

**2010**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (SENTENCE ADMINISTRATION) AMENDMENT BILL 2010**

**EXPLANATORY STATEMENT**

Circulated by authority of  
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## **Crimes (Sentence Administration) Amendment Bill 2010**

### **Outline**

The Crimes (Sentence Administration) Amendment Bill introduces a new system for the enforcement of court-imposed fines. This new system will strengthen the Territory's ability to recover outstanding fines by providing a number of new enforcement options. The new enforcement options will also be beneficial for people who default on fines in that there will be a number of new steps between defaulting on a fine and discharging that debt by way of imprisonment.

The Bill provides the following options to assist in the recovery of court-imposed fines:

- instalment plans;
- income assessment through written notice or under warrant;
- the seizure and subsequent sale of personal property;
- negative reporting to a credit provider;
- financial institution deduction orders;
- garnishee orders;
- voluntary community work orders; and
- imprisonment.

This Bill also allows an entity that has had a reparation order made in their favour enter into an agreement with the Chief Executive to have that order enforced through the new Chapter 6A. Where this occurs, compensation owing under a reparation order will be treated as an outstanding fine for the purposes of enforcement.

## Crimes (Sentence Administration) Amendment Bill 2010

### Detail

#### Part 1 — Preliminary

##### Clause 1— Name of Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Crimes (Sentence Administration) Amendment Act 2010*.

##### Clause 2— Commencement

This clause enables the Act to commence on 1 July 2010.

##### Clause 3— Legislation amended

This is a technical clause stating that the primary Act being amended is *Crimes (Sentence Administration) Act 2005*. This clause also identifies other Acts that are being incidentally amended. A full list appears in Schedule 1.

##### Clause 4— Application-pt 3.1 Section 10(2), except notes

This clause ensures that part 3.1 of the *Crimes (Sentence Administration) Act 2005* applies to a person imprisoned under the new section 116ZK.

##### Clause 5— Application- ch 5 Section 39, new note

This clause inserts a new note into section 39 of the *Crimes (Sentence Administration) Act 2005* to ensure that this section applies to a person who has been sentenced to periodic detention under the new section 116ZL.

##### Clause 6— New chapter 6A

This clause inserts a new chapter 6A into the *Crimes (Sentence Administration) Act 2005*. This chapter contains a comprehensive legislative framework for the new fine enforcement system.

#### Part 6A.1 General

##### 116A

The new section 116A contains a number of definitions relevant to the interpretation of provisions in the new Chapter 6A.

##### 116B

The new section 116B provides that a fine imposed by a court is payable in accordance with any provisions under this Chapter to the Territory. Under this Chapter, the Territory can be represented by either the registrar of the Magistrates Court or the Chief Executive.

#### Part 6A.2 Penalty notices, default notices and payment arrangements

##### 116C

This section provides that where an offender is convicted of an offence in the Supreme Court and is given a fine as part of that conviction, the registrar of the

Supreme Court must give the registrar of the Magistrates Court a copy of the conviction or order. When the registrar of the Magistrates Court receives such a copy, the registrar must then issue the offender with a penalty notice for the fine. The Magistrates Court is the court that administers fines in the Territory.

This section also provides that where an offender is convicted of an offence in the Magistrates Court and is given a fine as part of that conviction, the notice of conviction or order required by the *Magistrates Court Act* must contain a penalty notice. Subsection (2) makes reference to sections 116I and 141(1)(b). These sections require a written record of a conviction to be given to an offender if the conviction was made when the offender was not present in court (s.116I) or when the offender was present in court (s.141(1)(b)).

This section also states the required content of a penalty notice. A penalty notice issued by the Magistrates Court must:

- state the amount of the fine and the due date for payment;
- specify the amount of each instalment if applicable;
- state that if the fine or any instalment of the fine is not paid by the due date, the offender is liable for an administrative fee in addition to any outstanding amount of the fine. The administrative fee is provided for in the new section 116G.
- state that upon application made before the due date for payment of a fine, the Chief Executive may approve an arrangement about payment of the fine. An arrangement can allow further time to pay an amount outstanding or approve payment by instalments. Arrangements are provided for in the new section 116K.
- state that an offender has an obligation to notify the registrar of any change of address. If an offender does not notify the registrar of a change of address, they are liable for further penalty. The requirement to notify the registrar of a change of address is provided in the new section 116D.

#### 116D

This section requires an offender on whom a fine is imposed to give the registrar details of his or her home address and postal address within 7 days of the fine being imposed. If an offender on whom a fine is imposed does not give the registrar details of his or her home address and postal address, they commit an offence.

This section also requires an offender on whom a fine is imposed who changes his or her address before the entire fine and any relevant administrative fee is paid to give the registrar details of the new address within 7 days after the change occurs. If an offender who has not paid the fine and any administrative fee does not give the registrar the details of the new address within 7 days of the change, they commit an offence.

This section also requires a person to give evidence of his or her home address or postal address if the registrar so requires.

The purpose of this section is to ensure an offender's records are kept up to date to enable the effective administration of the fine imposed by the court.

116E

This section provides that the registrar may write to a relevant person and ask the person for any details held by the person about an address of an offender who is liable to pay a fine. A relevant person must comply with the registrar's request as far as practicable.

This section defines a relevant person as:

- the chief police officer;
- the housing commissioner; or
- the chief executive of an administrative unit, ACTEW Corporation Limited or a territory entity prescribed by regulation.

The definition of relevant person encompasses people in positions within particular agencies that are likely to have information about an offender's address details. The agencies mentioned are government or government owned agencies.

116F

This section applies if a document has not been served on a person by way of personal service. Personal service is defined in rule 6405 of the *Court Procedure Rules 2006*.

