

JUSTICES (FINE DEFAULT) AMENDMENT ACT 1994 No. 30

NEW SOUTH WALES



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JUSTICES (FINE DEFAULT) AMENDMENT ACT 1994 No. 30

NEW SOUTH WALES



Act No. 30, 1994

An Act to amend the Justices Act 1902 and certain other Acts to make further provision with respect to the enforcement of convictions and orders requiring the payment of fines and other amounts; and for other purposes. [Assented to 30 May 1994]

Justices (Fine Default) Amendment Act 1994 No. 30

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Justices (Fine Default) Amendment Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Justices Act 1902 No. 27

3. The Justices Act 1902 is amended as set out in Schedule 1

Amendment of Periodic Detention of Prisoners Act 1981 No. 18

4. The Periodic Detention of Prisoners Act 1981 is amended as set out in Schedule 2.

Amendment of Community Service Orders Act 1979 No. 192

5. The Community Service Orders Act 1979 is amended as set out in Schedule 3.

Amendment of Children (Community Service Orders) Act 1987 No. 56

6. The Children (Community Service Orders) Act 1987 is amended as set out in Schedule 4.

Amendment of Prisons Act 1952 No. 9

7. The Prisons Act 1952 is amended as set out in Schedule 5.

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902

(Sec. 3)

(1) Section 87 (**Warrant of commitment for non-payment**):

(a) After section 87 (1), insert:

(1A) Any further sum for the costs of enforcing the conviction or order are not to include costs in respect of a warrant that has been recalled, withdrawn or revoked.

(b) In section 87 (4) (a), after “regulations”, insert “or the person concerned is in custody under, or has been sentenced to, a term of imprisonment (whether or not by way of periodic detention), or is subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987, and has applied to the authorised Justice for the issue of the warrant”.

(c) Omit section 87 (5)–(8), insert instead:

(5) A warrant issued under this section is to commit the person to the control of the Minister administering the Children (Detention Centres) Act 1987 (but is otherwise to be in accordance with subsection (1) if the warrant is in respect of a person who either:

(a) was under the age of 18 years at the time of the conviction or order to which the warrant relates and is not of or above the age of 21 years at the time the warrant is issued; or

(b) is subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 at the time the warrant is issued.

(6) Despite subsection (5), a warrant referred to in that subsection is to commit the person to prison if at the time it is issued the person is remanded to or imprisoned in prison (even if the person is under the age of 18 years).

(7) A warrant issued as referred to in subsection (5) is taken to be an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987. This has the effect of making the warrant a detention order for the purposes of the Children (Detention Centres) Act 1987.

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

(8) Despite subsections (5) and (7), a warrant under this section is taken to commit the person to prison if at the time the warrant is executed the person:

- (a) is of or above the age of 21 years and not subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987; or
- (b) is remanded to or imprisoned in prison (even if the person is under the age of 18 years).

(2) Section 89 (**Form and contents of warrants**):

- (a) Omit “Attorney General’s Department”, insert instead “Department of Courts Administration”.
- (b) At the end of section 89, insert:

(2) If a fine defaulter is remanded to or imprisoned in a prison or is in custody in a detention centre, the superintendent of the prison or detention centre, or any person acting under his or her authority, may execute any warrant of commitment issued under section 87 in respect of the fine defaulter. A warrant is executed under this section by causing a copy of the warrant to be served on the fine defaulter. The warrant is taken to be directed to the superintendent or person who executes the warrant under this section.

(3) Sections 89B–89F:

Omit sections 89B and 89C, insert instead:

Fine defaulters to be given 7 days’ notice of warrant before execution

89B. (1) A warrant of commitment issued under section 87 may not be executed until at least 7 days after notice in writing of the warrant has been given to the fine defaulter in the form prescribed by the regulations for the purposes of this section.

(2) Notice for the purposes of this section may be given by a person seeking to execute a warrant of commitment or otherwise.

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

(3) This section does not apply to a warrant if the fine defaulter concerned:

- (a) has made an application under section 89D in respect of the matter to which the warrant relates and the warrant was issued either pursuant to the application or at any time after the application was dealt with (whether or not the application was granted); or
- (b) is under detention in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to or imprisoned in a prison (including by way of periodic detention); or
- (c) has by instrument in writing in the prescribed form consented to this section not applying to the warrant.

(4) In any proceedings in which it is alleged that a warrant of commitment issued under section 87 was not lawfully executed because this section was not complied with, the onus lies on the person making the allegation to establish on the balance of probabilities the matters alleged.

Fine defaulters may apply for community service orders

89C. (1) A person who is liable to be the subject of a warrant of commitment under section 87 (whether or not such a warrant has issued or is in force in respect of that liability) may apply to an authorised justice for a community service order under the Community Service Orders Act 1979 or the Children (Community Service Orders) Act 1987, as appropriate.

