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**THE LEGISLATIVE ASSEMBLY OF
THE AUSTRALIAN CAPITAL TERRITORY**

MAGISTRATES COURT (AMENDMENT) BILL 1998

EXPLANATORY MEMORANDUM

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Gary Humphries MLA

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OUTLINE

Current fine recovery mechanisms

The *Magistrates Court Act 1930* (the Act) presently provides that where a person defaults in payment of an amount being a penalty, sum of money or costs that is payable under a conviction or order a Magistrate may, by warrant, commit the person to prison in accordance with the terms of the conviction or order until the amount is paid. The period of imprisonment imposed by the court in default of payment of such an amount is such period as in the opinion of the court will satisfy the justice of the case, to be calculated at the rate of one day for each \$100, or part of \$100, included in the amount ordered to be paid or 6 months, whichever is less.

Currently the Magistrates Court enforces fines solely through issuing a warrant for the commitment of a defaulter to prison. Such warrants are the enforcement responsibility of the Australian Federal Police. The Supreme Court, in contrast to the Magistrates Court, has no fine enforcement mechanisms and has been unable to enforce the payment of overdue fines.

The Bill

The main purpose of the Magistrates Court (Amendment) Bill 1998 (the Bill) is to create a scheme for the uniform enforcement of fines imposed by courts utilising sanctions other than imprisonment.

The scheme will apply to all fines and levies imposed by ACT courts, that is the Supreme Court, the Magistrates Court and the Children's Court. It will be administered by the Registrar of the Magistrates Court (the Registrar).

An effective fine default scheme is required to enhance the integrity of the criminal justice system by ensuring that fine defaulters with the capacity to pay are made to do so. The scheme provides for the progressive application of a series of enforcement measures to encourage payment of fines by offenders through increasing the expectation that defaulters who have the capacity to pay, will be made to pay or will be subject to new enforcement measures. The scheme:-

- (i) enables determination at an early stage of the capacity of an offender to pay;
- (ii) applies the sanctions of driving licence suspension, motor vehicle registration suspension and suspension of the right to drive to encourage payment of fines;
- (iii) provides for civil enforcement procedures to be applied where there is a capacity to pay; and
- (iv) enables imprisonment to be imposed as a last resort.

The Bill requires consequential amendments to be made to the *Crimes Act 1900*, *Children's Services Act 1986*, *Motor Traffic Act 1936* and the *Remand Centres Act 1976*.

The following is a summary of the procedure for the payment of court imposed fines:

- (a) the Court makes an order which includes a fine and specifies a time to pay;
- (b) a penalty notice is sent to the offender advising the amount to be paid and possible enforcement action upon default in payment;
- (c) offenders will be able to make application for a special arrangement (extension of time or instalment payments) with the Registrar, at any stage of the process prior to a custodial order being imposed;

- (d) a default notice to pay will be served on an offender, once the time to pay has expired and the offender is in default, notifying the enforcement action that will be taken if the fine remains unpaid;
- (e) where a defaulter is licensed to drive and the fine remains unpaid (at the expiration of the period specified in the default notice), the Registrar shall notify the Registrar for Motor Vehicles to suspend the defaulter's driving licence, vehicle registration or right to drive within the ACT. Where a defaulter is not licensed the Registrar will make an order requiring the Registrar of Motor Vehicles to suspend the defaulter's ability to obtain or renew a licence;
- (f) a default notice will also include a requirement that the defaulter provide to the Registrar detailed financial information concerning the property and financial circumstances of the defaulter to enable the Registrar to determine the capacity of the defaulter to pay;
- (g) the Registrar will review the written financial information and will also be able to review relevant personal information from other government agencies such as ACTEW and ACT Housing, to distinguish those defaulters who can't pay from those who won't pay;
- (h) the Registrar will be able to meet or speak to the defaulter to supplement the written financial information, where the Registrar believes this appropriate;
- (i) once this process is complete the Registrar may, where he or she believes that the defaulter has the capacity to pay, make an order for civil enforcement action against the defaulter. Where there is no capacity to pay or the defaulter refuses to pay the Registrar will, by warrant, commit the defaulter to a period of imprisonment (calculated by reference to the amount of the outstanding fine), unless the defaulter sooner pays the fine or the fine is remitted pursuant to section 558 of the Crimes Act;

