

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**SERVICE AND EXECUTION OF PROCESS AMENDMENT (INTERSTATE FINE
ENFORCEMENT) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Robert McClelland MP)

SERVICE AND EXECUTION OF PROCESS AMENDMENT (INTERSTATE FINE ENFORCEMENT) BILL 2010

OUTLINE

Part 7 of the *Service and Execution of Process Act 1992* (SEPA) provides a scheme for the mutual recognition between States and Territories of fines imposed by courts of summary jurisdiction, which allows interstate fines to be enforced through the apprehension and imprisonment of fine defaulters.

The Bill implements a decision of the Standing Committee of Attorneys-General (SCAG) by replacing Part 7 with a cooperative and simplified mechanism which no longer relies on apprehension and imprisonment for enforcing court-imposed fines across State and Territory borders. States and Territories have introduced alternative, less punitive, sanctions for fine enforcement within their own jurisdiction and relying exclusively on apprehension and imprisonment for interstate fines is no longer appropriate.

Instead, the new Part 7 provides a scheme whereby a State or Territory that is owed a fine may request the fine's enforcement in another jurisdiction. Central to this new scheme is the registration of the fine in the jurisdiction in which the fine defaulter resides. When registered, the fine can be enforced according to that jurisdiction's own laws. Any money recovered through enforcement action will be remitted by the enforcing jurisdiction back to the State or Territory which is owed the fine. The Bill ensures that the new scheme will apply to fines that were imposed after its commencement and will also cover certain fines that were imposed prior to the scheme's commencement.

The amendments will also impact upon how Commonwealth fines are enforced against offenders who move between jurisdictions. The Commonwealth relies on the States and Territories to impose and enforce pecuniary penalties for offences against Commonwealth laws (via mechanisms such as the *Crimes Act 1914*). State and Territory courts impose such fines upon offenders residing in their respective jurisdiction. Where offenders move interstate, the fine is enforced as an 'interstate' fine in accordance with Part 7 of SEPA.

FINANCIAL IMPACT STATEMENT

The Bill has no significant financial impact, but may result in a small increase in revenue for the Commonwealth and the States and Territories through the more effective enforcement of interstate court-imposed fines.

NOTES ON PROPOSED SECTIONS

Clause 1: Short title

1. This clause is a formal provision that provides for the Act to be cited as the *Service and Execution of Process Amendment (Interstate Fine Enforcement) Act 2010*.

Clause 2: Commencement

2. This clause provides that sections 1 to 3 commence on the day the Act receives Royal Assent. Schedules 1 and 2 will commence on a day fixed by Proclamation and, if any provisions within the Schedules have not commenced within a period of 6 months from the day the Act receives the Royal Assent, they will commence the day after the end of that 6-month period.

Clause 3: Schedule(s)

3. This clause makes it clear that the Schedules to the Bill will amend the Acts set out in those Schedules in accordance with the provisions set out in each Schedule.

Schedule 1 – Main amendments

Service and Execution of Process Act 1992

SEPA treats Territories either as a State (see subsection 5(1)) or as part of a State (see subsection 7(2)). The Explanatory Memorandum adopts this terminology.

Item 1 – Part 7

4. Item 1 inserts a new Part 7 which implements the interstate fine enforcement framework agreed by SCAG.

Part 7—Enforcement of fines imposed by courts of summary jurisdiction

Division 1— Preliminary

Proposed sections 110 and 111

5. Proposed section 110 defines the key terms used within new Part 7. Proposed section 111 sets out how a court must be constituted in order for the Part to apply. ‘Court’ is defined in proposed section 110.

Division 2— Registration and enforcement of fines

Proposed sections 112 and 113

6. Proposed sections 112 and 113 establish the framework for the registration process. Proposed subsections 112(1) and (2) set out the circumstances in which a fine enforcement officer may request the registration in another jurisdiction and specify

the form and content requirements for such requests. Where a request complies with these requirements, proposed subsection 113(1) obliges the fine enforcement officer in the jurisdiction that received the request to register the fine.