If the registrar is satisfied that the document has not come to the knowledge of the offender, or doubts whether the document has come to the knowledge of the offender, the registrar must not take any further action under this chapter. Further action can be taken if the document is served on the offender again and the registrar is satisfied the document has come to the knowledge of the offender.

116G

This section provides that if after the due date for the payment of a fine there is any amount outstanding, the offender must pay an administrative fee determined under the *Court Procedures Act 2004* in addition to the outstanding amount of the fine.

116H

This section provides that if a person defaults on a fine, the Chief Executive must send that person (the fine defaulter) a default notice. A person defaults on a fine (or any relevant administrative fee) if the person fails to pay the entire amount owing by the due date stated in the relevant penalty notice, default notice or date required in accordance with a payment arrangement with the Chief Executive.

Under this section, the Chief Executive must not send a default notice until 28 days after the due date for payment of the fine and any relevant administrative fee.

116I

This section details the information that must be included on a default notice.

A default notice must:

- include details about the fine including the offence for which the fine was imposed, the date the fine was imposed, the amount of the fine imposed, the due date for payment, the due dates for payment by instalment if applicable,

the outstanding amount of the fine, the administrative fee payable as a result of defaulting on the fine and the default to which the notice relates;

- explain that a payment arrangement may, on application to the Chief Executive, be approved in accordance with the new section 116K;
- explain that if a payment arrangement is not approved by the Chief Executive and the fine remains unpaid, the Chief Executive will commence enforcement action;
- list the enforcement measures that may or must be imposed against the defaulter. These enforcement measures are
  - suspension of drivers licence and/or vehicle registration
  - reporting the default to a credit reporting agency which could negatively effect the person's credit rating
  - an order allowing an outstanding amount to be deducted from the defaulter's earnings, bank account or both
  - the seizure and subsequent sale of personal property
  - the imposition of a voluntary community work order
  - imprisonment.
- explain the fine defaulter's obligation to notify the registrar of any change of address in accordance with the new section 116D.

The enforcement measures are further explained in relevant sections.

A default notice can also specify details regarding a fine defaulter's property or financial circumstances that are required if a fine defaulter wants to make an application for a payment arrangement under the new section 116K.

#### 116J

This section provides that if after 14 days of being sent a default notice a person has not paid the outstanding fine or entered into a payment arrangement with the Chief Executive, the Chief Executive must send the person a reminder notice to the person's last known address.

#### 116K

This section provides that the Chief Executive may approve an application for a payment arrangement for either:

- further time to pay an outstanding amount of a fine or administrative fee (including an instalment of such an amount); or
- payment of an outstanding amount of a fine or administrative fee pay instalment.

This approval must be in writing.

An arrangement for further time to pay can also be made for an overdue amount under a previous arrangement.

If the Chief Executive approves a payment arrangement for further time to pay a fine or instalment and that arrangement is inconsistent with an order about the payment of the fine made by the court that imposed the fine, the court order has no effect. This reflects the change of responsibility for the administration of the fine from the originating court to the Chief Executive.

An application for a payment arrangement must be made in writing. Also, an application must include certain information. An application must state the grounds on which the application is made and must be given to the Chief Executive by the due date stated in the current penalty notice or default notice. If an applicant has defaulted on a fine, the application must also include any information about the person's property or financial circumstances if requested to do so in the default notice that was sent to the person.

An application for a payment arrangement for a fine cannot be made under this section if an offender is subject to a voluntary community work order or a term of imprisonment in relation to the fine.

If a payment arrangement in relation to a fine for which a penalty notice or default notice has been issued is approved, the chief executive must update the penalty notice or default notice to reflect any relevant terms of the agreement. An updated copy of the penalty notice or default notice must be given to the applicant.

### Part 6A.3- Fine enforcement action

#### Division 6A.3.1 Reporting fine defaulters

##### 116L

This section provides that Part 6A.3 applies to person who has been sent a default notice and reminder notice and has not paid a fine after 28 days of the default notice being sent or entered into a payment arrangement. Part 6A.3 also applies to a person who has entered into a payment arrangement but has not complied with the arrangement.

##### 116M

This section provides that the Chief Executive must give written notice to the road transport authority if a fine defaulter does not pay an outstanding amount 28 days after being sent a default notice. After receiving notice from the Chief Executive, the road transport will suspend the fine defaulter's drivers licence or prevent a person from holding a drivers licence if they do not currently hold one. If a person is a responsible person of a motor vehicle, the road transport authority may also suspend the vehicle registration.

The written notice given to the road transport authority must include the following information:

- the defaulter's name, home address and date of birth;
- the offence for which the fine defaulter was convicted;
- the amount of the fine imposed;
- a statement that the outstanding fine has not been fully paid; and
- a statement that the defaulter has not complied with a payment arrangement approved under the new section 116K if this is applicable.

The Chief Executive must give further notice to the road transport authority if the outstanding fine is paid, the Chief Executive approves an arrangement under section 116K, the outstanding fine is remitted, the outstanding fine is discharged because the person completed a voluntary community work order or served an appropriate term of imprisonment or if the conviction that gave rise to the fine is quashed or set aside. If

the road transport authority receives such further notice, all suspensions of licence or registration must be lifted.

### 116N

This section provides that the Chief Executive must give written notice to a credit reporting agency if a fine defaulter does not pay an outstanding amount 28 days after being sent a default notice.

The written notice given to the credit reporting agency must include the following information:

- the defaulter's name, home address and date of birth;
- a statement that the fine defaulter has not paid a fine that they were liable to pay;
- a statement that the defaulter has not complied with a payment arrangement approved under the new section 116K if this is applicable; and
- a statement confirming that the defaulter was made aware that their details could be given to a credit reporting agency if that person failed to pay a fine for which they were liable.

