordance with Division 1 of Part 12, if appropriate; or
 - (B) if the person refuses to enter into an undertaking of bail or cannot be dealt with under Division 1 of Part 12, take and safely convey the person named in the infringement warrant to a prison or a police gaol and there to deliver the person to the officer in charge of the prison or police gaol for the purposes of being dealt with under Division 2 of Part 12.
- (2) Nothing in this section requires a person to whom an infringement warrant is directed—
 - (a) to break and enter a property for the purpose of finding and seizing personal property;
 - (b) in the case of an infringement warrant issued against a natural person, including a director to whom a declaration under section 91 applies, to break and enter a property for the purpose of finding and seizing personal property before arresting the person named in the infringement warrant.
- (3) Despite subsection (2)(b), a person to whom an infringement warrant is directed must not arrest the person named in the infringement warrant unless the person executing the infringement warrant reasonably believes that there is not sufficient personal property of the person named

in the infringement warrant on which to levy the amounts named in the infringement warrant together with all lawful costs of execution.

- (4) On the imprisonment of a person for any reason, if there are any unsatisfied infringement warrants outstanding against the person, any person to whom such a warrant is directed is not required, in executing the infringement warrant, to serve any notice or to search for, or seize, any personal property of the imprisoned person.
- (5) An infringement warrant must be in the prescribed form.

S. 82(5)
inserted by
No. 32/2006
s. 32(2).

83 Person arrested under infringement warrant may be bailed

- (1) The person to whom an infringement warrant against a natural person (including a director to whom a declaration under section 91 applies) is directed must cause the person named or described in the infringement warrant, when arrested—
 - (a) to be brought before the Court within 24 hours of being arrested to be dealt with according to law; or
 - (b) to be released on bail in accordance with the endorsement on the infringement warrant; or
 - (c) to be released on a community work permit in accordance with Part 12 or otherwise dealt with under that Part.
- (2) A person arrested on an infringement warrant may be discharged from custody on bail under section 10 of the **Bail Act 1977**.

S. 83(1)(a)
amended by
No. 32/2006
s. 32(3)(a).

S. 83(1)(b)
amended by
No. 32/2006
s. 32(3)(b).

S. 83(1)(c)
inserted by
No. 32/2006
s. 32(3)(c).

84 Persons to whom infringement warrant may be directed

- (1) An infringement warrant, other than an infringement warrant issued against a body corporate, may be directed to—
 - (a) the sheriff; or
 - (b) a named police member; or
 - (c) generally all police members; or
 - (d) the Commissioner within the meaning of the **Corrections Act 1986**; or
 - (e) any other person authorised by law to execute an infringement warrant.
- (2) An infringement warrant issued against a body corporate may be directed to the sheriff.
- (3) An infringement warrant to be directed to the sheriff may be issued, not in paper form, but by an infringements registrar causing to be entered in the computer system used by the Court—
 - (a) the type of infringement warrant and the prescribed particulars; and
 - (b) his or her name and the date of issue of the infringement warrant.
- (4) An infringement warrant issued in accordance with subsection (3) must not be amended, altered or varied after its issue, unless the amendment, alteration or variation is authorised by or under this Act or any other Act.

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- (5) An infringement warrant directed to the sheriff may, if the sheriff so directs, be executed by—
- (a) a named person who is a bailiff for the purposes of the **Supreme Court Act 1986**;
or
 - (b) generally all persons who are bailiffs for the purposes of the **Supreme Court Act 1986**;
or
 - (c) a named police member; or
 - (d) generally all police members; or
 - (e) in the case of an infringement warrant issued against a natural person, including a director to whom a declaration under section 91 applies, generally all prison officers.
- (6) A direction may be given by the sheriff under subsection (5) by—
- (a) endorsing the execution copy of the infringement warrant with the direction; or
 - (b) issuing an infringement warrant to the same effect as the infringement warrant but directed in accordance with subsection (5).
- (7) An infringement warrant endorsed or issued by the sheriff in accordance with subsection (6) directs and authorises the person to whom it is directed to do all things that he or she would have been directed and authorised to do by the original infringement warrant if it had been directed to him or her.
- (8) An infringement warrant directed to a named police member may be executed by any police member.
- (9) An infringement warrant directed to a named bailiff may be executed by any bailiff.
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85 Unexecuted infringement warrants

A person authorised to execute an infringement warrant issued against a natural person (including a director to whom a declaration under section 91 applies) that is directed to the sheriff may also execute against the same person any unexecuted infringement warrant that is not directed to the sheriff.

86 Consolidation of warrants in execution copy

If there are multiple infringement warrants outstanding against a person, those warrants may be consolidated by the sheriff into one execution copy, with the details of each infringement warrant attached by, or included in, a schedule to the consolidated execution copy.

87 Notice of seizure of property

- (1) A person who executes an infringement warrant may serve on—
- (a) the person against whom the infringement warrant is issued and whose personal property is seized under the infringement warrant; or
 - (b) a person who is in possession of any personal property of the person against whom the infringement warrant is issued that is seized under the infringement warrant—

a notice in the form prescribed by the rules within the meaning of the **Magistrates' Court Act 1989** informing the person served with the notice—

- (c) that the person is responsible for the safe-keeping of the personal property seized under the infringement warrant that is described in the notice; and
- (d) informing that person of the provisions of subsection (2).

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- (2) A person who knows that property has been seized under an infringement warrant or is the subject of a notice served under subsection (1) must not, except with the written consent of the sheriff—
- (a) interfere with or dispose of that property; or
 - (b) deface or remove any mark attached to that property indicating that it had been so seized; or
 - (c) remove that property from the place at which it was situated when the notice was served.

Penalty: 25 penalty units or 6 months imprisonment or both.

- (3) Nothing in subsection (2) affects the powers of the Court or of the Supreme Court in relation to contempt.

**88 Warning of execution of infringement warrant—
seven-day notice**

- (1) A person authorised to execute an infringement warrant against a natural person (including a director to whom a declaration under section 91 applies) must not take any step to execute the infringement warrant unless—
- (a) that person or any other person has served on the person in respect of whom the infringement warrant has been issued a seven-day notice containing the prescribed details; and

Note

See Part 13 for service requirements.

- (b) if the person authorised to execute an infringement warrant is the sheriff, that person has made a demand on the person in respect of whom the infringement warrant has been issued.

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- (2) If a seven-day notice is served on a person other than by the sheriff, a demand is not to be made at the time of service of the seven-day notice.
 - (3) A seven-day notice must include a warning of all the enforcement mechanisms available under this Act if the person on whom the seven-day notice is served does not, within 7 days of the seven-day notice being served—
 - (a) pay the outstanding amount of the fine; or
 - (b) in the case of a natural person (other than a director to whom a declaration under section 91 applies)—
 - (i) apply for a payment order; or
 - (ii) apply for the revocation of the enforcement order.

89 What can be done during period of the seven-day notice?

- (1) Subject to subsection (2), during a period of 7 days after delivery of a seven-day notice, a person authorised to execute an infringement warrant—
 - (a) may seize and take possession of the personal property of the person in respect of whom the infringement warrant was issued; and
 - (b) must not remove that personal property from the residential or business property in which it is situated unless the person executing the infringement warrant believes on reasonable grounds that it is necessary to do so to avoid it being disposed of or removed.

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- (2) Seizure and taking possession of personal property under subsection (1) must not occur unless—
- (a) a demand has been made under section 88(1)(b); or
 - (b) prior to the seizure and taking possession of personal property under subsection (1), a demand for payment of the amount outstanding is made.
- (3) A person who executes an infringement warrant by removing property during the period referred to in subsection (1) must—
- (a) by written statement state the reason for so doing; and
 - (b) file a copy of the written statement with an infringements registrar.

Note

It is an offence to give false or misleading information in a statement required by or under this Act. See section 167.

90 Executing infringement warrant after 7 day period

- (1) After the expiry of the period referred to in section 89(1)—
- (a) if a demand for payment of the amount outstanding has not previously been made, the demand must be made on the person in respect of whom the infringement warrant has been issued; and
 - (b) any step may be taken in execution of the infringement warrant (including selling any personal property seized during that period) if the fine or any part of the fine remains unpaid unless the person in respect of whom the infringement warrant was issued has—

S. 90
amended by
No. 32/2006
s. 33(2) (ILA
s. 39B(1)).

s. 91

S. 90(b)(i)
substituted by
No. 32/2006
s. 33(1).

(i) obtained a payment order; or

S. 90(b)(ii)
substituted by
No. 32/2006
s. 33(1).

(ii) been granted a revocation of the enforcement order to which the infringement warrant relates.

S. 90(b)(iii)
repealed by
No. 32/2006
s. 33(1).

* * * * *

S. 90(2)
inserted by
No. 32/2006
s. 33(2).

(2) Despite subsection (1)(b), no step may be taken in the execution of an infringement warrant issued against a person if that person has made an application for a payment order under section 76 or an application under section 65 for the revocation of an enforcement order (as the case requires) which has not been determined, until the application is determined.

91 Enforcement against bodies corporate

(1) An infringements registrar—

(a) may declare that any person who was a director of a body corporate at the time of the commission of an offence by the body corporate for which an infringement notice was issued is jointly and severally liable for the payment of the fine; and

(b) may issue an infringement warrant against that person if—

(i) the person executing an infringement warrant issued against a body corporate returns that he or she cannot find sufficient personal property of the body corporate on which to levy the amounts named in the infringement warrant together with all lawful costs of execution; and

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- (ii) the infringements registrar receives from a prescribed person a certificate purporting to be given by that person stating that it appears from a return or returns lodged under the Corporations Act that a person was a director of the body corporate in default at the time of the commission of the offence for which the infringement notice was issued.
- (2) A certificate referred to in subsection (1)(b)(ii) may be provided to the infringements registrar electronically.
- (3) An infringements registrar must not make a declaration under subsection (1) in respect of, or issue an infringement warrant against, a director until the infringements registrar has given 28 days' notice in writing by post to the director of the infringements registrar's intention to make the declaration and issue the infringement warrant.
- (4) At the end of 28 days after the date of the notice under subsection (3), the infringements registrar must make the declaration under subsection (1) in respect of, and issue an infringement warrant against, the director unless—
- (a) the amount then outstanding is paid; or
 - (b) the director satisfies the infringements registrar that—
 - (i) at the time of the commission of the offence he or she had reasonable grounds for believing and did believe that the body corporate would be able to meet any liabilities that it incurred at that time; and
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- (ii) he or she had taken all reasonable steps in carrying on the business of the body corporate to ensure that it would be able to meet its liabilities as and when they became due; or
 - (c) the director applies to the infringements registrar to have the matter referred to the Court.
 - (5) If a director applies to an infringements registrar under subsection (4)(c) to have the matter referred to the Court, the infringements registrar must—
 - (a) refer the matter to the Court; and
 - (b) cause a notice of the time and place of hearing to be given or sent to the director.
 - (6) If a director of a body corporate makes application under subsection (4)(c), no other director of that body corporate may make an application in relation to the same matter.
 - (7) On hearing a matter referred under subsection (5), the Court may—
 - (a) make the declaration that the infringements registrar could have made under subsection (1) in respect of the director and order an infringements registrar to issue an infringement warrant against the director unless—
 - (i) the amount then outstanding is paid; or
 - (ii) the director satisfies the Court that—
 - (A) at the time of the commission of the offence he or she had reasonable grounds for believing and did believe that the body corporate would be able to meet any liabilities that it incurred at that time; and
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- (B) he or she had taken all reasonable steps in carrying on the business of the body corporate to ensure that it would be able to meet its liabilities as and when they became due; or
- (b) refer the matter back to an infringements registrar for the making of a declaration in respect of the director and the issuing of an infringement warrant against the director.
- (8) If under this section more than one person is obliged to pay a fine, the obligation must be taken to have been discharged if it is discharged by any one of them.
- (9) For the purposes of subsection (8), *discharged* includes the satisfaction of any obligation to which an infringement warrant applies by any director, including imprisonment of a director.

92 Reduction of imprisonment by payment of portion of fine

- (1) If, before the issue of an infringement warrant, it appears to the person issuing the infringement warrant that part of the fine has been paid, the amounts named in the infringement warrant must be reduced by the amount of the fine paid.
- (2) Subsection (1) applies despite any provision (except section 26) of the **Imprisonment of Fraudulent Debtors Act 1958** to the contrary.
- (3) If after the issue but before the execution in accordance with section 82(1)(c) of an infringement warrant, part of the amounts named in the infringement warrant is paid or levied on personal property of the person named in the infringement warrant, the person executing the infringement warrant must—

- (a) amend the execution copy of the infringement warrant; and
- (b) forward the amount paid or levied without delay to an infringements registrar.