- (j) where the Executive declines to remit a fine, the Registrar shall by warrant, commit the defaulter to a period of imprisonment;
- (k) where a person is committed to serve a period of imprisonment the place at which the imprisonment will be served will be determined by the Director of ACT Corrective Services;
- (l) the civil enforcement procedures to be available to the Registrar are those provided in the *Magistrates Court (Civil Jurisdiction) Act 1982* with the fine being enforceable as if it were a judgment for the payment of a debt. The civil enforcement procedures include a garnishee order which directly debits the defaulter's earnings or attaches to amounts owed to the defaulter and property seizure orders (including land or goods owned by the person); and
- (m) where a defaulter who has been served with a default notice does not furnish any financial information or pay the fine, the Registrar may issue an examination summons. The examination summons will be served by the bailiffs. Where the defaulter fails to attend before the Registrar pursuant to the summons and the fine remains unpaid the defaulter's driving licence, where he or she is licensed, or vehicle registration shall be ordered to be cancelled by the Registrar of Motor Vehicles and a warrant of apprehension shall issue for the arrest of the defaulter, to be brought before the Registrar for an examination as to capacity to pay and determination of appropriate enforcement action.

FINANCIAL IMPACT

There are no associated costs arising from the amendment to the Act. However the Government can anticipate prompter payment of fines.

NOTES ON CLAUSES

Clauses 1, 2 and 3 are formal clauses setting out the short title of the Act, providing for the commencement of its provisions and providing that references in the Act to "the Principal Act" are references to the *Magistrates Court Act 1930*.

Ex parte order may be set aside

Clause 4 omits subsection (7A) from section 23 of the Principal Act. Section 23 sets out circumstances in which the Court can set aside an order or conviction made in the absence one of the parties to the relevant proceedings. Subsection 7A is one of a series of provisions inserted by the *Magistrates Court (Amendment) Act (No 3) 1991* to provide for the enforcement of traffic and parking infringement notices through the suspension of an individual's licence or registration or right to drive in the ACT. Subsection 23(7A) requires the Court, where it sets aside a relevant conviction or order to also set aside certain further orders made in consequence of the initial conviction or order. The consequential orders are orders for the suspension of a person's licence to drive, orders for the suspension of a person's right to drive in the Territory and orders for the suspension of motor vehicle registration.

Subsection (7A) is no longer required as, under the new scheme for fine enforcement, the Registrar, rather than the Court, will initiate action for the suspension of licences, registration or the right to drive. Proposed *new section 149F* contains the relevant provisions.

Restrictions on the imposition of penalties under this Part

Clause 5 omits subsection 116H(2) of the Principal Act. This omission removes the power of the court to impose a penalty of imprisonment in default of payment of a fine which was imposed on a person in consequence of a conviction made pursuant to plea by post proceedings. This provision is no longer required because where a person defaults in payment of a fine under the proposed scheme

and the Registrar is satisfied that there is no ability to pay then the person will be committed to prison.

Minute of decision and notice to defendant

Clause 6 amends section 141 of the Principal Act which requires that a minute or memorandum of a conviction or order be made by the Court. The amendment to paragraph 141(1)(b) is to the effect that the notification to the defendant of a conviction or order does not require the inclusion of details of the penalty and the means and time by which it may be discharged. New procedures set out at proposed *new section 149* replace this requirement. The effect of the change to subsection 141(1A) is that a notice of a conviction or order to the defendant, is not required to specify the amount of any levy payable under Part III of the *Criminal Injuries Compensation Act 1983*. This provision is no longer required because the defendant will be advised of the total amount owing including fines and levies, by the notice sent by the Registrar, pursuant to proposed *new section 149*.

Heading - Division 2 Part IX

Clause 7 amends the heading to Division 2 Part IX by omitting "penalties and other sums". The omission of these words reflects the expanded definition of "fine" and the re-location of provisions for enforcing costs orders against an informant to *new section 184*.