After receiving notice from the Chief Executive, a credit reporting agency must include the information received about a fine defaulter in the records used as part of the agency's credit reporting business. The purpose of this provision is to negatively affect a fine defaulter's credit rating so as to provide an incentive to pay an outstanding amount.

The Chief Executive must give further notice to the credit reporting agency if the outstanding fine is paid, the Chief Executive approves an arrangement under section 116K, the outstanding fine is remitted, the outstanding fine is discharged because the person completed a voluntary community work order or served an appropriate term of imprisonment or if the conviction that gave rise to the fine is quashed or set aside. If the credit reporting agency receives such further notice, the agency must remove any information received about a fine defaulter from the records used as part of the agency's credit reporting business.

The definition of a credit reporting agency is a corporation that carries on a credit reporting business. This definition can be found in the section 6(1) of the Commonwealth *Privacy Act 1988*.

The definition of credit reporting business can also be found in section 6(1) of the Commonwealth *Privacy Act 1988*. A credit reporting business is a business that involves the preparation or maintenance of records containing personal information relating to individuals for the purpose of providing to other persons information on an individual's:

- eligibility to be provided with credit;
- history in relation to credit; or
- capacity to repay credit.

### Division 6A.3.2 Examining fine defaulter's financial circumstances

#### 116O



This section provides that the Chief Executive may conduct an examination of a fine defaulter in accordance with this division. The purpose of the examination is to determine a fine defaulter's financial position and what fine enforcement action should be taken against the fine defaulter. If the Chief Executive does not need further information to determine a defaulter's financial circumstance or what fine enforcement action should be taken, it is not a requirement for the Chief Executive to examine the defaulter.

#### 116P

This section provides that the Chief Executive may serve an examination notice on a fine defaulter if the Chief Executive thinks that doing so would assist in making a determination about the defaulter's financial circumstances and possible enforcement action to take. The service of the examination notice must be in accordance with Part 19.5 of the *Legislation Act 2001* which deals with the service of documents.

The examination notice may require the fine defaulter to produce any document stated in the notice. Any document requested by the Chief Executive must be submitted within 14 days after the date of the notice at a time and place stated in the notice. The fine defaulter may provide oral information about one or more documents stated in the examination notice if the Chief Executive approves.

An examination notice cannot be served on a fine defaulter if the defaulter would be required to comply with the examination notice within 6 months of complying with a previous examination notice for the same fine. This does not prevent an examination notice from being served on a fine defaulter within 6 months of complying with a previous examination notice so long as the required date of compliance on the latest examination notice does not fall within the 6 month period.

#### 116Q

This section details the type of information in documents that may be required to be produced by an examination notice. This includes:

- details about any bank account the person owns including the balance of the account. This can include a joint account;
- details about the defaulter's income;
- details about any cash the defaulter possesses or has access to;
- details about any other property the person owns or has a legal or equitable interest in;
- details about any debts owing to the defaulter;
- the amount of money the defaulter reasonably needs for living expenses;
- whether the defaulter has any dependants and, if so, the amount of money the defaulter needs to provide for them;
- the hardship (if any) that would be caused to the defaulter as a result of paying the fine;
- the hardship (if any) that would be caused to anyone else as a result of paying the fine; and
- relevant documents relating to matters mentioned in this section.

#### 116R

This section provides that where the Chief Executive reasonably believes that a defaulter has not complied with an examination notice, the Chief Executive may apply to the registrar for a warrant for the arrest of the defaulter. This warrant is known as an examination warrant.

The registrar may refuse an application for an examination warrant until the Chief Executive provides the registrar with all the information required by the registrar.

The registrar can only issue an examination warrant for the arrest of a fine defaulter if the defaulter was served with an examination notice and the defaulter failed to comply with the notice without a reasonable excuse or the defaulter provided false or misleading information or omitted something that caused information to be misleading.

An examination warrant authorises an enforcement officer to arrest the fine defaulter named in the warrant and bring the defaulter before the registrar. An enforcement officer means a sheriff, deputy sheriff or a sheriff's assistant under the *Supreme Court Act 1930* or a person appointed as an enforcement officer by the Chief Executive.

#### 116S

This section provides the contents of an examination warrant. An examination warrant must name or otherwise describe the fine defaulter who is to be apprehended and briefly state the reason for the issue of the warrant. An examination warrant must also require an enforcement officer to arrest the defaulter named in the warrant and bring that defaulter before the registrar to be examined at an examination hearing. An enforcement warrant must end 3 months or less after the date of its issue.

This section also provides details about the execution of an examination warrant. An enforcement officer executing an examination warrant may enter any premises using necessary assistance and force to arrest the defaulter named in the warrant. An enforcement officer can also use force to arrest the defaulter named in a warrant however this force must not be more than the minimum amount required. An enforcement officer can also ask a police officer to help when executing an enforcement warrant.

Before removing a fine defaulter in accordance with an examination warrant, an enforcement officer must explain the purpose of the warrant to the defaulter and must bring the defaulter before the registrar immediately. If the defaulter is under a legal disability, the enforcement officer must tell a parent or legal guardian of the arrest. People under the age of 18 are under a legal disability. An enforcement officer must also notify the Chief Executive when an arrest is made.

Where a police officer is asked to assist in the enforcement of an examination warrant, the police officer must assist the enforcement officer where it is practicable to do so.

If an enforcement officer believes that a fine defaulter has complied with the requirements of the examination notice after being arrested, the enforcement officer must release the defaulter immediately. This could occur if a third person assists the defaulter in complying with an examination notice while the defaulter is in custody.