93 Rules etc. with respect to execution of infringement warrant

- (1) Subject to this Act and the **Magistrates' Court Act 1989**—
 - (a) the rules, practice and procedure which apply to or are adopted by the sheriff in the execution of a warrant to seize property issued by the Court in enforcement of an order made by the Court in a civil proceeding under the **Magistrates' Court Act 1989** for the payment of money apply (with any necessary modifications) to the execution of an infringement warrant in accordance with section 82(1)(b); and
 - (b) subject to the power in the infringement warrant referred to in section 82(1)(c)(i), the interests of any persons in any property seized under an infringement warrant must be dealt with in the same manner as they would be if the property had been seized under a warrant to seize property issued by the Court in enforcement of an order made by the Court in a civil proceeding for the payment of money under the **Magistrates' Court Act 1989**.
- (2) Despite anything to the contrary in section 42 of the **Supreme Court Act 1986**, the person executing in accordance with section 82(1)(b) an infringement warrant or infringement warrants in respect of which the period referred to in section 89(1) has expired may, with the signed written consent of the person against whom the

infringement warrant is or infringement warrants are issued, seize or take in the execution of it or them personal property—

- (a) that is used by that person primarily as a means of transport; and
 - (b) that could not, but for this subsection, be seized or taken because of section 42 of the **Supreme Court Act 1986**.
- (3) A consent given by a person under subsection (2) is only effective if—
- (a) it is given after the delivery to the person by a person authorised to execute the infringement warrant or infringement warrants of a written statement containing the prescribed details and setting out the effect of giving the consent; and
 - (b) a copy of the signed written consent has been delivered to the person giving the consent.
- (4) If personal property referred to in subsection (2) is seized or taken in execution of an infringement warrant or infringement warrants in accordance with that subsection—
- (a) the proceeds of sale of the property must be applied towards the amounts named in the infringement warrant or infringement warrants together with all lawful costs of execution; and
 - (b) any amount remaining after those amounts and costs have been paid—
 - (i) must be applied to satisfy any other unexecuted infringement warrant issued against that person irrespective of when it was issued; and

- (ii) any amount then remaining must be paid to the person against whom the infringement warrant was, or infringement warrants were, issued.

94 Warrant void after 5 years

An infringement warrant is null and void if it has not been executed within the period of 5 years after the infringement warrant was first issued against the person named in the infringement warrant for the purpose specified in the infringement warrant.

**PART 7—DETENTION, IMMOBILISATION AND SALE OF
MOTOR VEHICLES**

95 Application of Part

- (1) This Part applies if an infringement warrant has been issued against a registered operator of a motor vehicle, whether or not a seven-day notice has been served on that person.
- (2) The sheriff or a police member may take action under this Part in addition to any other action under this Act.

96 Detention or immobilisation of motor vehicles

- (1) If a police member intercepts a motor vehicle of a registered operator against whom an infringement warrant has been issued or the sheriff or a police member finds parked or left standing such a motor vehicle, the sheriff or police member may—
 - (a) detain or immobilise, whether by wheel clamps or any other means, that motor vehicle, whether attended or not; and
 - (b) if necessary, remove that motor vehicle to a convenient place, including if appropriate a place of impoundment.
- (2) This section applies despite Part 6 and anything to the contrary in an infringement warrant.

97 Powers to detain, immobilise and seize

- (1) In order to detain, immobilise or seize a motor vehicle under this Part, a police member or the sheriff may—
 - (a) require the driver of the motor vehicle to stop the motor vehicle and cause it to remain stopped;

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- (b) enter the motor vehicle, using reasonable force if necessary, for the purpose of moving the motor vehicle;
 - (c) direct the driver, or any person in possession of the ignition or other keys to the motor vehicle, to give the keys to a police member or the sheriff;
 - (d) if, after having taken reasonable steps to obtain the keys, the keys are not available, cause any locking device or other feature of the motor vehicle that is impeding the exercise of the power to detain, immobilise or seize the motor vehicle to be removed, dismantled or neutralised, and start the motor vehicle by other means;
 - (e) enter—
 - (i) any place that is occupied by the registered operator of the motor vehicle against whom an infringement warrant has been issued, whether or not with the consent of that person; or
 - (ii) any place other than a place referred to in subparagraph (i) if the consent of the owner or occupier of that place is given to the police member or the sheriff; or
 - (iii) any place which is a public place.
- (2) Without limiting subsection (1), a police member or the sheriff may do anything else reasonably necessary to detain, immobilise or seize a motor vehicle under this Part.
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98 Powers to tow

If a motor vehicle is removed to a convenient place in accordance with this Part, it must be towed by a tow truck within the meaning of Part VI of the **Transport Act 1983** operating in accordance with a licence granted under Division 8 of that Part unless it is possible to move that vehicle by a police member or the sheriff driving the vehicle or directing another person to drive the vehicle.

99 Notice to be provided on detention or immobilisation

- (1) If the sheriff or police member detains or immobilises an unattended motor vehicle under this Part, the sheriff or a police member (as the case requires) must attach to the windscreen of the motor vehicle a notice that states—
 - (a) that the motor vehicle has been detained or immobilised because the registered operator of the motor vehicle is a person against whom an infringements warrant has been issued; and
 - (b) the contact details of the sheriff.
- (2) If the sheriff removes an unattended motor vehicle to a convenient place under this Part, the sheriff must—
 - (a) report the removal to a police member; and
 - (b) provide the police member with the registration details for that motor vehicle, whether those details are current or expired.

**100 Recovery of motor vehicle by registered operator
within prescribed period**

- (1) The sheriff, or a police member on the direction of the sheriff, must release a detained or immobilised motor vehicle to the registered operator of the motor vehicle if any of the following occurs before the expiry of the prescribed period—
- (a) payment in full of—
 - (i) the amount outstanding under the infringement warrant or enforcement order; and
 - (ii) any costs incurred as the result of the detention, immobilisation or impoundment of the motor vehicle under this Part;
 - (b) the person against whom an infringement warrant has been issued becomes subject to a payment order;
 - (c) an attachment of earnings order or an attachment of debts order is made in relation to the person against whom an infringement warrant has been issued;
 - (d) an application for revocation of the enforcement order is granted by an infringements registrar or the Court;
 - (e) an application against a refusal to revoke an enforcement order is granted;
 - (f) seizure of property under this Act sufficient to satisfy the amount outstanding under the infringement warrant or enforcement order;
 - (g) in the case of a natural person, including a director to whom a declaration under section 91 applies, the person is arrested under this Act;
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- (h) the infringement warrant issued against the person has been recalled and cancelled by an infringements registrar;
 - (i) the infringement warrant issued against the person has expired;
 - (j) the sheriff, in his or her discretion, considers that it is otherwise appropriate to release the motor vehicle.
- (2) On the release of a motor vehicle under subsection (1), the registered operator against whom the infringement warrant was issued is liable for any costs incurred as a result of the detention, immobilisation or impoundment of the motor vehicle under this Part.

101 Seizure and sale

- (1) After the prescribed period, if an amount remains outstanding under an infringement warrant issued against the registered operator of a motor vehicle detained or immobilised under this Part, the sheriff may—
- (a) seize the motor vehicle or an item left in or on a motor vehicle; and
 - (b) subject to subsections (2) and (3), sell that motor vehicle or item.
- (2) At least 14 days before exercising a power of sale under this section, the sheriff must serve a notice on the registered operator of the motor vehicle stating that—
- (a) the motor vehicle has been seized; and
 - (b) the sheriff may sell or otherwise dispose of the motor vehicle and any item left in or on the motor vehicle unless payment in full of the amount outstanding under the infringement warrant or enforcement order and any costs incurred as a result of the
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detention, immobilisation, seizure or impoundment of the motor vehicle is received within 14 days of the notice being sent.

- (3) At least 14 days before exercising a power of sale under this section, the sheriff must publish a notice of intention to sell in a newspaper circulating generally in the State.

102 Recovery of motor vehicle or item by third party before sale

- (1) At any time before a sale under section 101 occurs a person other than the registered operator of a motor vehicle against whom an infringement warrant has been issued may recover a motor vehicle or item detained, immobilised or seized under this Part if—
 - (a) the person was entitled, at the time the motor vehicle or item was detained, immobilised or seized, to possession of that vehicle or item; and
 - (b) the person provides to the sheriff satisfactory evidence, in accordance with the regulations (if any), of that person's identity and entitlement to possession of the motor vehicle or item (as the case requires).
- (2) The sheriff must release a motor vehicle or item (as the case requires) to a person if satisfied as to the matters referred to in subsection (1).
- (3) On the release of a motor vehicle under this section, the registered operator against whom the infringement warrant was issued is liable for any costs incurred as a result of the detention, immobilisation or impoundment of the motor vehicle under this Part.

103 Sheriff may return motor vehicle or items of low monetary value

- (1) Despite section 101, the sheriff may return a vehicle detained, immobilised or seized under this Part to the registered operator, or any other person entitled, at the time of the detention, immobilisation or seizure, to possession of that vehicle, if in the opinion of the sheriff—
 - (a) the costs of sale and the amount outstanding under the infringement warrant are greater than the total monetary value of the vehicle; or
 - (b) the vehicle is of negligible monetary value.
- (2) Despite section 101, the sheriff may return an item on or in any motor vehicle detained, immobilised or seized under this Part to the registered operator, or any other person entitled, at the time of the detention, immobilisation or seizure, to possession of that item, if in the opinion of the sheriff—
 - (a) the costs of sale and the amount outstanding under the infringement warrant are greater than the total monetary value of the item; or
 - (b) the item is of negligible monetary value.
- (3) The sheriff may exercise a power under this section in his or her absolute discretion and at any time.

104 Application of proceeds of sale

If a motor vehicle or item is sold under section 101 the proceeds of sale are to be applied in the following order of priority—

- (a) to pay the costs of the sale;
- (b) to pay any costs of detention, immobilisation, seizure or impoundment under this Part;

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- (c) to discharge any security interest over the motor vehicle;
 - (d) to pay the amount outstanding under the infringement warrant;
 - (e) to pay any amount remaining to—
 - (i) the registered operator; or
 - (ii) if the registered operator is not entitled to the amount, any other person entitled, at the time the motor vehicle was detained or immobilised, to possession of the motor vehicle; or
 - (iii) if the persons referred to in subparagraphs (i) or (ii) cannot be located after reasonable inquiries, deal with the balance in accordance with the **Unclaimed Moneys Act 1962**.

105 Section 42 of the Supreme Court Act 1986 does not apply

- (1) Despite anything to the contrary in section 42 of the **Supreme Court Act 1986**, the sheriff or police member may detain or immobilise a motor vehicle under this Part even if that motor vehicle—
 - (a) is primarily used by that person as a means of transport; and
 - (b) could not, but for this subsection, be detained or immobilised because of section 42 of the **Supreme Court Act 1986**.
- (2) Despite anything to the contrary in section 42 of the **Supreme Court Act 1986**, the sheriff may seize and sell a motor vehicle under this Part even if that motor vehicle—
 - (a) is primarily used by that person as a means of transport; and

(b) could not, but for this subsection, be seized and sold because of section 42 of the **Supreme Court Act 1986**.

106 Buyer acquires good title

- (1) A person who buys a motor vehicle or an item under this Part acquires a good title to the vehicle or item if the person buys the vehicle or item—
 - (a) in good faith; and
 - (b) without notice of any defect or want of title.
- (2) The sheriff is not liable in respect of the sale of a motor vehicle or item under this Part unless it is proved that the sheriff had notice, or might by making reasonable inquiry have ascertained, that the vehicle or item was not the property of the registered operator against whom an infringements warrant was issued.
- (3) Nothing in this section limits or affects any right or remedy the previous owner of the motor vehicle or item sold under this Part has or may bring otherwise than—
 - (a) against the motor vehicle or item; or
 - (b) against the sheriff in the exercise of a power of sale under this Part.

107 Offence to tamper with or remove means used to immobilise motor vehicle

A person, other than a person authorised to do so in accordance with this Part, must not tamper with or remove the means by which a motor vehicle has been detained, immobilised or seized under this Part.

Penalty: 60 penalty units.

**PART 8—SUSPENSION OF DRIVER LICENCES AND
REGISTRATION OF MOTOR VEHICLE OR TRAILER**

108 Meaning of *person in default* in this Part

S. 108
amended by
No. 32/2006
s. 34(2) (ILA
s. 39B(1)).

(1) For the purposes of this Part, a person is a person
in default if—

(a) an infringement warrant has been issued
against the person; and

(b) a seven-day notice has been served on the
person; and

S. 108(c)
amended by
No. 32/2006
s. 34(1)(a).

(c) a period of 7 days after service of the seven-
day notice has expired without the person—

(i) paying the amount outstanding under
the infringement warrant; or

S. 108(c)(ii)
amended by
No. 32/2006
s. 34(1)(b).

(ii) in the case of a natural person other
than a director to whom a declaration
under section 91 applies, obtaining a
payment order for the payment of the
amount outstanding under the warrant;
or

S. 108(c)(iii)
amended by
No. 32/2006
s. 34(1)(c).

(iii) being granted revocation of the
enforcement order.

S. 108(2)
inserted by
No. 32/2006
s. 34(2).

(2) Despite subsection (1)(c)(ii) and (iii), if a person
has made an application for a payment order
under section 76 or an application under
section 65 for the revocation of an enforcement
order (as the case requires) which has not been
determined before the period specified in
subsection (1)(c), that person is not a person in
default for the purposes of this Part—

- (a) until the application is determined; and
- (b) unless the payment order has not been obtained or the revocation of the enforcement order has not been granted, as the case requires.

109 Action under this Part

- (1) This Part applies whether or not the infringement offence in relation to which an infringement warrant has been issued involves a motor vehicle-related offence.
- (2) The sheriff may take action under this Part in addition to any other action under this Act.
- (3) Nothing in this Part prevents the sheriff making more than one direction under this Part or more than one type of direction under this Part in respect of any person or any motor vehicle or trailer.

S. 109(3)
inserted by
No. 32/2006
s. 35.

110 Sheriff may direct VicRoads to suspend driver licence

- (1) The sheriff may direct VicRoads to suspend, under section 24(1A) of the **Road Safety Act 1986**, the driver licence of a person in default until the sheriff notifies VicRoads that the suspension has ceased in accordance with section 111.

Note

See section 24(1A) of the **Road Safety Act 1986**.

