



Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010

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Law and Bills Digest Section

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Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010

Date introduced: 29 September 2010

House: Senate

Portfolio: Attorney-General

Commencement: Sections 1 to 3 commence on Royal Assent. Schedules 1 and 2 commence on a day to fixed by Proclamation or on the day after a six month period.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010 is to amend the *Service and Execution of Process Act 1992* (the Act) to implement a new Part 7 to the Act dealing with a simplified process of enforcing fines imposed by courts of summary jurisdiction.

Background

Service and Execution of Process Act 1992 - Part 7 as it currently Operates

The new scheme as proposed by the Bill replaces the old Part 7 which involved the apprehension and imprisonment of offenders to enforce court-imposed fines across state and territory borders.

Section 112 of the Act currently enables warrants of apprehension to be issued concerning an offender against whom a fine has been imposed and the liability has not been fully discharged. An enforcement officer may apprehend the offender and must give the offender an opportunity of paying the whole fine to the enforcement officer without delay.

If the offender doesn't pay, the enforcement officer apprehends the person and brings them before a court, together with the warrant. Under section 115, the Court, if it is satisfied that the person is the person on whom the fine was imposed and is not satisfied that the person's liability to pay the fine has been fully discharged, must order the person to be committed to prison to serve such period of imprisonment as specified in the order or a period of six months whichever is the shorter.

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Basis of policy commitment

Standing Committee of Attorneys-General (SCAG)

The Bill implements a decision of SCAG. In SCAG's communiqué of 28 March 2008, the decision relating to interstate enforcement of fines was noted.

Ministers had agreed "that the Commonwealth should amend the *Service and Execution of Process Act 1992* (Cth) to allow the mutual recognition between states and territories of court-imposed fines, to enable these fines to be registered for enforcement in accordance with the laws of the state or territory where the defendant resides." SCAG also agreed that registering a fine for interstate enforcement does not permit the enforcing jurisdiction to impose a sanction of imprisonment for default.¹

The Minister introducing the Bill noted:

The measures within this Bill provide a cooperative solution to one of the challenges posed by our federal system, and are consistent with the Federal Government's continuing commitment to ensuring early and appropriate intervention.²

He also noted that the Bill removes provisions which are inconsistent with state and territory laws that allow for alternative sanctions and that imprisonment is no longer an option despite "whether a state or territory law still permits fines to be 'served out.'"³ In effect, this Bill potentially overrides any inconsistent state or territory law on this point-see subsection 114(4).

Committee consideration

Senate Selection of Bills Committee

The Senate Selection of Bills Committee resolved at its meeting of 30 September 2010, to recommend that the Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010 not be referred to committees.⁴

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1. R McClelland (Attorney-General), *Standing committee of Attorneys-General communiqué*, media release, 28 March 2010, p. 2, viewed 27 October 2010, http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2008_FirstQuarter_28March2008-Communique-StandingCommitteeofAttorneys-General
 2. J Ludwig, 'Second reading speech: Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010', Senate, *Debates*, 29 September 2010, pp. 258.
 3. Ibid.
 4. Senate Selection of Bills Committee, [Report No. 11 of 2010](#), 30 September 2010.

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Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills commented on the retrospective application of provisions in the Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010. Its concerns centred around the retrospectivity of certain fines and refers in particular to item 1 of Schedule 1 that inserts new subparagraph 112(1)(c)(ii) and new subparagraph 112(1)(c)(iii) into the Act which relate to the registration of a fine that is a pre-commencement fine that is related to a post-commencement fine and a pre-commencement serious fine.⁵

The Eighth Scrutiny of Bills Committee⁶ report contains the Minister's response to the Committee's concerns. The Attorney-General explained that the extension to pre-commencement fines is "essentially a transitional mechanism to ensure application of the new regime to certain outstanding fines. To the extent that the new scheme has any retrospective operation, it will, as I have pointed out above, be less punitive to fine defaulters than the current arrangements."

Financial implications

The Explanatory Memorandum states that the Bill has no significant financial impact but may result in a small increase in revenue for the Commonwealth and states and territories because of more effective enforcement of interstate court-imposed fines.⁷

Key provisions

Schedule 1—Main amendments

Item 1 repeals Part 7 of the *Service and Execution of Process Act 1992* and substitutes proposed Part 7—Enforcement of fines imposed by courts of summary jurisdiction.

Proposed section 110 defines a number of new terms such as *fine enforcement officer*, *offender*, *originating state*, *post-commencement fine*, *pre-commencement fine*, *pre-commencement serious fine*, *registered fine*, *registering state* and *related*. Old terms such as *clerk*, *enforcement officer*, *police officer* and *warrant of apprehension* have been discarded.