An enforcement officer must also release a defaulter if the defaulter cannot be brought before the registrar immediately.

This section also provides that an examination warrant continues in force until the warrant is executed (which occurs when either a fine defaulter is brought before the registrar and examined or when examination is adjourned), the warrant is set aside by the registrar and the enforcement officer is told the warrant has been set aside or at the end of 3 months after the date the warrant is issued.

#### 116T

This section applies if an examination warrant for a fine defaulter has been issued and the defaulter is either brought before the registrar on the warrant or otherwise attends before the registrar.

This section provides that the registrar must set a date for an examination hearing and issue an examination hearing subpoena. An examination hearing subpoena will contain the date of the hearing and require the defaulter to answer questions, give information and provide produce documents or other things as required.

Once an examination hearing subpoena has been issued, the registrar must conduct the hearing to determine the financial position of the fine defaulter. The registrar may adjourn an examination hearing and may require the defaulter to which the hearing applies to attend an adjourned hearing.

The Chief Executive must be a party to an examination hearing. If the Chief Executive has been informed of the date, time and place of an examination hearing or adjourned examination hearing but does not attend before the registrar, the order for the examination hearing may be set aside or the examination hearing may be conducted in the absence of the Chief Executive.

At an examination hearing the registrar may orally examine or require the production of documents about:

- the assets, liabilities, expenses and income of the defaulter;
- any other means the defaulter has to satisfy the outstanding fine; and
- the defaulter's financial circumstances generally.

A fine defaulter being orally examined is done so on oath. Oath also includes affirmation.

An examination hearing must be conducted by the registrar and can be conducted in open court or in the absence of the public.

An examination hearing is a legal proceeding for chapter 7 of the *Criminal Code 2002* which deals with administration of justice offences. This means that a party to an examination hearing is subject to all provisions in chapter 7.

#### 116U

This section provides that if a fine defaulter is required to attend an examination hearing (including an adjourned examination hearing) and fails to attend, the registrar may issue a warrant requiring a police officer to apprehend the defaulter and bring the

defaulter before the registrar for examination. A warrant issued under this section is known as an examination hearing warrant.

The registrar may only issue an examination hearing warrant if the registrar is satisfied that the defaulter was aware that he or she was required to attend an examination hearing and does not have a reasonable excuse for failing to do so.

An examination hearing warrant can be issued on application from the Chief Executive or on the registrar's own accord.

#### 116V

This section provides the contents of an examination hearing warrant. An examination hearing warrant must name or otherwise describe the fine defaulter who is to be apprehended and briefly state the reason for the issue of the warrant. An examination hearing warrant must also require an enforcement officer to arrest the defaulter named in the warrant and bring that defaulter before the registrar to be examined at an examination hearing. An enforcement warrant must end 3 months or less after the date of its issue.

This section also provides details about the execution of an examination hearing warrant. An enforcement officer executing an examination hearing warrant may enter any premises using necessary assistance and force to arrest the defaulter named in the warrant. An enforcement officer can also use force to arrest the defaulter named in a warrant however this force must not be more than the minimum amount required. An enforcement officer can also ask a police officer to help when executing an enforcement warrant.

Before removing a fine defaulter in accordance with an examination hearing warrant, an enforcement officer must explain the purpose of the warrant to the defaulter and must bring the defaulter before the registrar immediately. If the defaulter is under a legal disability, the enforcement officer must tell a parent or legal guardian of the arrest. People under the age of 18 are under a legal disability. An enforcement officer must also notify the Chief Executive when an arrest is made.

Where a police officer is asked to assist in the enforcement of an examination hearing warrant, the police officer must assist the enforcement officer where it is practicable to do so.

This section also provides that an examination hearing warrant continues in force until the warrant is executed (which occurs when either a fine defaulter is brought before the registrar and examined or when examination is adjourned), the warrant is set aside by the registrar and the enforcement officer is told the warrant has been set aside or at the end of 3 months after the date the warrant is issued.

#### Division 6A.3.3 Fine enforcement orders – general

##### 116W

This section provides that the Chief Executive may apply to the Magistrates Court for an order to be made against a fine defaulter. This order is known as a fine enforcement order. The Chief Executive may apply for a specific fine enforcement order to be made.

The Chief Executive can apply to the Magistrates Court for a fine enforcement order to be made against a defaulter even if the defaulter has not been served with an examination notice or has not attended an examination hearing.

An application by the Chief Executive must include a statement setting out the grounds of the application including the reasons why the Chief Executive is seeking a particular fine enforcement order if applicable.

An application must also contain an affidavit from the Chief Executive detailing the offence for which the original fine relating to the application was imposed and the steps taken by the Chief Executive to notify the person on whom the fine was imposed that they had defaulted on the fine.

If the fine defaulter provided any oral information or documents to the Chief Executive under an examination notice, the information or documents must be provided to the court as part of an application.

If the fine defaulter appeared at an examination hearing, any documents provided to the registrar or a transcript of oral evidence must also be provided as part of an application.

#### 116X

This section provides that the Magistrates Court may make a fine enforcement order against a fine defaulter if an application to do so has been received from the Chief Executive and it is in the interests of justice to do so.

A fine enforcement order may contain an earnings redirection order, a financial institution deduction order or a seizure and sale order. A fine enforcement order may also contain a combination of the aforementioned orders.

When deciding whether it is in the interests of justice to make a fine enforcement order against a fine defaulter, the Court must take into account any information the court has regarding:

- the defaulter's income, assets or equitable interest in property;
- any debts payable to the defaulter;
- any other means by which the defaulter might pay the fine;
- the defaulter's reasonable living expenses including the reasonable living expenses of any dependants;
- the hardship a fine enforcement order would cause to the defaulter or a third party affected by the order;
- the need to give effect to the factor of deterrence that formed part of the decision of the sentencing court to impose a fine on the fine defaulter;
- whether the fine defaulter has the capacity to pay the fine and is unlikely to have the means to pay the fine in a reasonable time;
- whether the fine defaulter has knowingly attempted to misrepresent his or her financial affairs to avoid payment of the fine; or
- any other relevant matter.