- (2) At least 7 days before making a direction under subsection (1), the sheriff must cause to be served on the person whose driver licence is to be suspended a notice of intention to direct VicRoads to suspend the driver licence unless the person, before the end of the period specified in the notice of intention—
 - (a) pays the amount outstanding under the infringement warrant; or

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S. 110(2)(b)
amended by
No. 32/2006
s. 36(1)(a).

(b) has obtained a payment order; or

S. 110(2)(c)
amended by
No. 32/2006
s. 36(1)(b).

(c) has been granted revocation of the
enforcement order.

Note

See Part 13 for service requirements.

S. 110(3)
inserted by
No. 32/2006
s. 36(2).

(3) Despite subsection (2)(b) or (c), no direction under subsection (1) may be made if the person on whom a notice of intention to make a direction was served under subsection (2) has made an application for a payment order under section 76 or an application under section 65 for the revocation of an enforcement order (as the case requires) which has not been determined, until the application is determined.

S. 110(4)
inserted by
No. 32/2006
s. 36(2).

(4) The sheriff may serve a notice of intention under subsection (2) whether or not the person whose driver licence is to be suspended is a person in default at the time of the service of that notice of intention.

111 When does suspension of driver licence cease?

The sheriff must notify VicRoads that the suspension of a driver licence suspended under section 24(1A) of the **Road Safety Act 1986** has ceased when any of the following occurs—

- (a) payment in full of the amount outstanding under the infringement warrant or enforcement order;
- (b) the person whose driver licence has been suspended in accordance with this Act becomes subject to a payment order;

- (c) an attachment of earnings order or an attachment of debts order is made in relation to the person;
- (d) an application for revocation of the enforcement order is granted by an infringements registrar or the Court;
- (e) an application against a refusal to revoke an enforcement order is granted;
- (f) seizure of property under this Act sufficient to satisfy the amount outstanding under the infringement warrant or enforcement order;
- (g) the person is arrested under this Act;
- (h) the infringement warrant issued against the person has been recalled and cancelled by an infringements registrar;
- (i) the infringement warrant issued against the person has expired;
- (j) the sheriff, in his or her discretion, considers that the suspension of the driver licence is no longer an appropriate enforcement mechanism in any particular case.

112 Sheriff may direct VicRoads to suspend vehicle registration

- (1) The sheriff may direct VicRoads to suspend the registration of a motor vehicle or trailer under the **Road Safety Act 1986** if the person who is the registered operator of a vehicle is a person in default, until the sheriff notifies VicRoads that the suspension has ceased in accordance with section 113.

Note

See section 9AA of the **Road Safety Act 1986**.

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- (2) At least 7 days before making a direction under subsection (1), the sheriff must cause to be served on the person who is the registered operator of a vehicle a notice of intention to direct VicRoads to suspend the registration unless the person, before the end of the period specified in the notice of intention—
- (a) pays the amount outstanding under the infringement warrant; or
 - (b) in the case of a natural person (other than a director to whom a declaration under section 91 applies), has obtained a payment order; or
 - (c) has been granted revocation of the enforcement order.

S. 112(2)(b)
amended by
No. 32/2006
s. 36(3)(a).

S. 112(2)(c)
amended by
No. 32/2006
s. 36(3)(b).

Note

See Part 13 for service requirements.

S. 112(3)
substituted by
No. 32/2006
s. 36(4).

- (3) Despite subsection (2)(b) or (c), no direction under subsection (1) may be made if the person on whom a notice of intention to make a direction was served under subsection (2) has made an application for a payment order under section 76 or an application under section 65 for the revocation of an enforcement order (as the case requires) which has not been determined, until the application is determined.

S. 112(4)
inserted by
No. 32/2006
s. 36(4).

- (4) The sheriff may serve a notice of intention under subsection (2) whether or not the person who is the registered operator of a vehicle in respect of which the registration is to be suspended is a person in default at the time of the service of that notice of intention.

- (5) This section applies whether the person who is the registered operator of a vehicle is a natural person or a body corporate.

S. 112(5)
inserted by
No. 32/2006
s. 36(4).

113 When does suspension of registration cease?

The sheriff must notify VicRoads that the suspension of the registration of a motor vehicle or trailer has ceased when any of the following occurs—

- (a) payment in full of the amount outstanding under the infringement warrant or enforcement order;
- (b) the person whose vehicle registration has been suspended in accordance with this Act becomes subject to a payment order;
- (c) in the case of a natural person, an attachment of earnings order or an attachment of debts order is made in relation to the person;
- (d) an application for revocation of the enforcement order is granted by an infringements registrar or the Court;
- (e) an application against a refusal to revoke an enforcement order is granted;
- (f) seizure of property under this Act sufficient to satisfy the amount outstanding;
- (g) in the case of a natural person, including a director to whom a declaration under section 91 applies, the person is arrested under this Act;
- (h) the infringement warrant issued against the person has been recalled and cancelled by an infringements registrar;
- (i) the infringement warrant issued against the person has expired;

- (j) the sheriff, in his or her discretion, considers that the suspension of the registration of the motor vehicle or trailer is no longer an appropriate enforcement mechanism in any particular case.

114 Direction not to renew driver licence or motor vehicle registration

S. 114(1)
amended by
No. 32/2006
s. 37(1).

- (1) The sheriff may direct VicRoads not to renew the driver licence of a person against whom an infringement warrant has been issued, whether or not the person has been served with a seven-day notice until the sheriff notifies VicRoads that the non-renewal direction has ceased in accordance with section 115.

Note

See section 19A of the **Road Safety Act 1986**.

S. 114(2)
amended by
No. 32/2006
s. 37(1).

- (2) The sheriff may direct VicRoads not to renew the registration of a motor vehicle or trailer of a person who is the registered operator of that vehicle or trailer against whom an infringement warrant has been issued, whether or not the person has been served with a seven-day notice, until the sheriff notifies VicRoads that the non-renewal direction has ceased in accordance with section 115.

Note

See section 9AC of the **Road Safety Act 1986**.

- (3) Subsection (2) applies whether the person who is the registered operator of a vehicle is a natural person or a body corporate.

S. 114(4)
inserted by
No. 32/2006
s. 37(2).

- (4) If the sheriff makes a direction to VicRoads under subsection (2)—
- (a) a direction not to transfer to any other person the registration of a motor vehicle or trailer under section 116 is deemed to also apply in

- respect of the motor vehicle or trailer of the person who is the registered operator of that vehicle or trailer and in respect of whom the direction under subsection (2) is made; and
- (b) section 116 (other than subsection (3)(a)) applies with such modification as is necessary in respect of the direction under subsection (2) insofar as that direction includes the deemed direction referred to in paragraph (a); and
 - (c) on the non-renewal direction pursuant to a direction under subsection (2) ceasing in accordance with section 115, the deemed direction referred to in paragraph (a) is deemed to have ceased in accordance with section 117 without the sheriff having to make a separate notification in accordance with that section.

115 Renewal of licence or registration

The sheriff must notify VicRoads that the direction not to renew a driver licence or registration of a motor vehicle or trailer (as the case requires) has ceased when any of the following occurs—

- (a) payment in full of the amount outstanding under the infringement warrant or enforcement order;
- (b) the person whose licence or registration renewal has been directed to not be renewed in accordance with this Act becomes subject to a payment order;
- (c) in the case of a natural person, an attachment of earnings order or attachment of debts order is made in relation to the person;

- (d) an application for revocation of the enforcement order is granted by an infringements registrar or the Court;
- (e) an application against a refusal to revoke an enforcement order is granted;
- (f) seizure of property under this Act sufficient to satisfy the amount outstanding;
- (g) in the case of a natural person, including a director to whom a declaration under section 91 applies, the person is arrested under this Act;
- (h) the infringement warrant issued against the person has been recalled and cancelled by an infringements registrar;
- (i) the infringement warrant issued against the person has expired;
- (j) the sheriff, in his or her discretion, considers that the direction not to renew the driver licence or the registration of the motor vehicle or trailer (as the case requires) is no longer an appropriate enforcement mechanism in any particular case.

116 Direction not to transfer registration

- (1) If the registered operator of a motor vehicle or trailer is a person in default, the sheriff may direct VicRoads not to transfer to any other person the registration of that motor vehicle or trailer until the sheriff notifies VicRoads that the direction not to transfer has ceased in accordance with section 117 or, in the case of a deemed direction under section 114(4), has ceased in accordance with section 114(4)(c).

Note

See section 9AE of the **Road Safety Act 1986**.

S. 116(1)
amended by
No. 32/2006
s. 38(1).

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- (2) Subsection (1) applies whether or not an actual application for transfer of registration has been made.
- (3) On making a direction under subsection (1), the sheriff must—
- (a) cause to be served on the registered operator of a motor vehicle or trailer who is a person in default a notice of the making of a direction to VicRoads not to transfer to any other person the registration of the motor vehicle or trailer unless the person—
 - (i) pays the amount outstanding under the infringement warrant; or
 - (ii) in the case of a natural person (other than a director to whom a declaration under section 91 applies), has obtained a payment order; or
 - (iii) has been granted revocation of the enforcement order; and
 - (b) cause to be registered in the register kept under Part 3 of the **Chattel Securities Act 1987** an entry of a security interest arising because of the making of a direction under this section.
- (4) Despite subsection (3)(a), no direction under subsection (1) may be made if the person on whom a notice of the direction was served under subsection (3)(a) has made an application for a payment order under section 76 or an application under section 65 for the revocation of an enforcement order (as the case requires) which has not been determined, until the application is determined.
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s. 117

S. 116(4)
re-numbered
as s. 116(5) by
No. 32/2006
s. 38(4).

- (5) This section applies whether the person who is the registered operator of a vehicle is a natural person or a body corporate.

117 When can transfer of registration occur?

The sheriff must notify VicRoads that the direction not to transfer under section 116 has ceased when any of the following occurs—

- (a) payment in full of the amount outstanding under the infringement warrant or enforcement order;
- (b) in the case of a natural person, the person in default in respect of whom the direction not to transfer registration of a motor vehicle or trailer applies becomes subject to a payment order;
- (c) in the case of a natural person, an attachment of earnings order or attachment of debts order is made in relation to the person;
- (d) an application for revocation of the enforcement order is granted by an infringements registrar or the Court;
- (e) an application against a refusal to revoke an enforcement order is granted;
- (f) seizure of property under this Act sufficient to satisfy the amount outstanding;
- (g) in the case of a natural person, including a director to whom a declaration under section 91 applies, the person is arrested under this Act;
- (h) the infringement warrant issued against the person has been recalled and cancelled by an infringements registrar;

- (i) the infringement warrant issued against the person has expired;
- (j) the sheriff, in his or her discretion, considers that the direction not to transfer the registration of the motor vehicle or trailer is no longer an appropriate enforcement mechanism in any particular case.

118 Cessation of suspension under this Act does not affect any other suspension

- (1) The cessation of any suspension or direction in relation to a driver licence or registration of a motor vehicle or trailer in accordance with this Act does not affect the suspension of that licence or registration (as the case requires) under any other Act or law.
- (2) A period of suspension or a direction not to renew a driver licence or registration of a motor vehicle or trailer may be concurrent with any other period of suspension or non-renewal under the **Road Safety Act 1986**.

119 Avoidance of certain provisions in contracts of insurance

- (1) Any covenant, term, condition, or other provision of a contract or other agreement is void to the extent that it purports to exclude or limit the liability of an insurer under a contract of insurance in the event of the suspension of a driver licence or a vehicle registration or the failure to transfer a vehicle registration pursuant to a direction of the sheriff given to VicRoads under this Act.
- (2) Subsection (1) applies to a contract of insurance whether entered into before or after the commencement of this Part.

PART 9—ORAL EXAMINATION

120 Summons for oral examination

- (1) An infringements registrar may issue a summons for a person to attend before the infringements registrar for oral examination if the infringements registrar has not been provided with sufficient information regarding the financial circumstances of the person to make—
- (a) a payment order; or
 - (b) an attachment of earnings order; or
 - (c) an attachment of debts order.

Note

See Part 13 for service requirements.

- (2) A summons under subsection (1) must—
- (a) be in writing; and
 - (b) state the time, date and place of the oral examination; and
 - (c) contain a statement that a warrant for arrest may be issued against the person under the **Magistrates' Court Act 1989** for failure to comply; and
 - (d) require the person to provide to the infringements registrar, on or before the day of the oral examination, a written statement containing prescribed details setting out the financial circumstances of the person; and
 - (e) contain any other prescribed details.

S. 120(2)(c)
amended by
No. 32/2006
s. 39(2).

121 What happens if person does not attend oral examination?

- (1) If a person fails to attend before the infringements registrar as required by a summons under section 120 or otherwise fails to comply with the summons, an infringements registrar may issue a warrant to arrest the person in accordance with the **Magistrates' Court Act 1989**.
 - (2) A warrant under subsection (1) must—
 - (a) be addressed to the sheriff or a police member; and
 - (b) specify a time and place for the oral examination.
 - (3) If the sheriff or a police member (as the case requires) arrests a person pursuant to a warrant referred to in this section, the sheriff or police member may release the person if the person undertakes to attend for oral examination at the time and place specified in the warrant.
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**PART 10—ATTACHMENT OF EARNINGS ORDERS AND
ATTACHMENT OF DEBTS ORDERS**

Division 1—Application of Part

122 Application of Part

This Part applies where there is an outstanding infringement warrant against a person for not less than the prescribed amount.