7. As a general rule, registration is limited to fines that are imposed after the commencement of these amendments ('post-commencement fines'). However, proposed subparagraphs 112(1)(c)(ii) and (iii) allow for the registration for two types of fines imposed before the commencement of the amendments ('pre-commencement fines').
8. Targeted specifically at persistent or recalcitrant fine defaulters, proposed subparagraph 112(1)(c)(ii) allows the registration of pre-commencement fines that are related to one or multiple post-commencement fines. The registration of a related pre-commencement fine is governed by proposed subsection 113(3). Proposed section 110 defines when a pre-commencement fine is considered to be 'related' for the purposes of Part 7. Broadly, for the pre-commencement fine to be related, it must fulfil three requirements, including that the pre-commencement fine must be imposed upon the same offender and by a court of the same State as the post-commencement fine and that the liability to pay the post-commencement fine has not been fully discharged. Accordingly, if an offender repays a post-commencement fine before an originating State makes a request for the registration of a related pre-commencement fine, that request would fail.
9. Proposed subparagraph 112(1)(c)(iii) permits the registration of 'pre-commencement serious fines', which are defined in proposed section 110. The definition contains a non-exhaustive list of reasons why a pre-commencement fine may be considered to be serious, including the value of the fine, the nature or seriousness of the conduct that lead to the fine being imposed, or the fact that the offender is a repeat offender. The originating State determines whether a pre-commencement fine is serious.
10. Proposed subsection 112(2) sets out the form and content requirements applying to the request for registration. Under proposed paragraph 112(2)(a), the request must be in writing. This includes traditional 'hard-copy' paper requests, as well as modern electronic communications such as emails. Proposed paragraph 112(2)(b) requires that the request is made to a fine enforcement officer of the receiving jurisdiction.
11. Under proposed paragraph 112(2)(c), the request must be accompanied by a copy of the order.
12. Proposed paragraph 112(2)(d) requires the officer of an originating State to provide certain information as part of the request so that the registering State can properly register and enforce the fine. This provision is intended to be flexible to allow statements containing this information either to be included into the written request or to be contained in separate documents that accompany the originating State's request.

13. Proposed subparagraph 112(2)(d)(i) requires the officer of an originating State to state that the offender's liability for paying the fine has not been fully discharged. This statement must also include the value of the offender's liability at the time of issuing the request. This will ensure that the registering State will only enforce the amount of the fine that remains unpaid.
14. Where the originating State requests the registration of a pre-commencement serious fine under proposed subparagraph 112(1)(c)(iii), proposed subparagraph 112(2)(d)(ii) requires the originating State to provide reasons or a justification for why this pre-commencement fine was considered to be serious. It is envisaged that this could include a statement explaining the seriousness of the offender's conduct and may expound whether the conduct was considered to pose a risk to public safety.
15. Fines must only be registered in one registering State at any time. This will prevent offenders being faced with multiple enforcement proceedings in relation to the same fine. It will also avoid the duplication of enforcement activities in the States. Proposed subsection 112(4) clarifies that an originating State cannot request the registration of a court-imposed fine in multiple registering States for enforcement. If the offender moves to another jurisdiction and the originating State wishes to register the fine in that jurisdiction, it will need to, first, request the cancellation of the registration (under proposed paragraph 116(1)(b)) and, second, request a fresh registration of the fine in the other jurisdiction.

Proposed section 114 – Effect of registration

16. Proposed subsection 114(1) provides that with registration, the fine will have the same force and effect in the registering State as a fine that has been imposed by a court in the registering State and that is capable of enforcement by that jurisdiction.
17. As a general rule, the registering State can enforce registered fines according to its own laws. However, proposed subsection 114(4) clarifies that a registering State is not permitted to impose a sanction of imprisonment for defaulting on the registered fine, even though its laws may allow this.
18. Proposed subsection 114(2) provides that the originating State may not take enforcement measures against the offender while the fine remains registered in the registering jurisdiction. Therefore, if the originating State wishes to enforce the fine itself, for example, because the offender moved back into the originating State, it must first request the cancellation of the registration of the fine under proposed paragraph 116(1)(b) before it can take any steps towards enforcement.
19. Whilst this provision ensures that the originating State cannot enforce the fine against the offender when the fine is registered in another jurisdiction, it will remain possible for offenders to pay the fine voluntarily (either in full or in part). A Note inserted after

proposed subsection 114(2) puts beyond doubt that such voluntary payments in the originating State will continue to be possible.