It is not necessary for the court to have all the aforementioned information and only needs to have regard to such information if the Court possesses it.

A fine enforcement order may be made in the absence of and without notice to the fine defaulter.

Division 6A.3.4 Fine enforcement orders – earnings redirection orders

116Y

This section provides for earnings redirection orders. For the purposes this section, earnings is defined as any of the following that are owing or accruing to the fine defaulter:

- wages or salary or any other amount received under a contract of employment such as commission, bonus, overtime or allowances;
- an amount received that is similar in nature to an amount received under a contract of employment for example, a contract for services; and
- any other amount received, or the value of a benefit gained, as compensation for services or profit arising from employment, a contract for services or a position.

Earnings is also defined as including a pension, benefit or similar payment (which could include social security benefits), an annuity, an amount payable instead of leave or a retirement benefit.

Under this section, employer means a person or company who, as principal rather than as employee or agent, pays or is likely to pay earnings to a fine defaulter.

This section provides that the court may make an order requiring an employer of a fine defaulter to deduct an amount from the defaulter's earnings and pay that amount in accordance with the order. A deduction can be in the form of a lump sum or instalments.

For each payday that an earnings redirection order is in force, an employer must deduct an amount stipulated in the order from the defaulter's earnings and pay that amount to the registrar. An employer is permitted to deduct an extra amount to cover any administrative costs associated with making a deduction from the defaulter's earnings. Any such deduction can be no more than is usually charged to employees to make periodic deductions or otherwise no more than is necessary to cover the costs of complying with the order.

Where an employer makes a deduction in accordance with an order, the employer must be given notice detailing any deductions.

It is an offence for an employer to dismiss a defaulter, change a defaulter's position in a way that disadvantages the defaulter or discriminate against a defaulter because a defaulter has an earnings redirection order made against them.

Division 6A.3.5 Fine enforcement orders – financial institution deduction orders

116Z

This section provides that where a fine defaulter has an account with a financial institution that has or is likely to have sufficient funds to satisfy all or part of the defaulter's outstanding fine, the court may make a financial institution deduction order.

A financial institution order can direct a financial institution to deduct a stated amount, in either a lump sum or instalments, from an account held by the defaulter and pay the amount in accordance with the order. For each deduction made from a defaulter's account, a financial institution may make an extra deduction to cover the administrative costs associated with making a deduction. Any such deduction must not be more than is usually charged for customers making periodic payments or otherwise no more than is necessary to cover the costs of complying with the order.

Where a financial institution makes a deduction in accordance with an order, the financial institution must give the defaulter a notice detailing any deductions.

A financial institution deduction order must specify the name of the defaulter to whom the order relates, the name of the financial institution, relevant details of the defaulter's account and the amount or amounts to be deducted from the account.

A financial institution deduction order can be made in relation to an account jointly held by the fine defaulter and another person or persons if deemed appropriate by the court.

#### Division 6A.3.6 Fine enforcement orders – property seizure orders

##### 116ZA

This section provides that a court may make an order for the seizure of personal property belonging to a fine defaulter. This is known as a property seizure order.

##### 116ZB

This section provides that a property seizure order authorises the Chief Executive to enter a premises between 7am and 6pm on the same day if the Chief Executive gives a person present at the premises an opportunity to allow entry and the person refuses or if there is no one present at the premises. The Chief Executive can ask a police officer to help enter the premises.

A property seizure order authorises the Chief Executive to seize any property found on the premises or a public place that apparently wholly or partly belongs to the fine defaulter. This does not include clothing, bedding or other necessities of life. A necessity of life would, for example, encompass a refrigerator used to store food but would not include a surplus refrigerator used for drinks. The Chief Executive may also seize any documents that may prove the defaulter's title to personal property.

If the Chief Executive requests the help of a police officer to enter premises, the police officer must help the Chief Executive if it is practicable to do so. The police officer may also use reasonable force against a person during the course of providing help to the Chief Executive. The Chief Executive is only able to use force against a person if it is reasonable and necessary in the interests of a person's safety.

This section provides that where the Chief Executive seizes any property, the Chief Executive must prepare an inventory of the property seized. The Chief Executive must also attach to the premises, in a prominent place, a notice that property has been seized in accordance with the property seizure order, a copy of the inventory and a

notice setting out the person's rights to recover the seized goods. The recovery of seized goods is dealt with in section 116ZD.

Where possible, the Chief Executive must seize property that may be sold promptly and without necessary expense and that if sold, would not cause undue hardship to the defaulter or other people.

#### 116ZC

This section provides that the Chief Executive must sell property seized under a property seizure order and pay the proceeds of the sale to the registrar. However, seized property may not be sold unless-

- the holding period for the property has expired; and
- the Chief Executive has refused an application to return the property made under section 116ZD; and
- an appeal against the Chief Executive's refusal to return property has been withdrawn or refused.

The holding period is 28 days from the date of seizure.

This section provides that where possible, property must be sold in an order that is likely to satisfy an outstanding fine promptly without incurring unnecessary expense and minimises undue hardship to the defaulter or other people. Where possible, the property must also be sold at the best price reasonably obtainable at the time of sale.

Where the Chief Executive sells seized property, the Chief Executive may retain part of the proceeds to cover any reasonable expenses incurred as a result of the sale. This includes costs associated with storing property for the holding period.