Insertion - interpretation

Clause 8 amends section 146 of the Principal Act, an interpretation provision. The definitions of "parking offence" and "traffic offence" are omitted by **clause 8(a)** consequentially on the repeal of section 147A of the Principal Act by **clause 10**.

Clause 8 (b) inserts definitions for "Chief Police Officer", "fine", "fine defaulter", "default notice", "government agency", "outstanding fine", "penalty notice" and "Territory entity" for the purposes of the new provisions of the Act.

Repeal and substitution

Clause 9 repeals sections 146A, 147 and 147A of the Principal Act. The effect of section 146A, that a person is not to be imprisoned in default of payment of an amount pursuant to an order to make reparation, is preserved by proposed **new subsection 154D(3)**.

Section 147 dealing with enforcement of convictions and orders is repealed, as it is replaced by the new enforcement mechanisms inserted by **clause 11**. The effect of subsection 147 (3) of the Act is preserved in an amended form at proposed **new section 184**. Section 147(3) refers to orders for an informant to pay a defendant's costs and makes such orders enforceable as if judgement had been given in civil proceedings. This aspect of section 147(3) is reflected in proposed **new section 184**.

Clause 9 also repeals section 147A which provides for convictions or orders for parking and traffic offences made after the commencement of the infringement notice scheme penalties to be enforced through licence suspension and cancellation orders. This procedure is no longer necessary as under the new scheme all offences for which a monetary penalty is ordered are able to be enforced by the suspension of driving licence and motor vehicle registration.

Clause 9 inserts **new sections 147, 147A, 147B and 147C**.

Payment of fine

Proposed **new section 147** authorises payment of a fine enforced under this scheme to be made to the Registrar.

Notice of address

Proposed ***new section 147A(1)*** requires a person who is liable to pay a fine to notify the Registrar of his or her address within 7 days after the fine is imposed by the court.

Proposed ***new section 147A(2)*** requires a person who is liable to pay a fine and who changes address prior to paying the fine to give the Registrar particulars of the new address within 7 days of changing address.

Proposed ***new section 147A(3)*** requires a person who is liable to pay a fine to provide to the Registrar evidence of his or her address when required to do so by the Registrar.

A penalty of 5 penalty units for a natural person and 25 penalty units for a body corporate is provided for contravention of any of these provisions.

The effect of ***new section 147A(3)*** is to enable the Registrar to request production of a driving licence as evidence of a person's address.

Access to particulars of address

Proposed ***new section 147B*** authorises access to particulars of the address of a specified fine defaulter by the Registrar. The Registrar may require the Commissioner for Housing, the Chief Police Officer or the chief executive of an ACT government agency to provide particulars of the address of a specified fine defaulter.

Doubtful service

Proposed ***new section 147C*** is to the effect that where a document has been served on a person other than by personal service and the Registrar is satisfied that the document has not come to the knowledge of the person or doubt exists

whether the document has come to the knowledge of the person then the Registrar shall not take any further action until the Registrar is satisfied that the document has been served and come to the knowledge of the person.

Court may allow time to pay

Clause 10 omits subsections 148(1B), (2) and (3) and amends subsection 148(1) and 148(1C) of the Act. Sections 148(1) and (1A) enable the court to impose a time limit during which a fine is to be paid as part of a sentence and subsections 148(2) and (3) relate to payments to be made by instalments.

Under subsection 148(1B) the Court may require security to be given for the payment of an amount specified in the order. The changes to the provision preclude the Court from directing payment of a fine by instalments. The current provisions dealing with instalment payments are unnecessary as the proposed procedures in *new section 152* ensure that where a person is experiencing difficulty in meeting their obligations under an order the new scheme will enable the Registrar to allow further time to pay or allow payment by instalments upon sufficient financial information being provided.

Substitution - fine enforcement scheme

Clause 11 repeals sections 150, 150A, 150B and 150C of the Act and inserts proposed *new sections 149, 150, 151, 152, 153, 154, 154A, 154B, 154C and 154D* in the Act. These new sections provide the basis of the new scheme for enforcement of fines.