20. Proposed subsection 114(3) will ensure that the registering State will only enforce fines that would, but for proposed subsection 114(2), have been capable of being enforced in the original State.

Division 3— Amendment, cancellation and challenge to imposition etc.

Proposed section 115 – Amendment of registration initiated by originating State

21. Where an offender voluntarily chooses to fully or partially pay a fine in the originating State (which remains an option for the offender), proposed section 115 provides that the originating State must notify the registering State of this payment. Notification must occur as soon as practicable after payment. The proposed section also requires the registering State to amend their register to reflect the updated amount of the fine that remains unpaid as soon as practicable after the notification.

Proposed section 116 – Cancellation of registration initiated by originating State

22. Proposed subsection 116(1) provides that the originating State is required to notify the registering State if either the:
 - fine defaulter has paid the full amount of the unpaid fine in the original jurisdiction, or
 - fine enforcement officer is satisfied that the fine defaulter no longer resides in the registering jurisdiction.
23. Proposed subsection 116(2) allows the originating State to request the cancellation of the registration of the fine. The cancellation may be requested at any time. The request for cancellation must be a written request (either as a traditional ‘hard-copy’ paper request or by modern electronic communication, including email), issued to a fine enforcement officer of the registering State.
24. Proposed subsection 116(3) requires the registering State to cancel a registered fine as soon as practicable after receiving a notification or request from an originating State under proposed subsections 116(1) or (2).

Proposed section 117 – Payment of fine to the registering State

25. Proposed section 117 requires the registering State to notify the originating State that a fine has fully or partially been paid and then to transfer the recovered fine payment to the originating State.
26. This provision does not require a registering State to transfer any administrative charge levied by it, to offset costs incurred whilst enforcing the fine, to the originating

State. States will have considerable discretion to find the most efficient way of remitting recovered amounts.

Proposed section 118 – Cancellation of registration initiated by registering State

27. Proposed section 118 provides three circumstances in which the registering State may initiate the cancellation of the registration of a fine. First, under proposed paragraph 118(1)(a), the registering State may initiate the cancellation if a fine enforcement officer is satisfied that the request for registration is not made according to proposed section 112. This includes, for example, the situation where the request for registration did not contain all the information required under proposed subsection 112(2). This provision will enable registering States that use automated registration systems to cancel a registration after discovering that the information provided by the originating State was incomplete.
28. The second circumstance in which cancellation may be initiated is where a fine enforcement officer in the registering State is satisfied that the person specified as the fine defaulter is not the actual offender (proposed paragraph 118(1)(b)). The third circumstance is where the offender is not resident in the registering State (proposed paragraph 118(1)(c)).
29. Proposed paragraph 118(1)(d) will allow further circumstances in which registrations may be cancelled by the registering State to be added by way of regulation (the relevant regulation-making power is section 132(1)(a)).

Proposed section 119 – Effect of cancellation of registration

30. Proposed subsection 119(1) provides that with the cancellation of the registration of a fine, the originating State regains the ability to enforce that fine. This provision is a necessary corollary to proposed subsection 114(2).
31. Proposed subsection 119(2) makes special provision for the cancellation of pre-commencement fines that are related to post-commencement fines. Specifically, it recognises that related pre-commencement fines are not independent of the post-commencement fines to which they relate. Accordingly, a related pre-commencement fine can only be cancelled if the post-commencement fine to which it relates is cancelled and the fine does not relate to any other post-commencement fines.