(2) A person may not make an application under this section if an order in respect of the person under section 5C of the Periodic Detention of Prisoners Act 1981 in respect of the liability concerned was cancelled because the person was not serving his or her sentence in accordance with the order.

(3) A warrant of commitment is not to be issued under section 87 in respect of a liability while an application is pending under this section in respect of the liability or while an order made pursuant to such an application is in force.

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

(4) A warrant of commitment issued under section 87 may not be executed while an application under this section is pending in respect of any liability to which the warrant relates, and the making of an order pursuant to such an application revokes the warrant.

(5) A person may not make an application under this section if the person is under detention in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to or imprisoned in a prison.

(6) An application under this section by a person who was, at the time of the conviction or order to which the application relates, of or above the age of 18 years is to be dealt with under the Community Service Orders Act 1979,

Some fine defaulters may apply for periodic detention

89D. (1) A person who is liable to be the subject of a warrant of commitment under section 87 (whether or not such a warrant has issued or is in force in respect of that liability) may apply to an authorised justice for an order for periodic detention under section 5C of the Periodic Detention of Prisoners Act 1981 (“the PD Act”) in respect of the liability concerned.

(2) A person may not make an application under this section unless at the time of the application the person is of or above the age of 18 years and:

- (a) is the subject of a warrant of commitment which was issued as referred to in section 90 (4) (that is, as a further warrant of commitment issued under section 87 because the fine defaulter made application for further time to pay and failed to pay the amount payable within the time allowed); or
- (b) is the subject of a warrant of commitment which was issued as referred to in section 26K of the Community Service Orders Act 1979 or section 26A of the Children (Community Service Orders) Act 1987, on revocation of a community service order or children’s

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

community service order (being an order issued after a warrant of commitment had been issued in respect of the liability concerned); or

(c) is a periodic detainee under the PD Act.

(3) An application may not be made under this section if the liability to which the application relates is in respect of an offence under the PD Act.

(4) An application may not be made under this section if an order under section 5C of the PD Act in respect of the liability concerned was cancelled because the person concerned was not serving his or her sentence in accordance with the order.

(5) A warrant of commitment is not to be issued under section 87 in respect of a liability while an application is pending under this section in respect of the liability or while an order made pursuant to such an application is in force.

(6) A warrant of commitment issued under section 87 may not be executed while an application under this section is pending in respect of any liability to which the warrant relates, and the making of an order pursuant to such an application revokes the warrant.

(7) An application may not be made under this section by a person who is under detention in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to or imprisoned in a prison, except as a periodic detainee.

Civil enforcement as an alternative to a warrant of commitment

89E. (1) This section applies to a fine defaulter who:

(a) is liable to be the subject of a warrant of commitment issued as referred to in section 90 (4) (that is, a further warrant of commitment issued under section 87 because the fine defaulter made application for further time to pay and failed to pay the amount payable within the time allowed); or

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

(b) is liable to be the subject of a warrant of commitment issued as referred to in section 26K of the Community Service Orders Act 1979 or section 26A of the Children (Community Service Orders) Act 1987 (on revocation of a community service order or children's community service order).

(2) An authorised Justice may, as an alternative to issuing a warrant referred to in subsection (1) (a) or (b), if satisfied that an order under this section is reasonably likely to result in satisfaction of the unsatisfied balance of the amount owed by the fine defaulter:

(a) issue a warrant to seize the property of the fine defaulter for the purpose of levying that unsatisfied balance on that property; or

(b) issue a warrant as a garnishee order under a specified provision of Division 3 (Attachment of debts) of Part 5 of the Local Courts (Civil Claims) Act 1970.

(3) A warrant to seize the property of the fine defaulter is to be directed to the Sheriff and all bailiffs appointed for the purposes of the Local Courts (Civil Claim) Act 1970 and operates as a writ of execution issued under section 58 of that Act.

(4) A warrant issued as a garnishee order operates as an order issued under the provision of the Local Courts (Civil Claims) Act 1970 specified in the warrant.

(5) For the purposes of the operation of a warrant under this section, the person for the time being holding or acting in the office prescribed for the purposes of this section is, for and on behalf of the State, taken to be the judgment creditor.

(6) This section does not prevent the issue of a Mer warrant of commitment under section 87 in respect of any amount remaining unpaid after action under this section.

Guidelines for exercise of functions by Justices

89F. An authorised Justice must, in exercising or performing powers, authorities, duties or functions under this Subdivision or section 5C of the Periodic Detention of Prisoners Act 1981, comply with such guidelines (if any) as

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

may be issued by the Minister by order in writing published in the Gazette from time to time. A failure to comply with any such guidelines does not affect the validity of any proceedings, decision, order or warrant.

