

2010

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

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

**No.     , 2010**

*(Attorney-General)*

**A Bill for an Act to amend the *Service and  
Execution of Process Act 1992*, and for related  
purposes**



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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in Column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

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## **Schedule 1—Main amendments**

### *Service and Execution of Process Act 1992*

#### **1 Part 7**

Repeal the Part, substitute:

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

#### **Division 1—Preliminary**

##### **110 Definitions**

In this Part:

*court* means a court of a State having jurisdiction in relation to the summary trial of all or any offences under the law of the State.

*discharged*, in relation to a fine or part of a fine, means discharged because of a payment, remission or pardon, or otherwise.

*fine* means a pecuniary penalty imposed by a court for an offence against a law of the Commonwealth (other than a revenue law) or of a State, together with any amount (including an amount of costs, compensation or revenue charges) that the person on whom the fine was imposed was ordered to pay by the court in the proceedings in which the fine was imposed.

*fine enforcement officer* means:

- (a) an officer of a Department of State of a State, or a body established for a public purpose by or under a law of a State, that is responsible for the enforcement of fines; or
- (b) an officer of a court who is responsible for the enforcement of fines.

*offender*, in relation to a fine, means the person on whom the fine was imposed.

1            *originating State* for a fine means the State in which the fine was  
2 imposed.

3            *post-commencement fine* means a fine imposed after the  
4 commencement of this Part.

5            *pre-commencement fine* means a fine imposed before the  
6 commencement of this Part.

7            *pre-commencement serious fine* means a pre-commencement fine  
8 that the originating State considers is a serious fine:

- 9            (a) because of the value of the fine; or  
10           (b) because of the nature or seriousness of the conduct in relation  
11           to which the fine was imposed; or  
12           (c) because the fine is not the first fine imposed on the offender  
13           in relation to an offence of the same kind as the offence for  
14           which the fine was imposed; or  
15           (d) for any other reason.

16           *registered fine* means a fine that has been registered under  
17 section 113, and the registration of which has not been cancelled.

18           *registering State* for a fine means the State in which the fine is  
19 registered under section 113.

20           *related*: a pre-commencement fine is *related* to a  
21 post-commencement fine if:

- 22           (a) the pre-commencement fine is imposed on the same offender  
23           as the post-commencement fine; and  
24           (b) the pre-commencement fine is imposed by a court of the  
25           same State as the post-commencement fine; and  
26           (c) the liability of the offender to pay the post-commencement  
27           fine has not been fully discharged.

28           *revenue law* means a law of the Commonwealth relating to  
29           taxation (including duties) that contains special provisions with  
30           respect to imprisonment for non-payment of penalties.

## 31           **111 Constitution of courts**

32           The jurisdiction of a court for the purposes of this Part may be  
33           exercised by the court constituted by any person (other than a



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1 single justice of the peace sitting as such) or persons competent to  
2 exercise the jurisdiction of the court in any other matter.

## 3 **Division 2—Registration and enforcement of fines**

### 4 **112 Request for registration**

- 5 (1) A fine enforcement officer of the originating State for a fine may  
6 request registration of the fine in another State if:
- 7 (a) the liability of the offender to pay the fine has not been fully  
8 discharged; and
  - 9 (b) there is reason to believe that the offender is resident in, or  
10 appears to be resident in, the other State; and
  - 11 (c) the fine is any of the following:
    - 12 (i) a post-commencement fine;
    - 13 (ii) a pre-commencement fine that is related to a  
14 post-commencement fine;
    - 15 (iii) a pre-commencement serious fine.
- 16 (2) The request must:
- 17 (a) be in writing; and
  - 18 (b) be made to a fine enforcement officer of the other State; and
  - 19 (c) be accompanied by a copy of the order, however described,  
20 of the court imposing the fine; and
  - 21 (d) be accompanied by, or include:
    - 22 (i) a statement by a fine enforcement officer of the  
23 originating State stating that the liability of the offender  
24 to pay the fine has not been fully discharged, and  
25 specifying the amount of the fine that remains unpaid;
    - 26 (ii) if the fine is a pre-commencement serious fine—a  
27 statement by a fine enforcement officer of the  
28 originating State stating why the originating State  
29 considers the fine is a serious fine.
- 30 (3) A single request under subsection (1) may relate to more than one  
31 fine, in which case this section applies to each of the fines to which  
32 the request relates.
- 33 (4) A request cannot be made under this section for registration of a  
34 fine that is already registered in another State.