Division 2—Attachment of earnings order

123 When can an attachment of earnings order be made?

- (1) Subject to this section, an infringements registrar may make an attachment of earnings order in respect of a person if—
 - (a) an infringement warrant has been issued against the person; and
 - (b) a seven-day notice has been served on the person; and
 - (c) a period of 7 days after service of the seven-day notice has expired without the person—
 - (i) paying the amount outstanding under the infringement warrant; or
 - (ii) applying for a payment order for the payment of the amount outstanding under the infringement warrant; or
 - (iii) applying for revocation of the enforcement order.

S. 123(1)(c)
amended by
No. 32/2006
s. 39(3).

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- (2) An infringements registrar must not make an attachment of earnings order—
- (a) if the person referred to in subsection (1) has made an application in accordance with subsection (1)(c)(ii) or (iii) which has not been determined, until the application is determined; or
 - (b) if the infringements registrar has not been provided with sufficient information regarding the financial circumstances of the person.
- (3) An attachment of earnings order may be made—
- (a) on an infringements registrar's own motion; or
 - (b) on the application of—
 - (i) the sheriff; or
 - (ii) an enforcement agency; or
 - (iii) the person against whom an infringement warrant has been issued.

124 Service of an attachment of earnings order

An attachment of earnings order must be served—

- (a) on the person in respect of whom the order is made; and
- (b) on the person to whom the order is directed.

125 Infringements registrar may investigate person's employment details

An infringements registrar, on his or her own motion and in accordance with the regulations (if any), may seek information from the employer of a person in respect of whom an attachment of earnings order is to be made regarding the person's employment and earnings details.

126 Variation, discharge or suspension of attachment of earnings order

An attachment of earnings order may be varied, discharged or suspended by an infringements registrar in accordance with the regulations (if any).

127 Compliance with an attachment of earnings order

- (1) A person to whom an attachment of earnings order is directed must not fail to comply with the order.

Penalty: 60 penalty units or 6 months imprisonment or both.

- (2) It is a defence to a charge under subsection (1) for the person charged to prove that the person took all reasonable steps to comply with the order.
- (3) Nothing in subsection (1) affects the powers of the Court or the Supreme Court in relation to contempt of court.

128 Employer obligations in respect of an attachment of earnings order

- (1) A person must not dismiss an employee or injure an employee in the employee's employment or alter an employee's position to the prejudice of the employee because—

- (a) an attachment of earnings order has been made in respect of the employee; or
- (b) the employee is required to make payments under an attachment of earnings order.

Penalty: 5 penalty units.

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- (2) The Court may order a person convicted of an offence under subsection (1)—
- (a) to reimburse the employee any lost wages; and
 - (b) to cause the employee to be reinstated in the employee's former position or in a similar position.
- (3) An amount ordered to be reimbursed under subsection (2) may be recovered from the convicted person in the same manner as the penalty to which that person is liable under subsection (1) and may be included in the same warrant.
- (4) An attachment of earnings order may apply to earnings falling to be paid—
- (a) by the Crown; or
 - (b) by a statutory authority representing the Crown; or
 - (c) out of the Consolidated Fund.

Division 3—Attachment of debts order

129 When can an attachment of debts order be made?

- (1) Subject to subsection (2), an infringements registrar may make an attachment of debts order in respect of a person if—
- (a) an infringement warrant has been issued against the person; and
 - (b) a seven-day notice has been served on the person; and

s. 129

S. 129(1)(c)
amended by
No. 32/2006
s. 39(3).

-
- (c) a period of 7 days after service of the seven-day notice has expired without the person—
- (i) paying the amount outstanding under the infringement warrant; or
 - (ii) applying for a payment order for the payment of the amount outstanding under the infringement warrant; or
 - (iii) applying for revocation of the enforcement order.
- (2) An infringements registrar must not make an attachment of debts order—
- (a) if the person referred to in subsection (1) has made an application in accordance with subsection (1)(c)(ii) or (iii) which has not been determined, until the application is determined; or
 - (b) unless a debt is due or accruing to the person from the garnishee; and
 - (c) unless the garnishee is within Victoria.
- (3) An attachment of debts order may be made—
- (a) on an infringements registrar's own motion; or
 - (b) on the application of—
 - (i) the sheriff; or
 - (ii) an enforcement agency; or
 - (iii) the person against whom an infringement warrant has been issued.

130 Service and effect of attachment of debts order

- (1) An attachment of debts order must be served on the garnishee within 7 days of the making of the order.
- (2) An attachment of debts order binds the debts to which it applies on service of the order.

131 Dispute of liability by garnishee

If the garnishee or any other person disputes liability to pay the debt attached, the garnishee may, in accordance with the regulations (if any), apply to the infringements registrar within 14 days of service of the order for attachment of debts for a determination of liability.

132 Variation, discharge or suspension of attachment of debts order

An attachment of debts order may be varied, discharged or suspended by an infringements registrar in accordance with the regulations (if any).

133 Compliance with an attachment of debts order

- (1) A person to whom an attachment of debts order is directed must not fail to comply with the order.
Penalty: 60 penalty units or 6 months imprisonment or both.
 - (2) It is a defence to a charge under subsection (1) for the person charged to prove that the person took all reasonable steps to comply with the order.
 - (3) Nothing in subsection (1) affects the powers of the Court or the Supreme Court in relation to contempt of court.
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**PART 11—CHARGES OVER AND SALE OF REAL
PROPERTY**

134 Application of Part

This Part applies if—

- (a) a person owes not less than a prescribed amount under an outstanding infringement warrant under this Act; and
- (b) enforcement action pursuant to an infringement warrant or under Part 8—
 - (i) has been unsuccessful or unsatisfactory; or
 - (ii) is not possible; or
 - (iii) is not appropriate.

135 Application for order charging land

- (1) If the sheriff believes that seizure of personal property of a person is not a reasonably practicable means of satisfying any outstanding infringement warrant against a person, the sheriff may apply to the Court for an order that land in which that person holds an interest be made subject to a charge under this Part.
- (2) An application under this section may be made whether the person is the sole owner of the land or owns that land as a co-owner with any other person.

136 Court may make order charging land

- (1) The Court may make an order that land in which a person holds an interest be subject to a charge under this Part if satisfied—
 - (a) that there is an outstanding infringement warrant against the person for not less than the amount prescribed for the purposes of this Part; and
 - (b) that seizure of personal property of the person is not a reasonably practicable means of satisfying the outstanding infringement warrant against a person; and
 - (c) that enforcement action pursuant to an infringement warrant or under Part 8—
 - (i) has been unsuccessful or unsatisfactory; or
 - (ii) is not possible; or
 - (iii) is not appropriate.
- (2) An order under subsection (1) is a charge on the land to the extent of interest that the person holds in that land.

137 Land becomes subject to charge

- (1) As soon as practicable after an order is made under section 136, the sheriff must lodge with the Registrar of Titles—
 - (a) an application—
 - (i) describing the land to be charged; and
 - (ii) stating the amount of the charge; and
 - (b) a copy of the order of the Court under section 136.

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- (2) On an application being lodged under subsection (1), subject to the **Transfer of Land Act 1958**, the Registrar of Titles must record the charge in the Register kept under that Act and on that recording, the amount outstanding under the infringement warrant is a charge on the land held by the person in respect of whom the order applies until—
- (a) that amount is recovered; or
 - (b) the person in respect of whom the order under section 136 was made dies; or
 - (c) the charge on the land expires or is otherwise removed.
- (3) A charge may be recorded under this section in the Register kept under the **Transfer of Land Act 1958** without submission to the Registrar of Titles of any relevant certificate of title.

138 Application for removal of charge over land

The sheriff may apply to the Court for an order that a charge under this Part over land in which an interest is held by a person in respect of whom an order under section 136 applies be removed if—

- (a) the amount outstanding is paid; or
 - (b) the person in respect of whom the order under section 136 was made dies; or
 - (c) the charge on the land expires or otherwise should be removed; or
 - (d) the sheriff believes that in all the circumstances it is no longer appropriate for the charge to remain on the land.
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139 Court may order removal of charge

The Court may make an order that a charge under this Part over land be removed if satisfied that—

- (a) the amount outstanding has been paid; or
- (b) the person in respect of whom the order under section 136 was made has died; or
- (c) the charge on the land has expired or otherwise should be removed; or
- (d) in all the circumstances it is no longer appropriate for the charge to remain on the land.

140 Removal order to be lodged with Registrar of Titles

- (1) As soon as practicable after an order is made under section 139, the sheriff must lodge with the Registrar of Titles—
 - (a) an application describing the land in respect of which the charge is to be removed; and
 - (b) a copy of the order of the Court under section 139.
- (2) On an application being lodged under subsection (1), subject to the **Transfer of Land Act 1958**, the Registrar of Titles must record in the Register kept under that Act the removal of the charge and on that recording, the charge on the land is removed.
- (3) The removal of a charge may be recorded under this section in the Register kept under the **Transfer of Land Act 1958** without submission to the Registrar of Titles of any relevant certificate of title.

141 Powers of Registrar of Titles

- (1) For the purpose of enforcing a charge under this Part or registering an instrument connected with an enforcement of a charge under this Part, the Registrar of Titles may cancel the folio of the Register kept under the **Transfer of Land Act 1958** for the land charged and create a new folio.
- (2) The Registrar of Titles may make any other recording in the Register kept under the **Transfer of Land Act 1958** that is necessary because of the operation of this Part.

142 Owner to be notified of charge

- (1) The sheriff must notify a person whose interest in land is subject to a charge under this Part and any other person recorded in the Register kept under the **Transfer of Land Act 1958** as having an interest in the land in writing—
 - (a) that the land is charged under section 136 with the amount stated in the notice; or
 - (b) of the removal of a charge over land by order under section 139.
- (2) The sheriff must include a copy of the order made under section 136 or 139 (as the case requires) in a notice provided under subsection (1).

143 Power of sale

- (1) The sheriff may apply to the Court for an order permitting the sale of the land under this Part if—
 - (a) a charge over the land has been recorded under this Part for at least 3 months; and
 - (b) an amount is owing under the charge; and
 - (c) the sheriff has attempted, but has failed to recover the amount owing under the charge.

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- (2) The Court may make an order permitting the sheriff to sell the land under this Part if satisfied as to the matters referred to in subsection (1)(a) to (c).

144 Notice of intention to sell

- (1) If an order to sell is made under section 143, the sheriff must cause to be served a notice of intention to sell the land on any person recorded in the Register kept under the **Transfer of Land Act 1958** as having an interest in the land.
- (2) A notice under subsection (1) must—
- (a) be in writing and contain the prescribed particulars; and
 - (b) be served in the prescribed manner not less than one month before the intended sale; and
 - (c) state—
 - (i) the amount owing at the date of the notice; and
 - (ii) that the sale will not proceed if payment is made within one month of the service of the notice; and
 - (iii) the address at which payment may be made.

S. 144(1)
amended by
No. 32/2006
s. 39(4).

145 Sale to be treated as sale by mortgagee

Section 77 of the **Transfer of Land Act 1958** applies to a sale pursuant to an order under section 143 as if—

- (a) the charge were a registered mortgage; and
- (b) the sheriff were a mortgagee under that mortgage; and
- (c) the requirement relating to the giving of notice were deleted.

146 Application of proceeds of sale

Subject to section 145, if land is sold pursuant to an order under section 143 the proceeds of sale are to be applied in the following order of priority—

- (a) to pay the costs of the sale;
 - (b) to pay any costs incurred by the sheriff in applying for the charge and obtaining the recording of the charge in the Register kept under the **Transfer of Land Act 1958**;
 - (c) to pay the amount outstanding under the infringement warrant;
 - (d) to pay any amount remaining to the person whose interest in land was subject to the charge under this Part and, if appropriate, to any other person recorded in the Register kept under the **Transfer of Land Act 1958** as having an interest in the land.
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**PART 12—INFRINGEMENT OFFENDERS, COMMUNITY
WORK PERMITS AND IMPRISONMENT**

Division 1—Community work permits

146A Definition

In this Part, *sheriff* includes a person to whom the sheriff has given a direction under section 84(5).

S. 146A
inserted by
No. 32/2006
s. 40.

147 When a community work permit may be issued

- (1) Subject to this Part, this Division applies if an infringement offender is eligible to perform unpaid community work under a community work permit and consents to do so.
- (2) A community work permit must not be issued under this Division to an infringement offender in respect of one or more infringement warrants if the total amount of the outstanding fines under that infringement warrant or those infringement warrants exceeds an amount equivalent to the value of 100 penalty units.
- (3) A community work permit must not be issued under this Division to an infringement offender unless the sheriff is satisfied that the infringement offender—
 - (a) has the capacity to perform community work; and
 - (b) is reasonably unlikely to breach the conditions of a community work permit.

S. 147(1)
amended by
No. 32/2006
s. 41(1).

S. 147(2)
substituted by
No. 32/2006
s. 41(2).

S. 147(3)
inserted by
No. 32/2006
s. 41(2).

s. 148

S. 148
amended by
No. 32/2006
s. 41(3)(c)(4)
(ILA s. 39B(1)).

S. 148(a)
amended by
No. 32/2006
s. 41(3)(a).

S. 148(b)
amended by
No. 32/2006
s. 41(3)(b).

S. 148(2)
inserted by
No. 32/2006
s. 41(4).

148 Community work permit

(1) Subject to section 147, if—

(a) the sheriff arrests a person under one or more infringement warrants; and

(b) the infringement offender consents to perform unpaid community work in respect of outstanding fines under one or more infringement warrants—

the sheriff, subject to and in accordance with the infringement warrant or warrants and the regulations, may release the infringement offender on a community work permit issued by the sheriff.