The present section 150 authorises the commitment to prison of a person who defaults in payment of a fine. Present sections 150A, 150B and 150C deal with suspension of driving licences or motor vehicle registration arising from unpaid parking and traffic fines (for persons and bodies corporate) and service of orders of the court resulting in suspension of a licence or registration. These provisions are replaced by the new enforcement mechanisms.

Penalty notice

Proposed ***new section 149*** facilitates the application of the scheme to fines imposed by the Supreme Court. Proposed ***new subsection 149(1)*** requires that where the Registrar of the Supreme Court notifies the Registrar of the liability of a person to pay a fine the Registrar shall give the liable person a written penalty notice concerning the fine.

Proposed ***new subsection 149(2)*** requires a notice of a conviction or order, making a person liable to pay a fine imposed by the Magistrates Court, to contain a penalty notice concerning the fine.

Proposed ***new subsection 149(3)*** specifies the information about the fine which must be included in the penalty notice.

Proposed ***new subsection 149(4)*** requires a penalty notice which is varied by the Registrar to be amended to specify particulars of the approved arrangement.

Default

Proposed ***new section 150*** is to the effect that a person who defaults on payment of a fine becomes liable to pay, in addition to the outstanding amount of the fine, an administrative fee determined under subsection 248A(1) of the Act. Under proposed ***new subsection 150(1)*** the Registrar is required to give a default notice to such a person.

Proposed ***new subsection 150(2)*** is to the effect that where a person to whom a default notice has been given defaults in payment of the fine the Registrar must notify the Registrar of Motor Vehicles. When such a notification is made the Registrar of Motor Vehicles is required, pursuant to proposed ***new Division 3*** of Part XIII of the *Motor Traffic Act 1936*, to take action to suspend the defaulter's licence, vehicle registration or right to drive.

Proposed **new section 150(3)** is to the effect that a person defaults in payment of a fine or fee if the person fails to pay by the due date in the penalty notice or the default notice.

Default Notice

Proposed **new section 151** sets out the information to be included in a default notice, including advice about the consequences of failure to pay and how the person who is liable to pay may apply for a special arrangement to pay to be made.

Proposed **new subsection 151(2)** enables the Registrar to specify, in a default notice, the information about a liable person's property and financial circumstances which will need to be set out in any application for a special arrangement to pay. The information sought will be information which will assist the Registrar to determine whether it is appropriate, in the circumstances, for such a special arrangement to be made.

Proposed **new subsection 151(3)** requires that where a default notice is varied pursuant to a special arrangement, the notice must specify details of the approved arrangement for payment.

Special arrangements

Proposed **new section 152** deals with the process for a person who is liable to pay a fine making application for a special arrangement to pay.

Proposed **new subsection 152(1)** enables the Registrar to approve an arrangement for further time for payment of a fine or administrative fee or for the payment of the fine or administrative fee by instalments.

Proposed **new subsection 152(2)** is to the effect that an arrangement for further time to pay or for payment by instalments may be made in respect of an amount that is overdue for payment under a previous approved arrangement.

Proposed **new subsection 152(3)** is to the effect that where a special arrangement is in place any order by a court concerning time for payment of all or any of the fine is of no effect.

Proposed **new subsection 152(4)** sets out the requirements for an application for a special arrangement. It must be in writing, state the grounds on which it is made, be lodged with the Registrar by the date, or within the period, ascertained in accordance with the penalty notice or the default notice, as the case may be. The provision also requires an applicant who has been issued a default notice to include any particulars about his or her circumstances that were requested by the Registrar in the default notice.

Proposed **new subsection 152(5)** is to the effect that a person who has been committed to prison in default of payment may not apply for special arrangements to pay. Imprisonment for default is the option of last resort and will only be invoked after all other measures have been taken under the Act to recover a fine.

Proposed **new subsection 152(6)** ensures that where a special arrangement is approved by the Registrar the person who is liable to pay the fine is notified of the revised arrangements for payment in accordance with the approval.