1 **113 Registration**

2 *Registration*

- 3 (1) If a fine enforcement officer of a State receives a request made in  
4 accordance with section 112 for the registration of a fine, the  
5 officer must, subject to this section, register the fine in that State.
- 6 (2) The registration must specify who is the offender in relation to the  
7 fine.

8 *Related fines*

- 9 (3) A fine enforcement officer of a State may register a  
10 pre-commencement fine that is related to a post-commencement  
11 fine only if the post-commencement fine is registered in that State.

12 **114 Effect of registration**

13 *Effect*

- 14 (1) Subject to this section, a registered fine:  
15 (a) has the same force and effect; and  
16 (b) may give rise to the same actions by way of enforcement;  
17 as if the fine had been imposed on the offender by a court of the  
18 registering State.

19 *Enforcement only by registering State*

- 20 (2) A registered fine cannot be enforced in the originating State for the  
21 fine.

22 Note: This subsection does not prevent voluntary payment of the fine in the  
23 originating State—see sections 115 and 116.

24 *Fine capable of enforcement*

- 25 (3) A registered fine is capable of being enforced in or by the  
26 registering State only if, and to the extent that, when the action for  
27 enforcement is or is to be taken, the fine could, but for  
28 subsection (2), be enforced in the originating State.

1 *No imprisonment*

- 2 (4) Despite anything in the laws of the registering State, a registered  
3 fine cannot be enforced by the imposition of a sentence of  
4 imprisonment on the offender.

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

7 **115 Amendment of registration initiated by originating State**

8 *Obligation to initiate amendment*

- 9 (1) The originating State for a registered fine must notify the  
10 registering State if part of the amount of a fine that remains unpaid  
11 is paid to the originating State.

12 *Amendment*

- 13 (2) As soon as practicable after receiving a notice under  
14 subsection (1), the registering State must amend the registration of  
15 the fine accordingly.

16 **116 Cancellation of registration initiated by originating State**

17 *Obligation to initiate cancellation*

- 18 (1) The originating State for a registered fine must notify the  
19 registering State if:  
20 (a) the amount of the fine that remains unpaid is paid to the  
21 originating State; or  
22 (b) a fine enforcement officer of the originating State is satisfied  
23 that the offender is not resident in the registering State.

24 *Option to initiate cancellation*

- 25 (2) A fine enforcement officer of the originating State for a registered  
26 fine may, at any time, send a written request for the cancellation of  
27 the registration of the fine to a fine enforcement officer of the  
28 registering State.

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*Cancellation*

- (3) As soon as practicable after receiving a notice under subsection (1), or a request under subsection (2), the registering State must cancel the registration of the fine.

**117 Payment of fine to the registering State**

The registering State for a fine must:

- (a) notify the originating State if the amount of the fine, or part of the amount, is paid to the registering State; and
- (b) forward to a fine enforcement officer of the originating State the amount, or the part of the amount, that was paid.

**118 Cancellation of registration initiated by registering State**

- (1) This section applies if a fine enforcement officer of the registering State for a fine is satisfied:
  - (a) that the request for registration of the fine was not made in accordance with section 112; or
  - (b) that the person specified in the register as the offender in relation to the fine is not the offender in relation to the fine; or
  - (c) that the offender in relation to the fine is not resident in the State; or
  - (d) of a matter or matters prescribed by the regulations for the purposes of this paragraph.
- (2) The registering State must:
  - (a) notify the originating State that the officer is so satisfied; and
  - (b) cancel the registration of the fine.

**119 Effect of cancellation of registration**

*Originating State can enforce fine*

- (1) If the registration of a fine is cancelled for any reason, the originating State can, subject to subsections (2) and 114(3), enforce the fine.

1 *Cancellation of registration of related fine*

- 2 (2) The registering State for a pre-commencement fine must cancel the  
3 registration of the fine if:  
4 (a) the registration of a post-commencement fine is cancelled for  
5 any reason; and  
6 (b) the pre-commencement fine is related to the  
7 post-commencement fine; and  
8 (c) the pre-commencement fine is not related to another  
9 post-commencement fine that is registered in the State.