If the sale of property results in proceeds that exceed the amount needed to pay the outstanding fine and any costs incurred by the Chief Executive through selling the property, the excess amount must be given to any person who had a legal or equitable interest in the property. Where more than one person had an interest in the property, the excess amount will be apportioned in accordance with the share of the person's interest. For example, if two people owned a motor vehicle in equal shares and there was an excess amount of \$1000 after the sale of the motor vehicle, each person would receive \$500.

#### 116ZD

This section provides that where the Chief Executive has seized property in accordance with a property seizure order, a person may apply to have that property returned.

An application under this section must be made within the holding period that is applicable to the property in question. The holding period is 28 days from the date of seizure. An application must also clearly identify the item or items that are sought to be returned.

An application under this section can be made by the fine defaulter to whom the property seizure order relates or by another person. If the applicant is the fine defaulter, the application must state why the failure to return the property would result in undue hardship or unfairness to the applicant.



### Division 6A.3.6 Voluntary community work orders

#### 116ZE

This section provides that the Chief Executive may apply to the Magistrates Court for a voluntary community work order. This order requires a fine defaulter to undertake community work to discharge an outstanding fine.

The court can only make a voluntary community work order if the fine defaulter agrees to the order being made and, if the outstanding amount for which the defaulter is liable for is compensation under a reparation order, the entity in whose favour the reparation order is made agrees.

Furthermore, the court must be of the opinion that no other fine enforcement order is appropriate and that the defaulter is likely to comply with a voluntary community work order.

A voluntary community work order cannot be made if the originating offence for which the fine defaulter received a fine was a personal violence offence. An offence is a personal violence offence if it involves causing harm or threatening to cause harm to anyone or a domestic violence offence.

A voluntary community work order must state the number of hours required to be worked to discharge the outstanding fine. Where a fine defaulter undertakes community work in accordance with a voluntary community work order, the outstanding fine is discharged at a rate of \$37.50 per hour worked.

#### 116ZF

This section provides that voluntary community work orders are to be administered by the Chief Executive or another entity authorised by the Chief Executive. It is the responsibility of the administering entity to decide the kind of work that is to be performed by the defaulter. When deciding the type of work to be performed, the administering entity must take into account the defaulter's ability.

The administering authority must also decide the hours the defaulter must work, taking into account the defaulter's family, work and other relevant commitments. The maximum number of hours a day community work can be undertaken is eight. Where a fine defaulter makes a request for a change in the arrangements of a voluntary community work order, the administering entity must grant the request if it is reasonable to do so.

#### 116ZG

This section provides that where work is performed in accordance with a voluntary community work order, a fine defaulter's outstanding fine is discharged at a rate of \$37.50 per hour.

#### 116ZH

This section provides that if the entity administering a voluntary community work order believes on reasonable grounds that a person has not complied with the order and the person has not requested an amendment to the conditions of the order, the administering entity must report the noncompliance to the court.

If the court is satisfied that a fine defaulter has failed to comply with an order, the court may take no further action, warn the defaulter about the need to comply with the order, amend the order or cancel the order. If the court amends or cancels the order, the fine defaulter must be provided with written notice of the amendment or cancellation.

If the court cancels the order, the fine defaulter could be subject to another fine enforcement order, remission of the fine or imprisonment.

#### 116ZI

This section provides that if a fine defaulter satisfies the requirements of a voluntary community work order, the entity administering the order must certify the completion to the court. This is done by giving the court a certificate of completion.

#### 116ZJ

This section provides that if the defaulter's outstanding fine is paid while the person is completing a voluntary community work order, the order ceases to have effect and the person is no longer in default of a fine. An example is if a person has five hours of community work left on an order and that person pays \$187.50 as well as any administrative fee, the person does not need to complete the outstanding hours of work and the fine is discharged.

### Division 6A.3.8 Imprisonment

#### 116ZK

This section provides that if the Chief Executive applies to have a fine defaulter imprisoned, the Magistrates Court may order the imprisonment of the fine defaulter. The Court may only order the imprisonment of a fine defaulter if:

- all appropriate fine enforcement action has been taken against a the fine defaulter and there is no real likelihood of the fine being recovered; and
- the fine has not been remitted by the Chief Executive as is authorised by section 116ZO of the Act; and
- if a reparation order is being enforced, the entity in whose favour the reparation order is made consents to the amount owed being discharged by way of imprisonment.

Where the Court orders the imprisonment of a fine defaulter, the Court must also issue a warrant for the person's imprisonment in the custody of the Chief Executive in accordance with section 12 of the Act. This means the warrant must be addressed to the Chief Executive and signed by an authorised person of the Court.

If a fine defaulter's outstanding fine is paid to the Territory, or someone acting for the Territory, before the person is imprisoned, the imprisonment order and associated warrant for imprisonment no longer have effect and the person must not be taken into custody.

The length of time a person is to be imprisoned under this section is the lesser of 1 day of imprisonment for each \$300, or part of \$300, of the outstanding fine or 6 months. This means that if a person has an outstanding fine \$1500, the person will be imprisoned for 5 days.

If a person was a young offender at the time the offence was committed, the length of imprisonment is to be the lesser of 1 day for each \$500, or part of \$500, of the outstanding fine or 7 days. This means that if a person has an outstanding fine of \$1500, the person will be imprisoned for 3 days.

#### 116ZL

This section provides that where the Court makes an imprisonment order, the Court may allow all or part of the term of imprisonment to be served by periodic detention.

Periodic detention can only be used if:

- it is suitable and appropriate for the fine defaulter;
- there are appropriate facilities available at a correctional centre; and
- the offender signs an undertaking to comply with the periodic detention obligations contained in section 42 of the Act.