Notice for suspension of driving licence

Proposed **new section 153** is to the effect that where a person who has been given a default notice fails to pay the outstanding fine, action will be taken to notify the Registrar of Motor Vehicles. The Registrar of Motor Vehicles will, then in accordance with the *Motor Traffic Act*, suspend the person's driving licence, vehicle registration or right to drive in the Territory.

Proposed ***new subsection 153(1)*** requires notification by the Registrar to the Registrar of Motor Vehicles of the default in payment by a person who has been given a default notice.

Proposed ***new subsection 153(2)*** requires that where such a notification has been made and the Registrar subsequently approves an arrangement for payment of the outstanding amount, the Registrar shall notify the Registrar of Motor Vehicles. Where this is done, the suspension action pertaining to licence, registration or right to drive, taken by the Registrar of Motor Vehicles, will be terminated.

Proposed ***new subsection 153(3)*** is to the effect that whilst the suspension of the driving licence, vehicle registration or right to drive of a defaulter remains operative, the Registrar must notify the Registrar of Motor Vehicles if the defaulter pays the outstanding fine, is released from prison having served a sentence in respect of the default on the fine, the fine is remitted or the conviction or order which gave rise to the liability to pay the fine is quashed. In these circumstances any suspension action, by the Registrar of Motor Vehicles, in respect of that fine will be terminated.

Access to personal information

Proposed ***new section 154*** ensures the Registrar can obtain access to certain personal information held by ACT agencies. The Registrar is authorised to require the Commissioner for Housing, the Chief Police Officer or the chief executive of an ACT government agency to provide particulars of personal information concerning a specified fine defaulter. Personal information means particulars concerning the financial circumstances or criminal record of a fine defaulter.

Financial information can assist in determination at an early stage of the capacity of a defaulter to pay. Access to criminal records is required for assessing the potential risks to the bailiffs and sheriffs associated with executing a writ of execution against the defaulter's property.

Ascertainment of capacity to pay fine

Proposed ***new section 154A*** deals with the oral examination of a defaulter by the Registrar to determine the defaulter's capacity to pay the outstanding fine. Such examination may be necessary to assist the Registrar in considering an application for approval of special arrangements to pay, deciding whether to impose a garnishee order in respect of the outstanding fine, or issue a writ of execution against the defaulter. The section facilitates the determination, at an early stage, of the capacity of an offender to pay.

Proposed ***new subsection 154A(2)*** requires an examination to be taken on oath administered by the Registrar.

Proposed ***new subsection 154A(3)*** authorises the Registrar to issue a warrant for the apprehension of a defaulter who has failed to attend before the Registrar, for the purpose of an examination.

Proposed ***new subsection 154A(4)*** requires a person apprehended pursuant to the warrant to be brought before the Registrar for examination.

Garnishee and writ of execution

Proposed ***new section 154B*** is to the effect that where the Registrar is satisfied that a fine defaulter has the capacity to pay an outstanding fine the Registrar may make a garnishee order in respect of the outstanding fine or issue a writ of execution against the goods of the fine defaulter to recover the outstanding fine.

Proposed ***new subsection 154B(2)*** is to the effect that where the Registrar issues a writ of execution in respect of 2 or more outstanding fines, the writ operates in respect of the amount of each outstanding fine separately.

Application of Part XVIII A of the Magistrates Court (Civil Jurisdiction) Act

Proposed *new section 154C* applies certain provisions in Part XVIII A of the *Magistrates (Civil Jurisdiction) Act 1982* to fine defaulters. In brief, the provisions in that Part enable:

- examination of judgement debtors to determine their financial circumstances;
- the making of garnishee orders to recover judgement debts; and
- a writ of execution to be executed against the property of a debtor.

Examination procedures

Proposed new paragraph 154C(1)(a) and *subsections 154C(2)* and *(5)* have the effect of applying certain provisions of the *Magistrates Court (Civil Jurisdiction) Act*, dealing with examination of judgement debtors, in a modified form, to fine defaulters for the purposes of the examination of fine defaulters by the Registrar. The effect of the application of these modified provisions is that a fine defaulter may be examined and dealt with in a similar manner to a judgment debtor in respect of whom an examination summons is in force.