Proposed section 120 – Challenge to imposition of fine

32. Offenders should only be able to challenge the imposition of a fine in the originating State, which is in the jurisdiction where the fine was originally imposed and then heard and decided by a court. Therefore, proposed subsection 120(1) provides that a challenge can only be brought under the laws of the originating State.
33. Under proposed subsection 120(2), the challenging offender must notify the registering State of the challenge against the imposition. Until the challenge is finally determined in the originating State, proposed subsection 120(3) prevents the registering State from enforcing registered and any related pre-commencement fines.

34. If the challenge is successful and results in the cancellation or removal of the offender's fine, then proposed subsection 120(4) requires the registering State to cancel the fine's registration.
35. Proposed subsection 120(5) requires the originating State to inform the registering State of the outcome of the challenge. There is no obligation on the offender to inform the registering State. Whilst it is likely that an offender would inform the registering State if the challenge was successful, it is far less likely that the offender would do so where the challenge fails. Therefore, to avoid the registering State needing to make its own inquiries to find out whether the challenge has been finally determined and what the outcome of the challenge was, the onus of informing the registering State has been shifted to the originating State.

Division 4 – Miscellaneous

Proposed section 121 – Operation of State laws

36. Proposed section 121 ensures the concurrent operation of Commonwealth and State laws to enable the States to impose additional fees on top of the fine that is to be recovered. It is envisaged that the registering State would be able to keep such fees, but is required to return recovered fine payments to the originating State under proposed section 117.

Proposed section 122 – Saving

37. Proposed section 122 ensures that the Bill does not affect the operation of any other part of SEPA.

Transitional - fines

38. This transitional provision makes special arrangements concerning warrants of apprehension which are still in force and which had been issued for fine-defaulters under Part 7 as in force immediately before its repeal, but had not been completed by the time the new Bill came into effect.
39. It provides that a fine underpinning such warrants of apprehension will be governed by the new Part 7 as if the fine was issued after commencement of this Bill. This will ensure that such fines are registrable either as related pre-commencement fines or as pre-commencement serious fines.
40. In relation to a warrant of apprehension, the transitional provision requires that if this warrant operates under the old Part 7 as in force immediately before its repeal, then the warrant ceases to operate immediately after commencement of the new Part 7.
41. If any proceedings were on foot under the old Part 7, then these proceedings must not continue after this Bill's commencement.

42. Where a person is remanded in relation to the enforcement of a fine under the old Part 7, that person must be released from remand as soon as practicable after the commencement of this Bill. The offender may not be released where he or she has been remanded in relation to other causes.
43. Finally, where a person is serving a period of imprisonment, or is in custody, under the old Part 7 when this Bill commences, the person must be released as soon as practicable. Again, the offender may not be released if he or she is in custody for some other cause.

Regulations may deal with transitional, saving or application matters

44. This proposed provision allows regulations to be made prescribing matters required or permitted by the Bill, or matters necessary or convenient to be prescribed for carrying out or giving effect to the Bill.

Schedule 2 – Consequential amendments

Service and Execution of Process Act 1992

Item 1: Subsection 5(1)

45. This Bill repeals section 125, which deals with the application of the *Removal of Prisoners (Territories) Act 1923*. This item will omit the reference to this section from subsection 5(1).

Item 2: Section 81

46. Section 81 deals with warrants and currently applies to Part 7. This item will substitute a new section 81 which makes no reference to Part 7.

Transfer of Prisoners Act 1983

Item 3: Subparagraph 21(b)(ii)

47. This is a technical drafting amendment because subparagraph 21(b)(iii) will be repealed.

Item 4: Subparagraph 21(b)(iii)

48. Section 21 deals with the transfer of prisoners subject to default imprisonment. Subparagraph 21(b)(iii) will be repealed because Part 7 of SEPA will no longer provide for the apprehension and imprisonment of fine defaulters.

Item 5: Application

49. This item regulates the application of subparagraph 21(b)(iii) after the commencement of this Bill.