5. Senate Standing Committee for the Scrutiny of Bills, Alert Digest, [No. 7 of 2010](#), 23 June 2010, p. 10 .

6. Senate Standing Committee for the Scrutiny of Bills, [Eighth report of 2010](#), 27 October 2010, pp. 299-301.

7. Explanatory Memorandum, Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010, p. 1.

Registration of fines

Proposed section 112 deals with requests for registration. **Proposed subsection 112(1)** provides that a fine enforcement officer may request the registration of a fine in another state if

- the liability or fine is not fully discharged, and
- the offender is resident in or appears to be resident in another state, and
- the fine is either
 - a post-commencement fine
 - a pre-commencement fine that is related to a post-commencement fine
 - a pre-commencement serious fine.

Proposed subsection 112(2) provides that the request must

- be in writing, and
- be made to a fine enforcement officer of the other state, and attach a copy of the order of the court imposing the fine, and
- with a statement by the fine enforcement officer stating the amount of the fine that is still unpaid,
- If the fine is a pre-commencement serious fine, a statement by the fine enforcement officer of the originating state as to why it is so.

Proposed subsection 112(3) provides that one request may relate to more than one fine therefore section 112 applies to each of the fines.

Proposed section 113 relates to the registration of fines in another state. **Proposed subsection 113(1)** provides that if a fine enforcement officer of a state receives a request to register a fine, the officer must do so. The registration must specify the offender in relation to the fine (**proposed subsection 113(2)**). The registered fine has the same force and effect and may give rise to the same actions of enforcement as if it had been imposed by a court of the registering state (**proposed subsection 114(1)**). **Proposed subsection 114(2)** provides that a registered fine cannot be enforced in the originating state, although voluntary payment may be made in the originating state.

Proposed subsection 114(3) provides that a registered fine is capable of being enforced in the registering state only if the fine could have been enforced in the originating state but for the operation of subsection (2) above.

Proposed subsection 114(4) provides that a sentence of imprisonment cannot be imposed on the offender by the registering state, despite any laws in that State.

Amendment, cancellation and challenge to fines

Proposed Division 3 relates to the amendment, cancellation and challenge to the imposition of fines.

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Proposed section 115 deals with the amendment of a registration by the originating state. **Proposed subsection 115(1)** provides that the originating state must notify the registering state if an unpaid part of a fine or whole fine is paid to the originating state. The registering state must amend the registration of the fine as soon as possible (**proposed subsection 115(2)**).

Proposed subsection 116(1) provides that the originating state must notify the registering state if the fine is paid to the originating state or the fine enforcement officer of the originating state is satisfied that the offender no longer lives in the registering state. **Proposed subsection 116(2)** provides that the fine enforcement officer of the originating state may cancel the fine by written request at any time. **Proposed subsection 116(3)** provides that if the registering state receives a notice or a request to cancel the fine, it must cancel the registration of the fine as soon as practicable.

The registering state must notify the originating state if part or the whole of the fine has been paid. The registering state must then forward the amount paid to the originating state (**proposed section 117**).

Proposed section 118 deals with the cancellation of the registration initiated by the registering state. The fine enforcement officer of the registering state may cancel the registration of the fine if he is satisfied in relation to any of the following matters:

- request for registration was not made in accordance with section 112, or
- the person specified as the offender is not the offender, or
- the offender is not resident in the state, or
- of a matter or matters prescribed in the regulations for the purposes of the paragraph (**proposed subsection 118(1)**).

Proposed subsection 118(2) provides that the registering state notifies the originating state that the officer is satisfied in relation to one of the matters listed above and cancels the registration of the fine.

Proposed section 120 deals with a legal challenge to the imposition of a fine. **Proposed subsection 120(1)** provides that any challenges to a fine are brought under the laws of the originating state. If the offender challenges a registered fine, the offender must notify the registering state (**proposed subsection 120(2)**). If a challenge to the imposition of a registered fine exists and has not been determined, the registering state cannot enforce the fine or any pre-commencement related fines (**proposed subsection 120(3)**).

Proposed subsection 120(4) provides that if a challenge to the imposition of a fine is upheld, then the registering state must cancel the registration of the fine. The fine enforcement officer of the originating state must notify the registering state of the outcome of the challenge (**proposed subsection 120(5)**).

Concluding comments

As the Minister comments in the second reading speech, this Bill is consistent with the approach the Government has taken in its framework to improve access to justice.⁸ In November 2009, the Attorney-General welcomed the agreement by SCAG on a coordinated national approach to improving access to justice. He further noted:

Attorneys-General agreed on five key principles—accessibility, appropriateness, equity, efficiency and effectiveness—to guide policy making to achieve improved access to justice.⁹

8. op. cit., J Ludwig, p. 258.

9. R McClelland (Attorney-General), *National approach to access to justice*, media release, 6 November 2009, viewed 28 October 2010, http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2009_FourthQuarter_6November2009-NationalApproachtoAccessToJustice

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