(2) A community work permit must specify—

(a) the amount of the outstanding fines in penalty units to which the community work permit applies; and

(b) the number of hours a person is required to work under the community work permit in respect of each infringement warrant to which the community work permit applies.

149 Core conditions of community work permits

The following conditions apply to a community work permit—

(a) that the infringement offender does not commit, whether in or outside Victoria, an offence punishable on conviction by imprisonment;

(b) that the infringement offender reports to a specified community corrections centre within two clear working days after the issue of the community work permit;

- (c) that the infringement offender reports to, and receives visits from, a community corrections officer;
- (d) that the infringement offender notifies an officer at the specified community centre of any change of address or employment within two working days after the change;
- (e) that the infringement offender does not leave Victoria except with the permission of a community corrections officer at the specified community corrections centre granted either generally or in relation to the particular case;
- (f) that the infringement offender obeys all lawful instructions and directions of community corrections officers.

150 Program condition

The program condition of a community work permit is that the infringement offender performs unpaid community work as directed by the Secretary for the number of hours specified in the community work permit in accordance with section 152.

S. 150
amended by
No. 32/2006
s. 41(5).

151 Cumulative periods of work under community work permits and fine default CBOs

- (1) If the sheriff issues to an infringement offender two or more community work permits in respect of two or more infringement warrants, the periods of unpaid community work to be performed under those permits are cumulative.

S. 151
(Heading)
substituted by
No. 32/2006
s. 42(1).
S. 151
amended by
No. 32/2006
s. 42(2) (ILA
s. 39B(1)).

s. 152

S. 151(2)
inserted by
No. 32/2006
s. 42(2).

- (2) If a fine default CBO is in force in respect of an infringement offender, the hours of unpaid community work that the infringement offender is required to perform under a community work permit in force at the same time as the fine default CBO must be performed cumulatively with the hours performed under the fine default CBO.

Note

Work under fine default CBOs is to be performed cumulatively with work under other fine default CBOs but concurrently with work performed under any other community based order under the **Sentencing Act 1991**. See section 42(3) of the **Sentencing Act 1991**.

S. 151(3)
inserted by
No. 32/2006
s. 42(2).

- (3) In this section *fine default CBO* means a community based order under Division 4 of Part 3 of the **Sentencing Act 1991**.

152 Community work

S. 152(1)
amended by
No. 32/2006
s. 43(1).

- (1) Subject to subsection (4), the number of hours for which an infringement offender may be required to perform unpaid community work under a community work permit is one hour for each 0·2 penalty unit or part of 0·2 penalty unit of the outstanding fines expressed as an amount equivalent to penalty units in relation to the infringement warrant or warrants to which the permit applies with a minimum of 8 hours and a maximum of 500 hours.

S. 152(2)
amended by
No. 32/2006
s. 43(2).

- (2) Subject to subsection (3), the total number of hours to be worked in any period of 7 days must not exceed 20.
- (3) An infringement offender may work up to 40 hours in a period of 7 days if he or she requests to do so and signs a written consent to working the extra number of hours.

- (4) The number of hours of unpaid community work specified in a community work permit must be performed over a period not exceeding the period specified in column 2 of the table below opposite the corresponding number of hours specified in column 1 of that table.

S. 152(4)
inserted by
No. 32/2006
s. 43(3).

TABLE

<i>Column 1</i>	<i>Column 2</i>
<i>Number of Hours</i>	<i>Period</i>
376 to 500	24 months
251 to 375	18 months
126 to 250	12 months
51 to 125	6 months
up to 50	3 months

153 Secretary may direct infringement offender to report at another place

- (1) If, because an infringement offender has changed his or her place of residence or for any other reason, it is not convenient that the infringement offender report at a place or to a person specified in a community work permit, the Secretary may direct the infringement offender to report at another place or to another person.
- (2) An infringement offender must report as directed under subsection (1) as if that place or person had been specified in the community work permit.

154 Suspension of community work permit

If—

- (a) an infringement offender is ill; or
(b) there are other exceptional circumstances—

the Secretary may suspend for a period the operation of a community work permit or any condition of a community work permit.

155 Variation or cancellation of community work permit

- (1) An application for variation or cancellation of a community work permit may be made to the Court at any time while the community work permit is in force by—
 - (a) the infringement offender; or
 - (b) a prescribed person or a member of a prescribed class of persons.
- (2) If—
 - (a) an infringement offender makes an application under subsection (1), he or she must give notice of the application to a prescribed person or a member of a prescribed class of persons;
 - (b) a prescribed person or a member of a prescribed class of persons makes an application under subsection (1), he or she must give notice of the application to the infringement offender.
- (3) If, on an application under subsection (1), the Court is satisfied—
 - (a) that the circumstances of the infringement offender have materially altered since the community work permit was issued and as a result the infringement offender will not be able to comply with a condition of the permit; or
 - (b) that the circumstances of the infringement offender were wrongly stated or were not accurately presented to the sheriff before the community work permit was issued; or

- (c) that the infringement offender is no longer willing to comply with the community work permit—

the Court may vary the permit or cancel it.

156 Breach of community work permit

S. 156
substituted by
No. 32/2006
s. 44.

- (1) If an infringement offender fails without reasonable excuse to comply with a community work permit or any condition of a community work permit issued to him or her or with any requirement of the regulations made for the purposes of this Part, the infringement offender is guilty of an offence for which he or she may be proceeded against on a charge filed in the Court by a prescribed person or a member of a prescribed class of persons.
- (2) A proceeding for an offence under subsection (1) may be commenced at any time up until 3 years after the date on which the offence is alleged to have been committed.
- (3) Despite anything to the contrary in the **Magistrates' Court Act 1989**—
- (a) on the filing of a charge referred to in subsection (1), an application under section 28(1) of that Act for the issue of a summons to answer to the charge or a warrant to arrest may be made to the registrar at any venue of the Court;
- (b) a summons to answer to the charge issued on an application referred to in paragraph (a) must direct the infringement offender to attend at the Court to answer the charge;

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- (c) a warrant to arrest issued on an application referred to in paragraph (a) authorises the person to whom it is directed to bring the infringement offender when arrested before the Court to be dealt with under Division 2 of this Part.
- (4) If, on the hearing of a charge under subsection (1) the Court finds the infringement offender guilty of the offence, it may impose a fine not exceeding 10 penalty units.
- (5) The Court, in addition to imposing a fine under subsection (4), may—
- (a) vary the community work permit; or
 - (b) confirm the community work permit; or
 - (c) cancel the community work permit (if it is still in force) and, whether or not it is in force, subject to subsection (6), deal with the infringement offender in accordance with section 160.
- (6) In determining how to deal with an infringement offender following the cancellation by it of a community work permit, the Court must take into account the extent to which the infringement offender had complied with the community work permit before its cancellation.
- (7) A fine imposed under this section—
- (a) does not affect the continuance of the community work permit, if it is still in force; and
 - (b) must be taken for all purposes to be a fine payable on a conviction for an offence.
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**157 Part payment of outstanding fines to reduce
community service**

S. 157
amended by
No. 32/2006
s. 45.

At any time while a community work permit is in force, if part of the outstanding fines are paid, in accordance with this Act, by or on behalf of the infringement offender, the number of hours of work which the infringement offender is required to perform must be reduced by the number of hours bearing as nearly as possible the same proportion to the total number of hours specified in the community work permit as the amount paid bears to the penalty units to which the community work permit applies.

157A Hours worked reduces outstanding fines

S. 157A
inserted by
No. 32/2006
s. 46.

If an infringement offender has completed a number of hours of work under a community work permit before it is breached, the amount of the outstanding fines in penalty units to which the community work permit applies must be reduced by a proportion that is as nearly as possible the same proportion as the number of hours worked bears to the total number of hours required to be worked under the community work permit.

Division 2—Imprisonment

158 Application of this Division

S. 158
substituted by
No. 32/2006
s. 47.

This Division applies if an infringement offender—

- (a) does not consent to a community work permit; or
- (b) is not eligible, in accordance with section 147(3), to perform unpaid community work under a community work permit; or

s. 159

- (c) is not issued with a community work permit within 24 hours after being arrested; or
- (d) is issued with a community work permit and—
 - (i) fails to comply with the permit or a condition of the permit or any requirement of the regulations made for the purposes of this Part; or
 - (ii) the permit is cancelled by the Court under section 155; or
- (e) is delivered to the officer in charge of a prison or police gaol.

159 Infringement offender to be brought before the Court

S. 159(1)
inserted by
No. 32/2006
s. 48(1)(3)(a).

- (1) Subject to section 161A, an infringement offender must be brought before the Court within 24 hours after being arrested.

S. 159(2)
amended by
No. 32/2006
s. 48(3)(a).

- (2) If it is not practicable to bring an infringement offender before the Court within 24 hours after being arrested—
 - (a) a date for the infringement offender to appear before the Court must be fixed; and

S. 159(2)(b)
amended by
No. 32/2006
s. 48(2).

- (b) the infringement offender must be discharged from custody on bail under section 10 of the **Bail Act 1977**.

S. 159(3)
repealed by
No. 32/2006
s. 48(3)(b).

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S. 159(4)
re-numbered
as s. 159(3) by
No. 32/2006
s. 48(3)(c).

- (3) An infringement offender arrested under an infringement warrant may be discharged from custody on bail under section 10 of the **Bail Act 1977**.

- (4) This section ceases to apply if there are no outstanding fines under the infringement warrant.

S. 159(5)
re-numbered
as s. 159(4) by
No. 32/2006
s. 48(3)(d).

160 Powers of the Court

- (1) The Court may order that the infringement offender be imprisoned for a period of one day in respect of each penalty unit, or part of a penalty unit, to which the amount of the outstanding fines under the infringement warrant or warrants is an equivalent amount.

S. 160(1)
amended by
No. 32/2006
s. 48(4)(a).

- (2) If the Court is satisfied—

- (a) that an infringement offender has a mental or intellectual impairment, disorder, disease or illness; or
- (b) without limiting paragraph (a), that special circumstances apply to an infringement offender—

the Court may—

- (c) discharge the outstanding fines in full; or
 - (d) discharge up to two thirds of the outstanding fines; or
 - (e) adjourn the further hearing of the matter for a period of up to 6 months.
- (3) If the Court is satisfied that, having regard to the infringement offender's situation, imprisonment would be excessive, disproportionate and unduly harsh the Court may—

- (a) order the infringement offender to be imprisoned for a period that is up to two thirds less than one day in respect of each penalty unit, or part of a penalty unit, of the penalty units to which the amount of the outstanding fines is an equivalent amount; or

S. 160(3)(a)
amended by
No. 32/2006
s. 48(4)(b).

s. 161

S. 160(3)(d)
amended by
No. 32/2006
s. 48(4)(c).

- (b) discharge the outstanding fines in full; or
- (c) discharge up to two thirds of the outstanding fines; or
- (d) adjourn the further hearing of the matter for a period of up to 6 months; or

S. 160(3)(e)
inserted by
No. 32/2006
s. 48(4)(d).

- (e) a community based order under Division 4 of Part 3 of the **Sentencing Act 1991**.

(4) If the Court has made an order under subsection (1) or (3)(a) for imprisonment in default of payment of outstanding fines—

S. 160(4)(b)
substituted by
No. 32/2006
s. 48(4)(e).

- (a) a warrant to imprison may be issued under section 68 of the **Magistrates' Court Act 1989**; and
- (b) the Court may make an instalment order under the **Magistrates' Court Act 1989** in respect of the payment of the outstanding fines.

161 Reduction of imprisonment by payment of part of outstanding fines

S. 161(1)
inserted by
No. 32/2006
s. 48(5)(a)(i)(ii).

(1) Despite any provision (except section 26) of the **Imprisonment of Fraudulent Debtors Act 1958** to the contrary or anything in any infringement warrant, if an infringement offender is imprisoned under a warrant to imprison issued under section 68 of the **Magistrates' Court Act 1989**—

- (a) the whole or any part of the outstanding fines may be paid by or on behalf of the infringement offender to the officer in charge of the prison or police gaol in which the infringement offender is detained; and

(b) the officer in charge must receive the payment and forward it without delay to the registrar at any venue of the Court.

S. 161(1)(b)
amended by
No. 32/2006
s. 48(5)(a)(iii).

(2) If—

(a) the whole amount of the outstanding fines; or

(b) the amount remaining to be paid—

is paid to the officer in charge of the prison or police gaol by or on behalf of the infringement offender who is imprisoned, the offender must be discharged if he or she is in custody for no other matter.

(3) If part of the outstanding fines is paid to the officer in charge of the prison or police gaol by or on behalf of the infringement offender who is imprisoned—

(a) the officer in charge must—

(i) amend the execution copy of the warrant to imprison; and

S. 161(3)(a)(i)
amended by
No. 32/2006
s. 48(5)(b).

(ii) receive the payment and forward it without delay to an infringements registrar; and

(b) at the end of the reduced term, the infringement offender who is imprisoned must be discharged if he or she is in custody for no other matter.

161A Term of imprisonment in default of payment of outstanding fines

S. 161A
inserted by
No. 32/2006
s. 49.

(1) If—

(a) one or more infringement warrants are issued against a person who is in custody; and

(b) the person consents in writing to the sheriff to serving a period of imprisonment in default of payment of the outstanding fines

under any one or more of the infringement warrants—

the Court may order that the person be imprisoned for a period of one day in respect of each penalty unit, or part of a penalty unit, of the amount of the penalty units to which the outstanding fines under the infringement warrant or warrants is an equivalent amount.

