

# Fines Enforcement and Debt Recovery Bill 2017



## The *Fines Enforcement and Debt Recovery Bill 2017* has been introduced into Parliament.

This fact sheet outlines a number of proposed changes to the way overdue fines and expiation fees (referred to as “debts”) can be enforced and recovered in South Australia, including:

- refining legislation to address operational difficulties for the Fines Enforcement and Recovery Unit
- providing more options for vulnerable groups to address their overdue debts
- making recovery more efficient and equitable
- introducing government civil debt recovery as a function of the Chief Recovery Officer.

### About the Fines Unit

The Fines Enforcement and Recovery Unit and the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013* came into operation in 2014.

The Fines Unit took on fines recovery functions previously managed by the Fines Payment Unit of the Courts Administration Authority.

Its role is to manage and collect overdue fines and overdue expiation fees issued by a number of authorities across the state, including courts, SA Police and local councils.

### Legislation changes

The new Bill proposes a number of changes for consideration.

The proposed changes are outlined below and mainly involve consolidating the provisions currently contained in two separate Acts – the *Criminal Law (Sentencing) Act 1988* and the *Expiation of Offences Act 1996*.

It also proposes changing the name of the Fines Enforcement and Recovery Officer to the “Chief Recovery Officer”.

### Compensation and restitution payments

Under the proposed changes, compensation and restitution payments to victims will have priority and be paid ahead of the Victims of Crime Levy<sup>1</sup> when a payment is made on an overdue debt. This will ensure that these amounts are paid more quickly to victims or defendants than is currently the case.

<sup>1</sup> The *Victims of Crime Levy* is imposed by legislation on any court fine and most expiation notices. This levy is paid into the *Victims of Crime Fund* and can be used for payments of compensation to eligible victims of crime.

## Enforcement measures

'Enforcement' by the Fines Unit takes place when overdue debts remain outstanding. Enforcement refers to a range of measures that can be applied when overdue debts remain unpaid.

Currently enforcement actions that can be applied by the Fines Unit include:

- restricting the debtor's ability to renew a car registration or driver's licence, or transfer ownership of a vehicle
- suspension of the debtor's driver's licence
- clamping and impounding the debtor's vehicle
- garnishment of a debtor's salary or bank account
- seizure and sale of a debtor's property
- charge on land owned by a debtor
- publication on the online 'name and shame' register of names of individuals and registered companies who have not addressed their overdue fines.

New enforcement powers proposed in the Bill include:

- the seizure of a debtor's number plates, for example where it is not economical to seize the debtor's vehicle
- preventing an interstate driver with an overdue debt from driving in South Australia on their interstate driver's licence.

The Bill aims to streamline criteria to dispute enforcement action and tighten appeal rights under the *Expiation of Offences Act 1996*.

## More options for vulnerable groups

The Bill seeks to introduce or expand options for vulnerable groups to address their overdue debts.

In cases of financial hardship, debtors will be able, in appropriate cases, to offset their outstanding debts by performing community service or attending intervention or treatment programs for behavioural problems including problem gambling, substance abuse and mental impairment.

The Bill proposes that issuing authorities may withdraw an expiation notice if the debtor has a cognitive impairment or intellectual disability.

For those people who persistently drive without a driver's licence, it is proposed to provide incentives to break the cycle of their behaviour. For example a person who does not have a driver's licence and has received multiple fines or expiation notices for driving unlicensed, could be provided with an opportunity to reduce some of their debt if they obtain their driver's licence. Incentives will depend on an individual's circumstances.

## Civil debt recovery

The Bill also introduces provisions that will allow the Chief Recovery Officer to enforce and recover civil debt owed to government agencies and some public authorities. Government agencies will have the opportunity to opt-in to a centrally-managed scheme.

It is proposed that the powers currently employed by courts to recover payments and debts will be exercised by the Chief Recovery Officer. This will only apply to debts of \$100,000 or less and will not extend to issuing warrants, committing a debtor to prison or appointing a receiver.

A debtor who disputes the debt can take the matter to the Magistrates Court for decision. Debtors will also have a right to object to the Magistrates Court against decisions by the Chief Recovery Officer to exercise particular civil enforcement powers.

## Consultation information

This consultation will remain open until **1 September, 2017**.

More information and a copy of the Bill is available at [www.agd.sa.gov.au](http://www.agd.sa.gov.au)

Members of the community can provide feedback via [www.yourSAy.sa.gov.au](http://www.yourSAy.sa.gov.au)

*If you do not want the public to read your answers, please write 'confidential' on your submission. If someone asks for your answers through the Freedom of Information Act process, and if you have told us your answers are confidential, we will contact you and explain what is happening. However, even if your answers are confidential, we may still have to let someone read them if they ask for them through the Freedom of Information Act process.*