In deciding whether periodic detention is suitable for a fine defaulter, the Court must consider a report prepared by the Chief Executive that addresses the matters in section 79 of the *Crimes (Sentencing) Act 2005*. These matters include:

- any dependence on alcohol or a controlled drug;
- any psychiatric or psychological conditions;
- any medical conditions;
- any criminal record; and
- employment and personal circumstances.

The Court must also consider any evidence given by the person who prepared the report and any medical report about the fine defaulter.

A court cannot set a period of periodic detention for a young fine defaulter unless that defaulter will be an adult when serving the period of periodic detention.

The Court must state when the period detention period starts and ends.

#### 116ZM

This section provides the rate an outstanding fine is discharged through imprisonment.

A fine defaulter who was an adult at the time they committed the offence for which a fine relates discharges that fine at a rate of \$300 per day or part of a day of imprisonment. The maximum period an adult fine defaulter can be imprisoned is 6 months. This means that a fine defaulter must be released from imprisonment when a fine is fully discharged or after 6 months.

A fine defaulter who was under the age of 18 at the time they committed the offence for which a fine relates discharges that fine at a rate of \$500 per day or part of a day of imprisonment. The maximum period a young fine defaulter can be imprisoned is 7 days. This means that a fine defaulter must be released from imprisonment when a fine is fully discharged or after 7 days.

Where a person who was an adult at the time they committed an offence for a fine relates is serving periodic detention, the fine is discharged at a rate of \$12.50 per hour. This represents \$300 per day for full time custody divided by 24 (number of hours in a day).

Where a person who was under the age of 18 at the time they committed an offence for a fine relates is serving periodic detention, the fine is discharged at a rate of \$20 per hour. This represents the \$500 per day for full time custody divided by 24 (number of hours in a day) and rounded down to a whole number.

#### 116ZN

This section provides that where a person is imprisoned under this chapter, if an amount is paid to the Territory, or someone acting on behalf of the Territory, that completely discharges the outstanding amount, the person must be released from custody. If a person must be lawfully detained on another matter, the person cannot be released under this section.

#### Part 6A.4- Miscellaneous

##### 116ZO

This section provides that the Chief Executive may remit all or part of fine (including any administrative fee) owed by a fine defaulter. Any remission must be in writing. The Chief Executive can only remit a fine if satisfied that a fine enforcement order would not be effective or appropriate, a voluntary community work order is not possible or appropriate and it is appropriate in all circumstances to remit the fine.

When deciding whether to remit a fine, the Chief Executive must consider:

- any information known about the fine defaulter's financial and personal circumstances;
- the offence for which the fine was imposed;
- the amount of the fine;
- whether the fine defaulter has any other outstanding fines; and
- whether the fine defaulter has engaged in any conduct to frustrate or evade the making or effect of a fine enforcement order.

When deciding whether to remit a fine, the Chief Executive may consider anything else the Chief Executive considers relevant.

A fine may also be remitted by the Executive under section 313 of the Act. The Executive has the same meaning as it does in the *Legislation Act 2001*.

##### 116ZP

This section provides that if a fine defaulter is imprisoned on a matter other than for defaulting on a fine, the time served in custody for the other matter will also discharge the fine defaulter's outstanding fine. If a fine defaulter has more than 1 outstanding fine, the outstanding liability is the total of the fines. This means that if a person has an outstanding fine of \$400 and another outstanding fine of \$200, the outstanding liability will be \$600.

A defaulter's outstanding fine will be discharged at a rate of \$300 per day or part of a day of imprisonment if the person was an adult at the time the offence resulting in a fine was committed.

A defaulter's outstanding fine will be discharged at a rate of \$500 per day or part of a day of imprisonment if the person was under the age of 18 at the time the offence resulting in a fine was committed.

For example, if a fine defaulter (who was an adult at the time the offence was committed) has an outstanding fine of \$1500 and the defaulter is remanded in custody for 5 days on an assault charge, the fine will be discharged while the defaulter is in remand.

#### 116ZQ

This section provides that an entity in whose favour a reparation order was made may make an agreement with the Chief Executive to have that order enforced through this Chapter. This would mean that compensation owed by an offender to the victim would be treated as fine that is in default for the purposes of enforcement.

Any amount recovered under this type of agreement must be paid to the entity in whose favour the reparation order was made or dealt with in accordance with the agreement.

Any agreement must be in writing.

#### 116ZR

This section provides the order in which a fine or outstanding amount that has been recovered under this Chapter is applied.

#### 116ZS

This section provides that if an order that resulted in a fine being imposed on a fine defaulter is quashed or set aside, the registrar must notify the road transport authority to have any licence or vehicle suspensions lifted and notify any credit reporting agencies to remove information about the fine defaulter.

The registrar must also refund any amount paid towards the fine (including any administrative fee) to the person who paid the amount.

#### 116ZT

This section provides that any person exercising a function under this Chapter may provide another person exercising a function under this Chapter any information that is necessary for the exercise of the person's function.

#### 116ZU

This section provides that where the Court makes an order under this Chapter, the Court may attach any conditions it considers appropriate.

### **Clause 7— New chapter 19**

This clause inserts a new Chapter 19 into the *Crimes (Sentence Administration) Act 2005*. This is a transitional chapter.

Chapter 19- Transitional—Crimes (Sentence Administration) Amendment Act 2010  
800

This section provides that the amendments made by the *Crimes (Sentence Administration) Amendment Act 2010* apply to all court imposed fines regardless of whether the fine was imposed before or after the commencement of the Act.

801

This section provides that a regulation may prescribe any transitional matters that may be necessary or convenient to prescribe because of the enactment of the *Crimes (Sentence Administration) Amendment Act 2010*. This section allows for transitional matters that may have been overlooked or not adequately dealt with by this Chapter.