10 **120 Challenge to imposition of fine**

11 *Challenge in accordance with laws of originating State*

- 12 (1) Any challenge to the imposition of a registered fine may be  
13 brought only in accordance with the laws of the originating State.

14 *Offender to notify registering State*

- 15 (2) If the offender in relation to a registered fine challenges the  
16 imposition of the fine in accordance with subsection (1), the  
17 offender must notify the registering State.

18 *Certain fines cannot be enforced during challenge*

- 19 (3) If a challenge to the imposition of a registered fine has been  
20 initiated under subsection (1) and the challenge has not yet been  
21 finally determined, the registering State cannot enforce:  
22 (a) the registered fine; or  
23 (b) any pre-commencement related fines.

24 *Cancellation of registration if challenge upheld*

- 25 (4) If a challenge to the imposition of a registered fine is upheld, the  
26 registering State must cancel the registration of the fine.

27 *Fine enforcement officer of originating State to notify registering  
28 State*

- 29 (5) A fine enforcement officer of the originating State must notify the  
30 registering State of the outcome of the challenge.

1 **Division 4—Miscellaneous**

2 **121 Operation of State laws**

3 Nothing in this Part excludes the operation of a law of a State  
4 relating to the imposition of a fee (however described) by the State  
5 for the cost of enforcing a fine for an offence against a law of the  
6 Commonwealth.

7 **122 Saving**

8 Nothing in this Part affects the operation of any other Part of this  
9 Act.

10 **2 Transitional—fines**

- 11 (1) This item applies if, before commencement, a warrant of apprehension  
12 has been issued in relation to a fine under section 112 of the old law.
- 13 (2) This item does not apply if the liability to pay the fine has been fully  
14 discharged (whether because of payment of the fine, remission of the  
15 fine, service of a term of imprisonment in relation to the fine, the grant  
16 of a pardon in respect of the relevant offence, or otherwise).
- 17 (3) The new law has effect in relation to the fine as if the fine had been  
18 imposed after commencement.
- 19 (4) If, immediately before commencement:
- 20 (a) a warrant of apprehension or commitment is in effect under  
21 Part 7 of the old law in relation to the fine—the warrant  
22 ceases to have effect immediately after commencement; and
- 23 (b) proceedings under Part 7 of the old law in relation to the fine  
24 have not been finally determined—the proceedings must not  
25 be continued after commencement; and
- 26 (c) a person is remanded on bail under Part 7 of the old law in  
27 relation to the fine—the person must be released as soon as  
28 practicable after commencement, unless the person is on  
29 remand for some other cause; and
- 30 (d) a person is serving a period of imprisonment, or is in custody,  
31 under Part 7 of the old law in relation to the fine—the person  
32 must be released as soon as practicable after commencement  
33 unless the person is in custody for some other cause.

- 1 (5) In this item:  
2 *commencement* means the commencement of this Schedule.  
3 *new law* means the *Service and Execution of Process Act 1992* as in  
4 force immediately after commencement.  
5 *old law* means the *Service and Execution of Process Act 1992* as in  
6 force immediately before commencement.

7 **3 Regulations may deal with transitional, saving or**  
8 **application matters**

9 The Governor-General may make regulations dealing with matters of a  
10 transitional, saving or application nature relating to amendments and  
11 repeals made by this Act.

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## Schedule 2—Consequential amendments

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### *Service and Execution of Process Act 1992*

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#### **1 Subsection 5(1)**

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Omit “(other than section 125)”.

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#### **2 Section 81**

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Repeal the section, substitute:

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#### **81 Application of Division**

10

This Division applies in relation to all warrants other than warrants issued by tribunals.

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### *Transfer of Prisoners Act 1983*

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#### **3 Subparagraph 21(b)(ii)**

14

Omit “and”.

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#### **4 Subparagraph 21(b)(iii)**

16

Repeal the subparagraph.

17

#### **5 Application**

18

Subparagraph 21(b)(iii) of the *Transfer of Prisoners Act 1983*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a sentence of default imprisonment imposed under Part 7 of the *Service and Execution of Process Act 1992* before that commencement.

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