Garnishee orders

The effect of *new paragraph 154C(1)(b)* and *subsections 154C(3)* and *(5)* is to apply certain of the provisions of Division 5 of Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act* as if they made reference to outstanding "fines", "fine defaulters" and "the Territory", in place of "judgement debts", "judgement debtors" and "judgement creditors". Division 5 contains the provisions enabling a garnishee order to be made in respect of a judgement debtor.

By applying the provisions of Division 5 in this way, proposed *new subsection 154C(3)* among other things:

- (a) enables the Registrar to decline to make a garnishee order in certain circumstances;
- (b) provides that only one garnishee order can be in place in respect of an outstanding fine, at any one time;
- (c) provides that where earnings are attached under 2 or more garnishee orders the sum of the payments made pursuant to those orders shall not exceed that part of the earnings that exceeds the amount calculated at the rate referred to in section 5 of the *Earnings (Assignment and Attachment) Act 1966*;
- (d) requires payments to be made to the Registrar;
- (e) sets out the time within payment must be made;
- (f) requires notification of the likely due date of certain debts to which the order attaches;
- (g) enables an application by the fine defaulter or the garnishee for variation or revocation of the order on the ground the order imposes exceptional hardship (the Registrar will consider matters such as hardship when determining whether to make a garnishee order, and the Registrar's decision will be based on the financial information provided by the defaulter, together with reports obtained pursuant to *new section 154 - Access to personal information*);
- (h) provides that the garnishee remains liable to personally pay the amount of the earnings or debt to the Territory where sufficient cause has not been shown to demonstrate why the garnishee should not comply with the garnishee order;
- (i) provides that a lien or claim by third party on a debt is to be resolved by the Registrar who is to hear and determine the matter in accordance with the provisions;
- (j) provides that a reduction of an attached debt will be determined by the Registrar;
- (k) requires the Registrar to notify the fine defaulter if an excess is paid and to repay the excess amount to the fine defaulter.

Writ of execution procedures

The effect of ***new paragraph 154C(1)(c)*** and ***subsections 154C(4)*** and ***(5)*** is to apply certain of the provisions of Division 6 of Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act* as if they made reference to "outstanding fines", "fine defaulters" and "the Territory", in place of "judgement debts", "judgement debtors" and "judgement creditors". Division 6 contains the provisions enabling a writ of execution to be issued against the personal property of a judgement debtor.

By applying the provisions of Division 6 in this way, proposed ***new subsection 154C(4)*** among other things:

- (a) provides for the order of service of writs of execution;
- (b) provides that a writ of execution shall be valid for a period of six months commencing on the date of issue;
- (c) enables any property seized within the 6 month period for executing a writ to be retained until it is sold or is otherwise disposed of, or is returned to the fine defaulter in accordance with the provision contained within Division 6;
- (d) identifies property which is exempt from seizure and enables property which has been seized to remain in the custody of any person as the bailiff or sheriff directs;
- (e) permits an application to the court for forced entry in defined circumstances permitting the searching of a premises so as to seize any property which the bailiff or sheriff is entitled to seize;
- (f) enables the Registrar on the application of the fine defaulter to declare that specified property is exempt from execution on the grounds that the fine defaulter or members of his family would suffer exceptional hardship;
- (g) enables payment to prevent execution where the person pays the amount for which a writ of execution was issued, or produces a receipt of the Registrar for the amount and pays all the proper costs actually incurred in effecting the sale;
- (h) sets out the method for determining the market value of the property to be offered for sale at an auction whereby the bailiff or sheriff shall so far as he

or she can do so by exercising reasonable diligence, determine the market value of the item and engage a suitably qualified and experienced person to provide an opinion as to the value of the property;

- (i) enables property which is not sold at auction to be sold by private agreement, at a price not less than the reserve price;
- (j) provides that the costs and charges of a writ of execution shall be added to and form part of the outstanding fine;
- (k) provides for the payment of the amounts raised to the Registrar by the bailiff or sheriff;
- (l) provides that the Registrar remains obliged to account to the Territory for all monies received under an executed writ;
- (m) provides that the Registrar may, where property remains unsold after an auction and attempts at sale by private agreement have not been successful, and as a result the debt has not been satisfied, returned the remaining property to the defaulter and pursue other methods of enforcement;
- (n) provides for the protection of bailiffs and sheriffs in the execution of their duty; and
- (o) provides that the Registrar is entitled to consent to dealings with seized property.