- (2) The Court may make an order under subsection (1) whether or not the person is brought before the Court.
- (3) If the Court makes an order under subsection (1) in respect of a person who is only in custody because of—
 - (a) an order under section 160; or
 - (b) being in default of—
 - (i) an instalment order within the meaning of the **Sentencing Act 1991**; or
 - (ii) the payment of a fine—

the Court must order that the term of imprisonment in the order made under subsection (1) is to be served cumulatively with the term of imprisonment for which the person is currently in custody.

- (4) Subject to subsection (3), a term of imprisonment imposed by an order under subsection (1) must be served concurrently with any uncompleted sentence or sentences of imprisonment or detention in a youth training centre imposed on the person before that order is made but if the term imposed under the order exceeds the term of the uncompleted sentence or sentences, the balance of the term must be served cumulatively on the uncompleted sentence or sentences.

PART 13—GENERAL

162 Service of documents

- (1) Subject to this Act, documents required or permitted by this Act to be given or served, may be served—
 - (a) personally; or
 - (b) by post; or
 - (c) by any prescribed manner.
- (2) A document must be served personally if it is—
 - (a) a seven-day notice; or
 - (b) a summons for oral examination; or
 - (c) an attachment of earnings order or attachment of debts order; or
 - (d) a notice under section 110 or 112.

S. 162(2)(d)
amended by
No. 32/2006
s. 50(1)(a).

- (3) If a document is served on a director to whom a declaration under section 91 applies, it must be addressed to the address lodged with the Australian Securities and Investments Commission as the registered office address of the body corporate in respect of which that person is a director.

Note

For service on corporations generally, see section 109X of the Corporations Act.

- (4) If a penalty reminder notice is served by post it must be addressed—
 - (a) to the last known place of residence or business of the person alleged to have committed the offence; or

s. 162

S. 162(4)(b)
substituted by
No. 81/2006
s. 32(3).

(b) if the infringement notice was served under section 87 of the **Road Safety Act 1986**, to the last address of the person who is the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence at the time of the offence; or

S. 162(4)(c)
substituted by
No. 81/2006
s. 32(3).

(c) if the infringement notice was issued in respect of an offence to which section 66 of the **Road Safety Act 1986** applies, to the last address of the person who is the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the motor vehicle or trailer involved in the offence at the time of the offence; or

S. 162(4)(d)
substituted by
No. 81/2006
s. 32(3).

(d) if the infringement notice was issued in respect of an offence against section 73(1) of the **Melbourne City Link Act 1995**—

(i) to the last address of the person who is the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence at the time of the offence; or

(ii) to the last address of the driver of that vehicle as shown in a statement or declaration supplied in accordance with section 72(3) of the **Melbourne City Link Act 1995**; or

S. 162(4)(e)
amended by
No. 32/2006
s. 50(1)(b).

(e) if the infringement notice was issued in respect of an offence against section 204 of the **EastLink Project Act 2004**—

(i) to the last address of the owner of the vehicle within the meaning of that Act; or

- (ii) if a statement or declaration has been supplied under section 199 or 219 of that Act, to the last address of the person alleged in that statement or declaration to have been the driver of the vehicle.
- (5) Any other document served by post under this Act may be addressed to the address for service given by the person on whom the document is to be served.
- (6) Subject to any evidence to the contrary and despite anything to the contrary in section 49 of the **Interpretation of Legislation Act 1984**, any document that is served by post in accordance with this section is deemed to be served 14 days after the date specified in the document as the date of that document.
- (7) A document served on a person less than the period required by this Act for service of that kind of document is invalidly served.

S. 162(6)
inserted by
No. 32/2006
s. 50(2).

S. 162(7)
inserted by
No. 32/2006
s. 50(2).

163 Substituted service

- (1) If for any reason it is impracticable to serve a document in the manner required by section 162, a magistrate may order that such steps be taken as specified in the order for the purposes of bringing the document to the notice of the person to be served.
- (2) If a magistrate makes an order under subsection (1), he or she may order that the document be taken to have been served on the happening of any specified event, or on the expiry of any specified time.
- (3) A magistrate may make an order under subsection (1) notwithstanding that the person to be served is out of Victoria or was out of Victoria when the proceeding commenced.

S. 163A
inserted by
No. 32/2006
s. 51.

163A Service deemed despite document being returned to sender

- (1) Subject to subsection (2) and despite anything to the contrary in section 162(6), a document, other than an infringement notice, served by post to a person at an authorised address and returned undelivered to its sender, is deemed to be served 14 days after the date specified in the document as the date of that document, despite it being returned to its sender as undelivered.
- (2) Despite anything to the contrary in section 12(2), an infringement notice in respect of a lodgeable infringement offence served by post to a person at an authorised address and returned undelivered to its sender, is deemed to be served 14 days after the date of that infringement notice, despite it being returned to its sender as undelivered.
- (3) For the purposes of this section, *authorised address* means—
 - (a) an address recorded in relation to a person in a register kept by a public statutory body (including, in relation to a director, alternate director or secretary of a company within the meaning of the Corporations Act, the Australian Securities and Investments Commission) if by law that person or another person is required to notify that public statutory body of any change in that address;
 - (b) in relation to any document in respect of a transport infringement within the meaning of the **Transport Act 1983** or a ticket infringement within the meaning of that Act, an address provided by a person to an authorised officer or police member under section 218B of that Act after that officer or that member has requested the person to state his or her name and address because the

officer or member believes on reasonable grounds that the person has committed a transport infringement or a ticket infringement, as the case requires.

- (4) This section has effect despite anything to the contrary in section 49(1) of the **Interpretation of Legislation Act 1984**.

Note

See sections 37 and 38 which deal with the situation where a person does not know that he or she has been served with an infringement notice and then subsequently becomes aware of that infringement notice.

164 Certain agencies may give information for enforcement purposes

- (1) In this section, *specified agency* means a person or body—
- (a) that holds information that may be of use in the enforcement of orders and warrants under this Act; and
 - (b) that is prescribed by regulations made for the purposes of this section to be a specified agency—

but does not include a person or body listed in section 90A(1) of the **Melbourne City Link Act 1995**.

- (2) For the purpose of the enforcement of orders and warrants under this Act, an infringements registrar, the sheriff and any contractor or sub-contractor supporting the functions of the infringements registrar or the sheriff may request information that may assist in carrying out that purpose from any person or body.

S. 164(4)
amended by
No. 32/2006
s. 39(5).

- (3) On the written request of an infringements registrar, the sheriff or any contractor or sub-contractor supporting the functions of the infringements registrar or the sheriff, a specified agency may give the person or body making the request access to any information held by the agency that may be of use in the enforcement of orders and warrants under this Act.
- (4) A person who obtains access to any information as a result of a request made under this section may use the information to enforce orders and warrants under this Act but is otherwise subject to all the requirements and restrictions concerning the handling, use and disclosure of the information that apply to the person who provided, or granted access to, the information in response to the request.

165 Police may assist sheriff

A police member, at the request of the sheriff, may assist the sheriff in the execution of the sheriff's functions or duties under this Act.

166 Police may exercise certain powers of sheriff

- (1) The sheriff, with the approval of the Chief Commissioner of Police, by instrument may authorise a police member or a class of police members to exercise in accordance with the regulations (if any) all or any of the powers, functions or duties of the sheriff under this Act.
- (2) Without limiting subsection (1), a police member authorised under subsection (1), may serve, in accordance with Part 6, a seven-day notice on a person against whom an infringement warrant has been issued.
- (3) An authority given under subsection (1) may be subject to any conditions and limitations which are stated in the authority.

167 Offence to give false information

A person must not intentionally provide false or misleading information in any written statement required by or under this Act.

Penalty: 10 penalty units.

168 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing infringement offences for the purposes of this Act; and
 - (b) prescribing forms of infringement notices, including short forms of infringement notices and the circumstances in which various forms of infringement notice may be used; and
 - (c) prescribing processes, systems, the conduct of and other matters relating to, the internal review by enforcement agencies of the issuing and enforcement of infringement notices; and
 - (d) prescribing forms, including composite forms; and
 - (e) prescribing information required under this Act; and
 - (f) prescribing evidence of identity and entitlement to possession and other matters for the purposes of Part 7; and
 - (g) prescribing persons or classes of persons for the purposes of making applications for orders under Part 10; and
 - (h) prescribing for the purposes of Part 10, the type of information that can be sought and the circumstances in which, and the persons from whom, information can be sought; and
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s. 168

- (i) prescribing the practice and procedure in relation to applications for attachment of earnings orders and attachment of debts orders under Part 10, including variation, discharge or suspension of those orders; and
- S. 168(1)(j)**
amended by
No. 32/2006
s. 52.
- (j) prescribing conditions for grants of community work permits, the release of persons on community work permits and procedures for the purposes of Part 12 including, but not limited to—
- S. 168(1)(j)(i)**
inserted by
No. 32/2006
s. 52.
- (i) the commencement of community work permits;
- S. 168(1)(j)(ii)**
inserted by
No. 32/2006
s. 52.
- (ii) the matters to be specified in community work permits;
- S. 168(1)(j)(iii)**
inserted by
No. 32/2006
s. 52.
- (iii) the supply of copies of community work permits to specified persons;
- S. 168(1)(j)(iv)**
inserted by
No. 32/2006
s. 52.
- (iv) the obligations of persons subject to community work permits;
- S. 168(1)(j)(v)**
inserted by
No. 32/2006
s. 52.
- (v) the payment of fines by or on behalf of a person required to perform unpaid community work under a community work permit; and
- (k) the fees, costs and charges payable in respect of the execution by the sheriff of any infringement warrant issued under this Act; and
- (l) the fees, costs and charges payable in respect of the exercise by an infringements registrar of any jurisdiction, power or authority vested under this Act; and
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- (m) other fees, costs and charges under this Act;
and
- (n) without limiting any power to make regulations conferred by any other paragraph, the fees, costs and charges payable in respect of—
- (i) the issue or execution of an infringement warrant; or
 - (ii) the amendment, alteration or variation of an infringement warrant; or
 - (iii) the supply of a duplicate copy of an infringement warrant; and
- (o) prescribing for the purposes of section 166, the exercise of powers, functions and duties;
and
- (p) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by subsection (1) to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum fees;
 - (c) minimum fees;
 - (d) fees that vary according to value or time;
 - (e) the manner of payment of fees;
 - (f) the time or times at which fees are to be paid.

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- (3) Regulations made under this Act may—
- (a) confer a discretionary authority on an infringements registrar or a class of infringements registrar or the sheriff; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and
 - (d) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations providing for the imposition of fees; and
 - (e) provide for the reduction, waiver or refund, in whole or in part, of the fees, costs and charges fixed by regulation under this section; and
 - (f) provide, in specified circumstances, for the reinstatement or payment, in whole or in part, of any fee, cost or charge reduced, waived or refunded by the regulations.
- (4) Without limiting subsection (3), if the regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, cost or charge pursuant to subsection (3), the reduction, waiver or refund—
- (a) may be expressed to apply either generally or specifically—
 - (i) in respect of certain matters or classes of matters;
 - (ii) in respect of certain persons or classes of persons;
 - (iii) in respect of a specified class of lodgeable infringement offence, including offences committed before or after the commencement of the
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- regulations providing for the reduction, waiver or refund, in whole or in part, of the fees, costs and charges;
- (iv) in respect of a specified class of infringement notice in respect of lodgeable infringement offences including notices issued or served before or after the commencement of the regulations providing for the reduction, waiver or refund, in whole or in part, of the fees, costs and charges;
 - (v) in respect of a specified enforcement agency or class of enforcement agency;
 - (vi) for a specified period or periods or from a specified commencement date to a specified expiry date;
 - (vii) in respect of any combination of the matters referred to in paragraphs (i) to (vi);
- (b) may be subject to specified conditions.
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PART 14—AMENDMENTS TO OTHER ACTS

Division 1—Amendments to Magistrates' Court Act 1989

169 Miscellaneous amendments

In the Magistrates' Court Act 1989—

(a) in section 3(1), in the definition of *proceeding* for "registrar under Schedule 7" **substitute** "infringements registrar";

(b) in section 3(1), **insert** the following definitions—

"Infringements Court means the venue of the Court prescribed by the rules made under section 16(1A)(m);

infringements registrar has the same meaning as it has in the **Infringements Act 2006**;

infringement warrant has the same meaning as it has in the **Infringements Act 2006**";

(c) in section 16(1A)(m), for "Schedule 7" **substitute** "the **Infringements Act 2006**";

(d) in section 58(1)(b), for "clause 8(1) of Schedule 7" **substitute** "section 80 of the **Infringements Act 2006**";

(e) in section 73, subsections (3A) and (3B) are **repealed**;

(f) in section 140(1)(b) for "registrar under Schedule 7", **substitute** "infringements registrar".

See:
Act No.
51/1989.
Reprint No. 11
as at
1 July 2005
and
amending
Act Nos
77/2004,
2/2005,
16/2005,
18/2005,
19/2005,
45/2005,
62/2005 and
69/2005.
LawToday:
www.
legislation.
vic.gov.au

170 Heading amended

In the heading to Subdivision 2 of Division 6 of Part 4 of the **Magistrates' Court Act 1989**, after "*Penalties*" insert "*under the Infringements Act 2006*".

