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THE LEGISLATIVE ASSEMBLY OF
THE AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (AMENDMENT) BILL (NO.3) 1998

EXPLANATORY MEMORANDUM

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Explanatory Memorandum

OUTLINE

Background

The Magistrates Court (Amendment) Act 1998 created a scheme for the enforcement of fines imposed by courts utilising various methods to encourage payment with the ultimate sanction of imprisonment. It did not give any discretion to withhold the sanction of imprisonment even when the fine defaulter had a reasonable explanation.

The Bill

The purpose of the Magistrates Court (Amendment) Bill (No.3) 1998 (the Bill) is to require the Registrar to refer the question of the imprisonment of fine defaulters back to the Court for its consideration of all relevant matters. The Bill amends the Magistrates Court (Amendment) Act 1998.

Consequential amendments will also need to be made to the Crimes (Amendment) Act (No.3) 1998 and the Children's Services (Amendment) Act 1998.

NOTES ON CLAUSES

Clauses 1 and 2 are the formal clauses setting out the short title of the Act, providing for the commencement of its provisions and in particular providing that Clause 3 commences when Section 11 of the Magistrates Court (Amendment) Act 1998 commences.

Registrar of Motor Vehicles to be notified

Clause 3 proposes a new paragraph 153(3) (ba) requiring the Registrar of the Magistrates Court to notify the Registrar of Motor Vehicles if a community service order made under subsection 556 G (3) of the Crimes Act is discharged in accordance with subsection 556 V (1) of the Crimes Act 1900.

Referral to Magistrates Court

Clause 3 proposes a new section 154 CA requiring the Registrar of the Magistrates Court, subject to certain conditions and limitations, to refer to the Magistrates Court the issue of imprisoning a fine defaulter.

The Court would then have the option of imposing the alternative punishment of a community service order under section 556 G (3) of the Crimes Act 1900.

Referral to Children's Court

Clause 3 also proposes a new section 154 CB requiring the Registrar of the Magistrates Court, again subject to certain conditions and limitations, to refer to the Children's Court the issue of committing a juvenile fine defaulter to an institution.

The Children's Court would then have available to it all of the options for dealing with a juvenile fine defaulter under section 54 (5) of the Children's Services Act 1986.

Circumstances in which an adult fine defaulter is imprisoned

Clause 3 omits paragraphs 154 (D) (1) (a) and (b) of the Magistrates Court Act 1930 as amended by the Magistrates Court (Amendment) Act 1998 and substitutes the circumstances when the Registrar of the Magistrates Court is required to commit an adult fine defaulter to prison.

Under proposed paragraph 154 (D) (1) (a) the Registrar must imprison a fine defaulter where, after notification that the fine default is being considered for a referral to the Magistrates Court the fine defaulter has not consented to that referral, the Executive has refused to remit the fine and the Registrar is satisfied that all reasonable action has been taken to secure payment of the outstanding fine and there is no reasonable likelihood of it being paid.

Under proposed paragraphs 154 (D) (1) (b) and (c) the Registrar must also imprison a fine defaulter where the Court has refused to make a community service order or where a community service order has been revoked under specified provisions of the Crimes Act 1900. These provisions cover the following circumstances :

- where the Court revokes a community service order (section 556 KA and paragraph 556 M (1) (b))
- where a fine defaulter is convicted of an offence while the subject of a community service order (section 556 NA) or
- where a fine defaulter seeks to leave the ACT to avoid the requirements of a community service order (subsection 556 Q (3)).