802

This section provides that the new Chapter 19 contained in this clause expires 2 years after the day the *Crimes (Sentence Administration) Amendment Act 2010* commences.

**Schedule 1— Consequential Amendments**

Part 1.1 Bail Act 1992

1.1

This section substitutes section 37(5) of the *Bail Act 1992* with a new section 37(5). This ensures that the new fine enforcement provisions contained in this Act are captured by the *Bail Act*.

1.2

This section changes the reference to ‘Subsection (4)’ in section 37(6) of the *Bail Act* to ‘Subsection (5)’. This ensures that fines exceeding \$50,000 are still captured by the new fine enforcement provisions contained in this Act.

Part 1.2 Court Procedures Act 2004

1.3

This section inserts the *Crimes (Sentence Administration) Act 2005* into the definition of ‘relevant legislation’ into the *Court Procedures Act 2004*.

Part 1.3 Court Procedure Rules 2006

1.4

This section omits Division 4.2.4 of the *Court Procedure Rules 2006*.

Part 1.4 Crimes (Sentencing) Act 2005

1.5

This section inserts a new section 14(5A) into the *Crimes (Sentencing) Act 2005*. The new section 14(5A) provides that if the Magistrates Court imposes a fine on an offender and the summons for the offence was served in accordance with section 116B of the *Magistrates Court Act 1930*, the Court must allow at least 14 days for the offender to pay the fine. Section 116B of the *Magistrates Court Act* provides the necessary processes that must be undertaken in relation to the service of a summons for a prescribed offence. A prescribed offence is:

- any offence against the road transport legislation that carries a maximum penalty of 30 penalty units; or
- any other offence that carries a maximum penalty of 10 penalty units.

1.6

This section inserts a new section 15A into the *Crimes (Sentencing) Act 2005*. The new section 15A provides that the court may order an offender to provide security for payment of the amount in addition to allowing time to pay the amount. This security can be with or without sureties and must be to the satisfaction of the person specified by the court. Any security must be given, and may be enforced, in accordance with part 3.12 of the *Magistrates Court Act*. This part contains a framework for the provision, recovery and enforcement of security for criminal matters.

1.7

This section substitutes the existing definition of ‘fine’ in the *Crimes (Sentencing) Act 2005* with the definition of ‘fine’ contained in the *Crimes (Sentence Administration) Act 2005*.

Part 1.5 Crimes (Sentencing) Regulation 20061.8

This section inserts a new section 3(e) into the *Crimes (Sentencing) Regulation 2006*. The new section 3(e) includes Volunteering ACT, incorporated under the *Associations Incorporation Act 1991*, certificate of incorporation A01640 as a criminal justice entity.

Part 1.6 Magistrates Court Act 19301.9

This section inserts a new note into section 116I of the *Magistrates Court Act 1930* that makes reference to the *Crimes (Sentence Administration) Act 2005*.

1.10

This section inserts a new note into section 141(1) of the *Magistrates Court Act* that makes reference to the *Crimes (Sentence Administration) Act 2005*.

1.11

This section removes Division 3.9.2 from the *Magistrates Court Act*. This Division is replaced by the new fine enforcement provisions contained in this Act.

1.12

This section inserts a new section 248 into the *Magistrates Court Act*. This section provides that ‘security’ means a security under the *Crimes (Sentence Administration) Act 2005*.

1.13

This section removes the phrase ‘under this Act (other than chapter 4 (Civil proceedings))’ from sections 249 to 253 of the *Magistrates Court Act*.

1.14

This section removes the definition of ‘default notice’ in the *Magistrates Court Act*.

1.15

This section substitutes the existing definition of ‘fine’ with a new definition that refers to section 166A of the *Magistrates Court Act*.

1.16

This section removes the definitions of ‘fine defaulter’, ‘government agency’, ‘outstanding fine’ and ‘penalty notice’ from the *Magistrates Court Act*.

1.17

This section provides a new definition of ‘security’ for part 3.12 of the *Magistrates Court Act*. The new definition refers to section 248 of the Act.

1.18

This section removes the definition of ‘territory entity’ from the *Magistrates Court Act*.

Part 1.7 Road Transport (Driver Licensing) Act 19991.19

This section substitutes the existing section 37(1)(d) of the *Road Transport (Driver Licensing) Act 1999* with a new section 37(1)(d) that makes reference to the *Crimes (Sentence Administration) Act 2005*.

1.20

This section substitutes the existing section 37(3) of the *Road Transport (Driver Licensing) Act* with a new section 37(3) that makes reference to the *Crimes (Sentence Administration) Act 2005*.

Part 1.8 Road Transport (General) Act 19991.21

This section removes a reference to the *Magistrates Court Act 1930* in section 84 of the *Road Transport (General) Act 1999* and replaces it with a reference to the *Crimes (Sentence Administration) Act 2005*.

1.22

This section removes a reference to the *Magistrates Court Act 1930* in section 86(1)(a) of the *Road Transport (General) Act 1999* and replaces it with a reference to the *Crimes (Sentence Administration) Act 2005*.

1.23

This section removes a reference to the *Magistrates Court Act 1930* in section 86(1)(b) of the *Road Transport (General) Act 1999* and replaces it with a reference to the *Crimes (Sentence Administration) Act 2005*.

Part 1.9 Supreme Court Act 19331.24

This section removes section 49A from the *Supreme Court Act 1933*.

Part 1.10 Victims of Crime Act 19941.25

This section substitutes the existing note in section 24(2) of the *Victims of Crime Act 1994* with a new note that refers to the *Crimes (Sentence Administration) Act 2005*.