171 Section 99 substituted

For section 99 of the **Magistrates' Court Act 1989** substitute—

S. 171
amended by
No. 32/2006
s. 53(1).

"99 Infringement offence enforcement procedure under the Infringements Act 2006

The procedure set out in the **Infringements Act 2006** may be used instead of commencing a proceeding against a person for an offence—

- (a) for which an infringement notice within the meaning of that Act could be issued or served in respect of an offence under an Act or other instrument which establishes the offence; and
- (b) which is a lodgeable infringement offence within the meaning of the **Infringements Act 2006**."

172 Certain agencies may give information

In section 99A of the **Magistrates' Court Act 1989**—

- (a) in subsection (2), **omit** "and Schedule 7";
- (b) in subsection (3)—
 - (i) for "registrar of the PERIN Court" **substitute** "infringements registrar";
 - (ii) for "PERIN Court" **substitute** "Infringements Court";

- (c) in subsection (4)—
- (i) for "registrar of the PERIN Court"
substitute "infringements registrar";
 - (ii) for "PERIN Court" **substitute**
"Infringements Court".

173 Administrative services arrangements

- (1) In section 124A of the **Magistrates' Court Act 1989** the definition of *PERIN Court* is repealed.
- (2) In section 124B(1)(a) of the **Magistrates' Court Act 1989**, for "PERIN" **substitute** "Infringements".
- (3) In section 124C(n) of the **Magistrates' Court Act 1989**, for "or the regulations" **substitute** ", the regulations, the **Infringements Act 2006** or any regulations under that Act".
- (4) In section 124I(3)(b)(i) of the **Magistrates' Court Act 1989**, for "PERIN" **substitute** "Infringements".

174 Contempt of Court

After section 134(5)(a) of the **Magistrates' Court Act 1989** insert—

- "(ab) having been summoned under Part 9 of the **Infringements Act 2006** to attend at the Court to be orally examined by an infringements registrar and having been given any conduct money required to be given or tendered, the person refuses or neglects without sufficient cause to attend; or".

175 New clause 7 to Schedule 2 inserted

After clause 6 of Schedule 2 to the **Magistrates' Court Act 1989** insert—

**"7 Non-appearance of defendant—
Infringements Act 2006**

Without limiting any other power of the Court, in the case of any lodgeable infringement offence within the meaning of the **Infringements Act 2006** in respect of which an election to have the matter of the offence heard and determined in Court under Part 2 or Part 4 of that Act has been made or an order under section 72(1) of that Act has been made, if the defendant fails to appear and the Court proceeds to hear and determine the charge in the defendant's absence under section 41(2) or (3), the Court may hear and determine the charge based on the prescribed information lodged under section 40(1)(a) or 71(1)(a) of that Act (as the case requires).".

176 Repeal of certain provisions

- (1) Subdivision 7 of Division 3 of Part 4 of the **Magistrates' Court Act 1989** is **repealed**.
- (2) Schedule 7 to the **Magistrates' Court Act 1989** is **repealed**.

S. 176(2)
amended by
No. 32/2006
s. 53(2).

See:
Act No.
104/1994.
Reprint No. 2
as at
1 July 2002
and
amending
Act Nos
108/2004 and
20/2005.
LawToday:
www.
legislation.
vic.gov.au

**Division 2—Amendments to Subordinate Legislation
Act 1994**

177 New section 6A inserted

After section 6 of the **Subordinate Legislation Act 1994** insert—

"6A Infringements offence consultation certificate

- (1) If a proposed statutory rule provides for the enforcement of an offence against the statutory rule by an infringement notice, whether under the **Infringements Act 2006** or otherwise, the responsible Minister must certify—
 - (a) that the Department of Justice has been consulted about—
 - (i) the enforcement of the proposed statutory rule by infringement notice; and
 - (ii) the suitability of the proposed statutory rule to be an infringement offence enforced under the **Infringements Act 2006**; and
 - (b) that the Attorney-General's guidelines within the meaning of the **Infringements Act 2006** have been taken into account in the preparation of the proposed statutory rule; and

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- (c) that the Minister is satisfied that the proposed statutory rule—
- (i) meets the requirements of those guidelines; or
 - (ii) does not meet the requirements of those guidelines but should be made despite not meeting those requirements because of the reasons specified in the certificate.
- (2) The responsible Minister must ensure that a copy of the certificate under subsection (1) is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.
- (3) A copy of the certificate under subsection (1) must be laid before each House of the Parliament at the same time as the statutory rule is so laid under section 15."

178 Submission of statutory rules to Governor in Council

In section 14 of the **Subordinate Legislation Act 1994**—

- (a) in paragraph (d), for "certificate." **substitute** "certificate;"
- (b) after paragraph (d) **insert**—
 - "(e) if the proposed statutory rule provides for the enforcement of an offence against the statutory rule by an infringement notice, whether under the **Infringements Act 2006** or otherwise, a copy of the certificate under section 6A."

Division 3—Amendments to Road Safety Act 1986

See:
Act No.
127/1986.
Reprint No. 9
as at
25 August
2005
and
amending
Act Nos
19/1991,
111/2003,
110/2004,
21/2005 and
24/2005.
LawToday:
www.
legislation.
vic.gov.au

179 Powers of Corporation

In section 5AB(1) of the **Road Safety Act 1986**, after "regulations" insert "or the **Infringements Act 2006** (as the case requires)".

180 New sections 9AA to 9AF inserted

After section 9 of the **Road Safety Act 1986** insert—

"9AA Suspension of motor vehicle or trailer registration

- (1) Despite section 9(1), if directed by the sheriff under section 112 of the **Infringements Act 2006**, the Corporation must suspend any registration of a motor vehicle or trailer in the name of the registered operator of that vehicle or trailer until notified by the sheriff that the suspension has ceased because one of the matters referred to in section 113 of that Act has occurred.
- (2) While the registration of a motor vehicle or trailer is suspended under subsection (1), the vehicle is unregistered for the purposes of this Part.

S. 180
amended by
No. 32/2006
s. 53(3)–(5).

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- (3) Despite subsection (2) it is not an offence against this Act to leave a vehicle whose registration has been suspended under this section standing on a highway.
 - (4) Suspension under this section does not alter the expiry date for the registration of a motor vehicle or trailer under this Act.

9AB Cessation of suspension

The suspension of a registration of a motor vehicle or trailer suspended under section 9AA ceases when the Corporation receives notification from the sheriff in accordance with section 113 of the **Infringements Act 2006**.

9AC Direction not to renew registration

- (1) Despite section 9(1), if directed by the sheriff under section 114(2) of the **Infringements Act 2006**, the Corporation must not renew any registration of a motor vehicle or trailer in the name of the registered operator of that vehicle or trailer or transfer to any other person any registration of that motor vehicle or trailer in respect of that registered operator until notified by the sheriff that the direction not to renew has ceased because one of the matters referred to in section 115 of that Act has occurred.
- (2) When sending a notice of renewal of a motor vehicle or trailer registration in accordance with this Act to a registered operator of a vehicle or trailer in respect of whom a direction has been given under section 114(2) of **Infringements Act 2006**, the Corporation must include in the notice of renewal a notice advising that renewal will

not be granted or registration transferred until one of the matters referred to in section 115 of that Act occurs because of a direction of the sheriff under section 114(2) of that Act.

9AD Renewal of registration

The Corporation may renew a motor vehicle or trailer registration which was not renewed by virtue of section 9AC when the Corporation receives notification from the sheriff in accordance with section 115 of the **Infringements Act 2006**.

9AE Non-transfer of registration

- (1) Despite section 9(1), if directed by the sheriff under section 116 of the **Infringements Act 2006**, or if a deemed direction under section 114(4) of that Act is in force, the Corporation must not transfer to any other person any registration of a motor vehicle or trailer if the registered operator of that vehicle or trailer is a person in respect of whom a direction under section 116 of that Act or a deemed direction under section 114(4) of that Act applies until notified by the sheriff that the direction not to transfer has ceased because one of the matters referred to in section 115 or 117 of that Act has occurred, as the case requires.
- (2) When directed by the sheriff under section 116 of the **Infringements Act 2006**, or if a deemed direction under section 114(4) of that Act is in force, the Corporation must send to the registered operator of the motor vehicle or trailer in respect of whom the direction applies a notice advising that no transfer of registration will occur in relation to that vehicle or trailer until one of the

matters referred to in section 115 or 117 of that Act occurs, as the case requires because of a direction of the sheriff under section 116 of that Act or a deemed direction under section 114(4) of that Act.

9AF Transfer of registration

The Corporation may transfer a motor vehicle or trailer registration which was directed not to be transferred by virtue of section 9AE when the Corporation receives notification from the sheriff in accordance with section 115 or 117 of the **Infringements Act 2006** as the case requires."

181 Appeal to Magistrates' Court under Road Safety Act 1986

In section 12(1)(c) of the **Road Safety Act 1986**, after "suspend" **insert** ", other than a suspension in accordance with Part 8 of the **Infringements Act 2006** under section 9AA,".

182 New section 19A and 19B inserted

After section 19 of the **Road Safety Act 1986** **insert**—

S. 182
amended by
No. 32/2006
s. 53(6).

"19A Direction not to renew licence

- (1) Despite section 19(4), if directed by the sheriff under section 114 of the **Infringements Act 2006**, the Corporation must not renew a driver licence or permit of a person in respect of whom that direction applies until notified by the sheriff that the non-renewal direction has ceased because one of the matters referred to in section 115 of that Act has occurred.

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- (2) When sending a notice of renewal of a driver licence or permit in accordance with this Act to a licence or permit holder in respect of whom a direction has been given under section 114 of the **Infringements Act 2006**, the Corporation must include in the notice of renewal a notice advising that renewal will not be granted until one of the matters referred to in section 115 of that Act occurs because of a direction of the sheriff under section 114 of that Act.

19B Renewal of licence or permit

The Corporation may renew a driver licence or permit which was not renewed by virtue of section 19A when the Corporation receives notification from the sheriff in accordance with section 115 of the **Infringements Act 2006**."

183 Suspension of driver licence

After section 24(1) of the **Road Safety Act 1986** insert—

- "(1A) If directed to do so by the sheriff under section 110 of the **Infringements Act 2006**, the Corporation must suspend a driver licence or permit of a person in respect of whom the direction applies until the sheriff notifies the Corporation that one of the matters referred to in section 111 of that Act has occurred.
- (1B) The suspension of a driver licence or permit suspended under subsection (1A) ceases when the Corporation receives notification from the sheriff in accordance with section 111 of the **Infringements Act 2006**."

184 Offence to drive or apply for licence while suspended

- (1) In the **Road Safety Act 1986**—
- (a) in section 28A, after "this Act" **insert** "or the **Infringements Act 2006**";
 - (b) in section 28B, after "driver licence or permit" **insert** "under this Act or the **Infringements Act 2006**".
- (2) In the **Road Safety Act 1986** in section 30(1), for "A person" **substitute** "Subject to section 30AA, a person".

185 New section 30AA inserted

After section 30 of the **Road Safety Act 1986**
insert—

"30AA Offence to drive while licence suspended under Infringements Act 2006

A person must not drive a motor vehicle on a highway while that person's driver licence or permit is suspended in accordance with Part 8 of the **Infringements Act 2006**.

Penalty: 10 penalty units."

Pt 15
(Heading and
ss 186–210)
inserted by
No. 32/2006
s. 54.

PART 15—TRANSITIONAL AND SAVINGS PROVISIONS

S. 186
inserted by
No. 32/2006
s. 54.

186 Definition

In this Part, *former scheme* means Schedule 7 to the **Magistrates' Court Act 1989** as in force immediately before its repeal.

S. 187
inserted by
No. 32/2006
s. 54.

187 General transitional provision

- (1) This Part does not affect or take away from the operation of the **Interpretation of Legislation Act 1984**.
- (2) Except as specifically provided, this Part does not affect or take away from any other transitional provision.

S. 188
inserted by
No. 32/2006
s. 54.

188 Infringement offences

Subject to this Part and anything to the contrary in this Act, this Act applies to any infringement offence irrespective of whether the infringement offence was committed before, on or after the commencement of section 176(2).

S. 189
inserted by
No. 32/2006
s. 54.

189 Infringement notices

- (1) Subject to this Part and anything to the contrary in this Act, this Act applies to any infringement notice irrespective of whether the infringement notice was issued or served before, on or after the commencement of section 176(2).
- (2) Despite subsection (1) and anything to the contrary in this Act, if an infringement notice was issued to or served on a person before the commencement of section 176(2)—

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- (a) the date or period of time specified in the infringement notice as the time by which the person issued or served with the notice must pay the penalty specified in the infringement notice is the date or period of time by which that person must pay that penalty, irrespective of whether that date or period of time specified is less than 28 days after the infringement notice was issued or served; and
 - (b) if any matter specified in the infringement notice conflicts with the requirements of this Act, the matter specified in the infringement notice prevails.

190 Form of infringement notice

Despite anything to the contrary in this Act, an infringement notice in a form which complied with any Act, regulation or other instrument as in force immediately before the commencement of section 13—

- (a) is deemed to comply with section 13 for a period of 6 months from the commencement of that section; and
- (b) may, for a period of 6 months from that commencement, be issued or served in respect of an infringement offence whether the infringement offence is alleged to have been committed before, on or after the commencement of that section; and
- (c) may be enforced in accordance with this Act, despite not complying with that section.

S. 190
inserted by
No. 32/2006
s. 54.

s. 191

S. 191
inserted by
No. 32/2006
s. 54.

191 Courtesy letters

- (1) Subject to subsection (2), a courtesy letter within the meaning of the former scheme served under the former scheme before the commencement of section 29, on and from that commencement—
 - (a) is deemed to be a penalty reminder notice under this Act; and
 - (b) may be dealt with and enforced as a penalty reminder notice under this Act.
- (2) Subsection (1) does not affect a decision of a person made under clause 3(6) of the former scheme to decline to be dealt with under Part 2 of the former scheme.

