

JUSTICES (FINE DEFAULT) AMENDMENT BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to introduce periodic detention and civil debt enforcement as additional alternatives to full-time imprisonment for fine defaulters; and
- (b) to alter the procedures governing the availability of the existing alternatives to full-time imprisonment for fine defaulters; and
- (c) to make civil enforcement the only means of recovering costs awarded in favour of people who take private prosecutions and to limit the existing options open to “private payees” entitled to the payment of fines, penalties or costs; and
- (d) to make various miscellaneous amendments to fine enforcement procedures.

The Bill amends the Justices Act 1902, the Community Service Orders Act 1979, the Children (Community Service Orders) Act 1987, the Periodic Detention of Prisoners Act 1981 and the Prisons Act 1952.

The amendments made by the Bill are as follows:

Community Service Orders for fine defaulters

The Bill (Schedule 1 (3)—proposed substituted section 89C and Schedules 3 (1) and (3) (b) and (c) and 4 (1) and (3) (b) and (c)) will permit a fine defaulter to apply for a fine default Community Service Order (“CSO”), both before and after the issue of a warrant of commitment to prison for recovery of outstanding fines, whether it is the first warrant issued in a matter or a subsequent warrant. Currently a CSO can only be applied for after a warrant has been issued and only within 7 days after notice of the impending execution of the warrant has been given to the fine defaulter.

The Bill provides that the granting of the first such application for a CSO will be automatic but that all subsequent applications will be granted or refused at the discretion of the Justice to whom the application is made. There will be power for the Minister to issue guidelines as to how that discretion is to be exercised.

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Periodic detention for fine defaulters

The Bill (Schedule 1 (3)—proposed section 89D and Schedule 2) will introduce periodic detention as an option to full-time imprisonment for fine defaulters as a means of satisfying an outstanding fine. Currently, periodic detention is not available to fine defaulters.

Under the amendments, an application for a periodic detention order (“PDO”) will only be available to persons who are at least 18 years of age, and then only in 3 situations:

- after the issue of a warrant of commitment which was issued following the failure to recover the full amount after further time to pay had been allowed; or
- following the revocation of a CSO which was issued after a warrant of commitment had issued; or
- where the fine defaulter is already subject to a PDO sentence (in which case the fine defaulter may apply for a fine default PDO at any time after the fine has been imposed by the Court and whether or not a warrant of commitment has issued).

A PDO will not be available in respect of a fine for an offence under the Periodic Detention of Prisoners Act 1981.

If a person is already serving periodic detention when a warrant of commitment is issued, that warrant (along with all other warrants of commitment that are issued while the person is under periodic detention) will automatically convert to periodic detention orders. If periodic detention (whether or not it is fine default periodic detention) is revoked, the warrants of commitment concerned will automatically revert to full-time imprisonment warrants.

If a fine defaulter fails to comply with a fine default PDO, the order will be revoked and the fine defaulter will then not be able to apply for a CSO or another fine default PDO

Optional civil enforcement against fine defaulters

The Bill (Schedule 1 (3)—proposed section 89E) provides that civil enforcement by means of a writ of execution over property or a garnishee order is available as an alternative to the issue of a warrant of commitment against a fine defaulter if the fine defaulter has already been granted further time to pay and has failed to pay within the time allowed or has had a fine default CSO revoked. This option will only be available if the justice who is considering whether to issue a warrant of commitment is satisfied that civil enforcement is reasonably likely to result in satisfaction of the amount owing.

7 days’ notice of committal warrants before execution

The Bill (Schedule 1 (3)—proposed substituted section 89B) will provide that a warrant of commitment (even if it is not the first warrant issued in the matter) cannot be executed until at least 7 days’ notice in writing of the warrant has been given to the fine defaulter. However, no notice will be necessary where the fine defaulter has exhausted his or her other options for avoiding full-time imprisonment, or has given written consent to the waiving of the seven day notice period. The notice will be in the form prescribed by the regulations and will contain information as to the options available to the fine defaulter to avoid full-time imprisonment. Currently 7 days’ oral notice is required before a warrant can be executed and is only required in the case of the first warrant of commitment issued in the matter. A subsequent warrant can currently be issued with no further notice to the fine defaulter.

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The Bill also provides that if a fine defaulter claims not to have been given the 7 days' notice, the onus will be on the fine defaulter to establish this on the balance of probabilities.

Recovery against private informants

The Bill (Schedule 1 (4)) will remove the availability of warrants of commitment to prison for unpaid costs awarded in favour of private informants in private prosecutions. In future, civil enforcement procedures will be the only method of enforcing costs orders in favour of private informants.