Proposed ***new subsection 154C(6)*** permits the Registrar to act on his or her own initiative in the exercise of a power which under the provisions of the *Magistrates Court (Civil Jurisdiction) Act* depends on action being taken by the judgment creditor.

Proposed ***new subsection 154C(7)*** prevents the Registrar from making an order under an applied provision of the *Magistrates Court (Civil Jurisdiction) Act* to permit payment of a fine or administrative fee by instalments.

Proposed ***new subsection 154C(8)*** imports the operation of relevant regulations or determinations so that they apply in relation to the modified application of the

Magistrates Court (Civil Jurisdiction) Act to outstanding fines, in the same way that they would apply in respect of judgement debts.

Committal to prison - fine defaulters

Proposed *new section 154D* authorises the Registrar to commit a fine defaulter to prison by warrant where the Registrar is satisfied that all reasonable action has been taken under the new scheme to recover the outstanding fine and there is no reasonable likelihood of the outstanding amount being paid.

The Registrar cannot commit a person to prison under this provision if the fine has been remitted.

Proposed *new subsection 154D(2)* is to the effect that the period for which a defaulter is to be committed to prison shall be calculated at the rate of one day for each \$100, or part thereof. A defaulter cannot be imprisoned for more than 6 months in respect of an unpaid fine.

Committal to prison

Clause 12 amends section 151 of the Act which provides for the committal to prison of persons for an offence or failure to do something directed by the court (other than payment of a fine). The amendment to section 151 inserts a *new subsection 151(2)* is to the same effect as repealed section 146A, that a reference to an order within paragraph 151(1)(b) does not include a reference to a reparation order made under section 437 of the *Crimes Act 1900*.

Relocation of ss. 151, 152 and 154

Clause 13 relocates and renumbers sections 151, 152 and 154 of the Act dealing with commitment to prison and warrants of commitment. The sections are renumbered as sections 185, 186 and 187, respectively.

Repeal

Clause 14 repeals sections 153, 153A, 153B, 153C and 155A of the Act.

Section 153 enables the court to postpone issuing a warrant of commitment for non-payment of an amount adjudged to be paid pursuant to a conviction or order. This provision has been replaced under the new scheme by requiring the Registrar to be satisfied that a defaulter has no ability to pay an outstanding fine before a warrant of commitment may be issued.

Section 153(2) of the Act provides for a reduction in a default period of imprisonment, proportionate to an amount already paid by the person liable to pay a fine. Section 153(2) is replaced by proposed *new section 154D(2)*.

Sections 153A, 153B and 153C of the Act which provide for the payment by instalment of parking offence penalties, the imposition of licence and registration suspensions in default of payment and the recording of part payments for traffic and parking offences are no longer required. They have been replaced by the proposed enforcement scheme which includes the sanction of licence suspension, as one of a number of fine enforcement provisions, available in relation to all offences for which a fine is imposed.

Section 155A of the Act requires that where money payable on account of costs pursuant to a conviction or order in respect of a traffic or parking offence is paid to the Registrar of Motor Vehicles, he or she shall pay that amount to the Registrar. This provision is no longer required as payments in respect of all court-imposed fines will, under the new scheme, be made to the Registrar, not the Registrar of Motor Vehicles.

Payment of amount to keeper or superintendent

Clause 15 amends section 157 dealing with payments of amounts to the keeper of a prison to reflect that under the new scheme, payments are to be paid to the Registrar pursuant to a notice, rather than an order of the court.

Insertion

Clause 16 inserts *new sections 158, 159, 160 and 161*.

Fine satisfied by imprisonment

Proposed *new section 158* enables an outstanding fine to be satisfied by imprisonment at the rate of \$100 for each day or part thereof for which the person is imprisoned or the completion of 6 months imprisonment.

Remission

Proposed *new section 159* enables the Executive, in writing, to remit all or any part of a fine.