S. 192
inserted by
No. 32/2006
s. 54.

192 Decision to go to Court

If a person has made a decision under clause 3(6) of the former scheme to decline to be dealt with under Part 2 of that scheme and on the commencement of section 176(2) that matter has not been referred to the Court, on and from that commencement, this Act applies as if that decision under clause 3(6) were an election made under Part 2 of this Act.

S. 193
inserted by
No. 32/2006
s. 54.

193 Payment plans

A payment plan arranged and managed by an enforcement agency or managed by the Secretary under the former scheme, on and from the commencement of section 176(2)—

- (a) is deemed to be a payment plan arranged and managed by an enforcement agency or managed by the Secretary (as the case requires) under this Act; and
- (b) may be managed and dealt with in accordance with Part 3 of this Act.

194 Infringement penalties registered under former scheme

S. 194
inserted by
No. 32/2006
s. 54.

- (1) If an enforcement agency has sought to have an infringement penalty with any prescribed costs registered under the former scheme for enforcement under the former scheme but the infringement penalty and any prescribed costs were not registered before the commencement of section 176(2), the infringement penalty and any prescribed costs, on and from that commencement—
 - (a) are deemed to be lodged under section 54 of this Act; and
 - (b) may be enforced in accordance with this Act.
- (2) If a registrar under the former scheme registered an infringement penalty or part of an infringement penalty and any prescribed costs under the former scheme before the commencement of section 176(2) but an enforcement order was not made before that commencement, an infringements registrar may make an enforcement order in respect of the infringement penalty or part of an infringement penalty and any prescribed costs under section 59 of this Act as if the details of that infringement penalty or part of an infringement penalty and any prescribed costs had been lodged under section 54 of this Act.

195 Enforcement orders made and notices of enforcement order sent under former scheme

S. 195
inserted by
No. 32/2006
s. 54.

- (1) An enforcement order made under the former scheme is, on and from the commencement of section 59—
 - (a) deemed to be an enforcement order made under section 59 of this Act; and

- (b) all rights, duties and enforcement mechanisms that apply in respect of an enforcement order made under this Act apply to the deemed enforcement order; and
- (c) if the registrar under the former scheme has not already caused notice of the enforcement order to be sent, an infringements registrar must cause an enforcement order notice to be sent to the person under section 60 of this Act.

- (2) A notice under clause 6 of the former scheme sent before the commencement of section 60 to a person against whom an enforcement order has been made is deemed, on and from that commencement, to be an enforcement order notice under section 60 of this Act.

S. 196
inserted by
No. 32/2006
s. 54.

196 Applications for an order to pay fine by instalments and extensions of time to pay under former scheme

- (1) If a natural person (other than a director to whom a declaration under clause 8A of the former scheme applies) has applied to the registrar under the former scheme before the commencement of section 176(2) for an order to pay a fine by instalments or an order to pay a fine within an extended period in accordance with clause 7 of the former scheme and that application is pending on that commencement, an infringements registrar may consider that application under section 77 of this Act as if that application were an application for a payment order under this Act.
- (2) If a body corporate has applied to the registrar before the commencement of section 176(2) for an order to pay a fine by instalments or an order to pay a fine within an extended period in accordance with clause 7 of the former scheme and that application is pending on that commencement, an infringements registrar must

consider the application, and if necessary, make an order under clause 7 of the former scheme as if the former scheme had not been repealed.

- (3) If a person defaults under an order made pursuant to subsection (2), an infringements registrar may issue an infringement warrant against the person under this Act despite the default being made in respect of an order made under the former scheme.

197 Orders to pay fine by instalments and extension of time to pay under former scheme

S. 197
inserted by
No. 32/2006
s. 54.

- (1) Subject to subsection (2), an order to pay a fine by instalments or an order to pay a fine within an extended period made by the registrar under the former scheme before the commencement of section 176(2) continues in force, on and from that commencement, as if the former scheme had not been repealed until the fine is paid in accordance with the order.
- (2) On and from the commencement of section 176(2), if a person defaults under an order referred to in subsection (1) for a period of more than 28 days, an infringements registrar may issue an infringement warrant against the person under this Act as if the default had been made under a payment order under this Act.

198 Pending revocation applications under former scheme

S. 198
inserted by
No. 32/2006
s. 54.

- (1) If a revocation application made to the registrar under clause 10(1) of the former scheme is pending on the commencement of section 176(2), an infringements registrar may deal with that application under section 66 of this Act as if that application were a revocation application made under section 65 of this Act.

s. 199

- (2) If a revocation application made under clause 10(6) of the former scheme that has been referred to the Court under the former scheme is pending on the commencement of section 176(2), that application may be heard by the Court under section 72 of this Act as if the application were a revocation application made under section 68(1) of this Act.

S. 199
inserted by
No. 32/2006
s. 54.

199 Enforcement orders revoked under former scheme

On and from the commencement of section 176(2), an enforcement order revoked under the former scheme before that commencement must be taken to be an enforcement order revoked under this Act.

S. 200
inserted by
No. 32/2006
s. 54.

200 Pending hearings under the former scheme

- (1) If, immediately before the commencement of section 176(2), any matter in respect of an alleged infringement offence, including any application to the Court under the former scheme, was pending before the Court under the former scheme but the Court had not begun to hear the matter, on and from that commencement, the matter must be heard and determined by the Court in accordance with this Act.
- (2) If, immediately before the commencement of section 176(2), a matter in respect of an alleged infringement offence, including any application to the Court under the former scheme, had begun to be heard but had not been determined, the matter, on and from that commencement, must be heard and determined by the Court in accordance with the former scheme as if the former scheme had not been repealed.

- (3) The repeal of clause 10(8) of the former scheme does not affect any application made under that clause that has not been determined before that repeal.

201 Seven-day notice

A statement in writing required to be delivered to a person under clause 8(2) of the former scheme before the commencement of section 176(2), on and from that commencement—

- (a) is deemed, to be a seven-day notice under this Act; and
(b) may be relied on and enforced as a seven-day notice under this Act accordingly.

S. 201
inserted by
No. 32/2006
s. 54.

202 Unexecuted warrants issued under former scheme

- (1) A penalty enforcement warrant that is issued against a person under the former scheme before the commencement of Part 6, that has not commenced to be executed before that commencement, on and from that commencement—
- (a) is deemed to be an infringement warrant issued under this Act; and
(b) may be enforced accordingly.
- (2) A warrant to seize property that is issued against a corporation under the former scheme before the commencement of Part 6, that has not commenced to be executed before that commencement, on and from that commencement—
- (a) is deemed to be an infringement warrant issued under this Act; and
(b) may be enforced accordingly.

S. 202
inserted by
No. 32/2006
s. 54.

- (3) The sums named in a warrant issued under clause 8 of the former scheme that has been deemed to be an infringement warrant by force of this section, remain recoverable under this Act in respect of the deemed infringement warrant on and from the commencement of section 176(2).

S. 203
inserted by
No. 32/2006
s. 54.

203 Former scheme warrants where execution has commenced

If a penalty enforcement warrant or a warrant of seizure and sale had been issued against a person under the former scheme and execution of the warrant had commenced but was not completed before the commencement of section 176(2), the execution of that warrant continues and must be completed, on and from that commencement, in accordance with the former scheme as if the former scheme had not been repealed by this Act.

S. 204
inserted by
No. 32/2006
s. 54.

204 Registrars in PERIN Court

- (1) A registrar employed pursuant to section 17 of the **Magistrates' Court Act 1989** on whom functions have been conferred under that Act in respect of any proceeding or class of proceeding under Schedule 7 to that Act before the commencement of section 176(2) is deemed, on and from that commencement, to be an infringements registrar within the meaning of this Act.
- (2) A deputy registrar employed pursuant to section 17 of the **Magistrates' Court Act 1989** to whom duties, powers and functions under that Act were delegated in respect of the PERIN Court under that Act before the commencement of section 176(2) is deemed, on and from that commencement, to be an infringements registrar within the meaning of this Act.

- (3) Nothing in this section prevents the amendment, variation or revocation of a conferral referred to in subsection (1) or a delegation referred to in subsection (2) under this Act or any other Act.

205 Superseded references

S. 205
inserted by
No. 32/2006
s. 54.

Unless the context otherwise requires, on and from the commencement of section 176(2), in any Act (other than this Act or a provision of an Act amended by this Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to the PERIN Court must be taken to be a reference to the Infringements Court within the meaning of the **Magistrates' Court Act 1989**;
- (b) a reference to the PERIN Registrar must be taken to be a reference to an infringements registrar;
- (c) a reference to a courtesy letter must be taken to be a reference to a penalty reminder notice;
- (d) a reference to an instalment order under Schedule 7 to the **Magistrates' Court Act 1989** or a time to pay order under that Schedule must be taken to be a reference to a payment order;
- (e) a reference to a penalty enforcement warrant must be taken to be a reference to an infringement warrant;
- (f) a reference to a warrant to seize property issued under clause 8 of the former scheme must be taken to be a reference to an infringement warrant;

- (g) a reference to Schedule 7 to the **Magistrates' Court Act 1989** must be taken to be a reference to the **Infringements Act 2006**.

S. 206
inserted by
No. 32/2006
s. 54.

206 Enforcement agencies

- (1) An enforcement agency within the meaning of clause 2 of the former scheme is deemed, on and from the commencement of section 176(2), to be an enforcement agency within the meaning of this Act.
- (2) Nothing in this section prevents regulations made under this Act from amending or revoking any thing deemed to have been prescribed as an enforcement agency under subsection (1).

S. 207
inserted by
No. 32/2006
s. 54.

207 PERIN offences

- (1) An offence under a prescribed provision specified in regulation 1203 of the Magistrates' Court General Regulations 2000 as in force immediately before the commencement of section 176(2), on and from that commencement—
 - (a) is deemed to be a lodgeable infringement offence as if it had been prescribed as a lodgeable infringement offence by regulations made under this Act;
 - (b) may be dealt with as a lodgeable infringement offence under this Act.
- (2) Nothing in this section prevents regulations made under this Act from amending or revoking any thing deemed to have been prescribed as a lodgeable infringement offence under subsection (1).

208 Deemed service

Despite anything to the contrary in the **Interpretation of Legislation Act 1984**, section 163A applies to a document of a kind referred to in that section served on a person by post and returned undelivered to its sender irrespective of whether that document was served before, on or after the commencement of section 176(2).

S. 208
inserted by
No. 32/2006
s. 54.

209 Clauses 28 and 29 of Schedule 7 continue to have effect

Despite the repeal of clauses 28 and 29 of Schedule 7 to the **Magistrates' Court Act 1989** by section 176(2), those clauses continue to have effect as if they had not been repealed.

S. 209
inserted by
No. 32/2006
s. 54.

209A Period for lodgement

- (1) Despite section 55(ab), if an offence has been committed against section 166(1) of the **Electoral Act 2002** and an infringement notice in respect of that offence has been served under section 167 of that Act during the period 1 November 2005 to 30 June 2006, on and from 1 July 2006, details of the infringement penalty and prescribed costs in respect of that offence may be lodged with an infringements registrar under section 54 no more than 12 months after the date of service of that infringement notice.
- (2) Despite section 55(ac), if an offence has been committed against section 40(1A) of the **Local Government Act 1989** and an infringement notice in respect of that offence has been served under section 40(3) of that Act during the period 1 November 2005 to 30 June 2006, on and from 1 July 2006, details of the infringement penalty and prescribed costs in respect of that offence may be lodged with an infringements registrar under

S. 209A
inserted by
No. 79/2006
s. 25.

section 54 no more than 12 months after the date of service of that infringement notice.

S. 210
inserted by
No. 32/2006
s. 54.

210 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act (including the repeals and amendments made by this Act) or the **Infringements (Consequential and Other Amendments) Act 2006**.
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or from 11 April 2006; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and
 - (d) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act) or in any subordinate instrument.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 16 November 2005

Legislative Council: 28 March 2006

The long title for the Bill for this Act was "to provide for a new framework for the issuing and serving of infringement notices for offences and the enforcement of infringement notices, to amend the **Magistrates' Court Act 1989**, the **Road Safety Act 1986** and the **Subordinate Legislation Act 1994** and for other purposes."

The **Infringements Act 2006** was assented to on 11 April 2006 and came into operation on 1 July 2006: Government Gazette 29 June 2006 page 1315.

2. Table of Amendments

This Version incorporates amendments made to the **Infringements Act 2006** by Acts and subordinate instruments.

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 53 on 11.4.06: s. 2(2); ss 4–52, 54 on 1.7.06:
Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s
amending the **Infringements Act 2006**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 40 on 1.9.06: s. 2(2); s. 42(Sch. item 18) on 23.4.07:
s. 2(3)
Current State: This information relates only to the provision/s
amending the **Infringements Act 2006**

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: Ss 24, 25 on 1.7.06: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Infringements Act 2006**

Road Legislation (Projects and Road Safety) Act 2006, No. 81/2006

Assent Date: 10.10.06
Commencement Date: S. 32 on 1.7.07: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Infringements Act 2006**

Water Acts Amendment (Enforcement and Other Matters) Act 2007, No. 29/2007

Assent Date: 26.6.07
Commencement Date: S. 25 on 27.6.07: s. 2
Current State: This information relates only to the provision/s
amending the **Infringements Act 2006**

3. Explanatory Details

No entries at date of publication.