The Bill will also limit the existing provision that makes civil enforcement an option available to "private payees", so that it will only be available in the case of orders for compensation, orders for costs in favour of private informants and orders for costs against non-private informants. Other amounts (such as fines and penalties) payable to private payees that can currently be recovered by civil enforcement will in future only be able to be recovered by means of the procedures for warrants of commitment. In addition, persons who have the option of civil enforcement will be required to elect the civil enforcement option within 3 months after the payment falls due or the option will be lost to them and they will have to rely on enforcement by means of warrant of commitment (if that method of enforcement is an available option).

Transitional provisions included in the Bill (Schedule 1 (9)—proposed clause 19) will mean that private payees under existing orders will not be affected by these amendments except in the case of existing orders for costs in favour of private informants, which will be limited to civil enforcement.

Guidelines for the issue of warrants

The Bill (Schedule 1 (3)—proposed section 89F) will authorise the Minister to issue guidelines as to how the functions of an authorised Justice are to be exercised under the provisions of the Justices Act 1902 concerning fine defaulters.

Authority for prison officers to execute warrants

The Bill (Schedule 1 (2)) will allow superintendents (and their officers) of prisons and juvenile detention centres to execute warrants of commitment on prisoners, periodic detainees and juveniles who are already in custody or on remand.

Use of copies of warrants

The Bill (Schedule 1 (8)) will provide that photocopies and facsimile copies of warrants issued under the Justices Act 1902 are as valid and effectual as the original warrant and may be used accordingly.

Enforcement costs

The Bill (Schedules 1 (1) (a), 3 (1) (a) and 4 (1) (a)) will provide that enforcement costs specified in warrants of commitment are not payable and are not to be included in any subsequent enforcement action where the warrant is recalled, withdrawn or revoked.

Warrants concerning traffic matters

The Bill (Schedule 1 (1) (b)) will alter an existing provision that prevents a warrant of commitment issuing in traffic matters until attempts to recover the amount owing by

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licence or registration cancellation procedures have been unsuccessful. The amendment will allow a warrant to be issued if the fine defaulter has been sentenced to prison or is already in prison and applies for the warrant to issue. This will prevent a traffic fine defaulter being disadvantaged by not being able to start “paying off” traffic fines as soon as possible while serving his or her prison sentence.

Conversion of detention centre warrants to prison warrants

The Bill (Schedule 1 (1) (c)) will clarify an existing provision which requires that a warrant for the detention of a person who was a juvenile when convicted but is in prison when the warrant is issued be issued as a prison warrant (rather than as a children’s detention centre warrant). The existing provision is limited to situations where the person is in prison when the warrant is *issued*. The Bill alters the existing provision so that it will apply even if the person is under 18 (so long as he or she is in prison) and adds a new provision which will deem detention centre warrants to be prison warrants if the person is in prison when the warrant is *executed* (again, even if the person is under 18).

Rate at which fines are “cut-out”

The Bill (Schedules 3 (2) and 4 (2)) will increase the rate at which work done under a community service order cuts out amounts owed under warrants from \$12.50 an hour to \$15.00 an hour, giving a daily rate (for an 8 hour day) of \$120.

Breach reports

The Bill (Schedules 3 (3) (a) and 4 (3) (a)) will remove the existing requirement that breach reports (relating to breaches of community service orders) be served on fine defaulters.

Time of release of fine defaulters

The Bill (Schedule 5) will repeal a provision of the Prisons Act 1952 that excludes fine defaulters from the operation of a provision that allows prisoners to be released at any time during the 24 hours before the mandatory time of release.

Savings and transitional provisions

The Bill contains savings and transitional provisions that generally apply the proposed amendments to existing warrants and fines, with the exception explained above for the recovery of costs awarded in favour of private informants.

Consequential amendments are also made.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the Justices Act 1902.

Clause 4 is a formal provision giving effect to the Schedule of amendments to the Periodic Detention of Prisoners Act 1981.

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Clause 5 is a formal provision giving effect to the Schedule of amendments to the Community Service Orders Act 1979.

Clause 6 is a formal provision giving effect to the Schedule of amendments to the Children (Community Service Orders) Act 1987.

Clause 7 is a formal provision giving effect to the Schedule containing the amendment to the Prisons Act 1952.

Schedule 1 contains the amendments to the Justices Act 1902 described above.

Schedule 2 contains the amendments to the Periodic Detention of Prisoners Act 1981 described above.

Schedule 3 contains the amendments to the Community Service Orders Act 1979 described above.

Schedule 4 contains the amendments to the Children (Community Service Orders) Act 1987 described above.

Schedule 5 contains the amendment to the Prisons Act 1952 described above.