Conviction or order quashed or set aside

Proposed *new section 160* requires that where a conviction or order which gave rise to liability to pay a fine is quashed or set aside, the Registrar must refund any amount paid in respect of the fine or a relevant administrative fee.

Other enforcement provisions not affected

Proposed *new section 161* is to the effect that Division 2 - Enforcement of Fines of Part IX of the Act does not affect any other law providing for the recovery or enforcement of a fine.

Insertion

Clause 17 inserts *new section 184* which is to the effect that where a court orders an Informant in criminal proceedings to pay costs to a defendant, the order operates as a judgment given or entered in respect of a claim for the payment of money and is enforceable as such. This section re-enacts an element of subsection 147(3) of the Principal Act.

Repeal

Clause 18 repeals section 189 of the Act which provides the scale of imprisonment for non-payment of money. This is replaced by *new sections 154D(2) and 158*.

Determination of fees and charges

Clause 19 is to the effect that paragraphs 248A(2)(c) and (d) of the Act, which enable the Minister, by notice in writing published in the gazette, to provide for the remission or deferral in payment of fees and charges in particular circumstances, do not apply to an administrative fee determined for the fine default provisions.

Refusal or failure to give evidence

Clause 20 amends section 255AA of the Act to the effect that it is an offence for a person required to submit to an examination by the Registrar, under the new scheme, to refuse or fail to give evidence to the Registrar for that purpose. Giving false information in an examination by the Registrar also becomes an offence.

Commitment to remand centre

Clause 21 amends section 255A of the Act, authorising the commitment of a defaulter to a remand centre, by omitting from paragraph (1)(a) references to present sections 150 and 151 and substituting "185". This amendment is consequential on the relocation of section 151 to *new section 185* and the

replacement of the existing provisions of section 150 with the new provisions whereby the Registrar is authorised to commit a fine defaulter to prison.

PART III - TRANSITIONAL PROVISIONS

Interpretation

Clause 22 defines the terms "amended Act", "commencement day", "existing fine" and "fine" which are used in the Part of the Bill dealing with transitional arrangements.

Application to existing fines

Clause 23 provides that subject to Part III of the Bill, the Act as amended applies in relation to an existing fine (that is any part of the fine outstanding) on and after the commencement day. The commencement day is the day on which the substantive provisions of the Bill commence.

Existing fines - not in default

Clause 24 requires the Registrar within 21 days of the commencement day to take reasonable steps to give a penalty notice to each person who is liable to pay an existing fine but who is not in default in respect of payment of any part of the fine.

Subclause 24(2) requires the penalty notice to specify the payment arrangements which were fixed before the commencement day for payment of the fine or instalments.

Existing fines - in default

Clause 25 sets out the procedures to apply where a person is in default in payment of an existing fine when the new scheme commences.

Subclause 25(2) provides that where a warrant of commitment has not been issued before the commencement day, the Registrar must give the defaulter a default notice in accordance with the new scheme, as soon as practicable.

Subclause 25(3) effectively converts a warrant of commitment issued prior to the commencement day into a warrant of commitment issued pursuant to the new scheme.

Subclause 25(4) prevents the execution of a warrant of commitment issued before the commencement day, until the Registrar has examined the defaulter's capacity to pay the fine. If the Registrar is satisfied after such examination that there is no likelihood the fine will be paid the warrant can be executed.

Subclause 25(5) is to the effect that where a person has been imprisoned pursuant to a warrant of commitment issued before the commencement day the person remains liable to imprisonment in accordance with the order or sentence to which the warrant relates.

Subclause 25(6) makes it clear that notwithstanding subclauses 25(3), (4) and (5) the Registrar may revoke a warrant or issue a default notice in respect of an existing fine.

Old parking and traffic offences

Clause 26 provides that Part IX of the amended Act (that is the new scheme) does not apply in relation to parking and traffic offences within the meaning of the current provisions dealing with enforcement in Part IX of the Act. This excludes parking and traffic offences committed before the introduction of infringement notice schemes (in 14 February 1990 for parking offences and 18 May 1992 for traffic offences) for such offences from the application of the new provisions.