(4) Existing section 89D (**Enforcement of amounts payable to private payees**):

(a) From section 89D (1), omit “to receive payment or the proceeds of a fine, penalty, costs or other amount payable”, insert instead “to receive payment of compensation, costs awarded against an informant (being an informant not acting in his or her private capacity) or costs awarded in favour of an informant (being an informant acting in his or her private capacity),”.

(b) Omit section 89D (4), insert instead:

(4) A person or body to whom this section applies may not take action under subsection (2) unless, within 3 months after the last day for payment of the amount concerned, the person or body has lodged with a Local Court a certificate under section 23 of the Evidence Act 1898 in respect of the payment concerned.

(4A) Once a certificate has been lodged with a Local Court as referred to in subsection (4), no further action may be taken under this Act in respect of the amount payable or the person by whom the amount is payable.

(4B) No action may be taken under this Act (except as provided by subsection (2)) in respect of any costs awarded against a person as informant if the person was acting in his or her private capacity.

(c) Re-number section 89D as section 89G.

(5) Section 90 (**Further time etc. may be allowed for payment**):

(a) Omit section 90 (2A).

(b) From section 90 (3), omit “subsections (1), (2) and (2A)”, insert instead “subsections (1) and (2)”.

(c) After section 90 (3), insert:

(4) A further warrant of commitment may be issued under section 87 if a fine defaulter who makes an application for further time to pay under this section fails to pay the amount payable within the time allowed.

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

(6) Section 90A:

Omit the section, insert instead:

Effect of part payment and other reductions in amount owing

90A. Any calculation for the purposes of the issue of a warrant of commitment under section 87 of the amount required to be paid under the warrant is to be made taking into account each of the following:

- (a) any amount that has been paid, whether by instalments or otherwise, or that has been remitted by the Governor pursuant to the Fines and Penalties Act 1901;
- (b) any amount worked off in accordance with a community service order under the Community Service Orders Act 1979 or children's community service order under the Children (Community Service Orders) Act 1987;
- (c) any amount that is attributable to service of any period of periodic detention under the Periodic Detention of Prisoners Act 1981 pursuant to an order under section 5C of that Act, calculated at the rate of 2 prescribed units (as defined in section 87 (3)) for each detention period served.

(7) Section 91A (**Imprisonment under several default warrants**):

(a) After section 91A (2), insert:

(2A) Subsections (1) and (2) extend to apply to terms of imprisonment to which a person is committed by warrant under section 87 that are being served by way of periodic detention pursuant to an order under section 5C of the Periodic Detention of Prisoners Act 1981.

(b) In section 91A (3) (a), after "detention", insert "(not pursuant to an order under section 5C of the Periodic Detention of Prisoners Act 1981)".

(c) In section 91A (3) (b), after "imprisonment", insert "(not by way of periodic detention)".

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

(8) Section 147:

After section 146, insert:

Sufficiency of photocopy or facsimile of warrant

147. A copy of a warrant issued under this Act (being a copy produced by means of a photographic process or facsimile transmission) is as valid and effectual as the original warrant and confers the same powers, authorities, duties and functions as the original warrant.

(9) Second Schedule (**Savings, transitional and other provisions**):

After Part 6, insert:

**PART 7—PROVISIONS CONSEQUENTIAL ON
JUSTICES (FINE DEFAULT) AMENDMENT
ACT 1994**

Definition

18. In this Part:

“**fine default amendments**” means the Justices (Fine Default) Amendment Act 1994.

Operation of fine default amendments generally

19. (1) The amendments made by the fine default amendments apply in respect of convictions or orders whether made before or after the commencement of those amendments, except as provided by this Part.

(2) An amendment made by the fine default amendments extends to apply in respect of any warrant of commitment issued under section 87 and in force but not executed immediately before the commencement of the amendment.

(3) Section 87 (1A) does not apply to affect the validity of a warrant issued before the commencement of that subsection.

Civil enforcement by private payees

20. (1) An amendment made to section 89D by the fine default amendments (re-numbered as section 89G by those amendments) does not apply in respect of the proceeds of a fine, penalty, costs or other amount payable by virtue of a conviction, order or enforcement order made before the commencement of the amendment, except as provided by subclause (2).

SCHEDULE 1—AMENDMENT OF JUSTICES ACT 1902—
continued

(2) Section 89G (4B) extends to apply in respect of costs payable by virtue of a conviction, order or enforcement order made before the commencement of that subsection.

(3) A warrant of commitment in force under section 87 immediately before the commencement of section 89G (4B) is revoked on the commencement of that subsection to the extent that the warrant relates to any costs awarded against a person as informant if the person was not acting in the capacity of a public official.

Applications for community service orders

21. An application made under section 89B (as in force immediately before the repeal of that section by the fine default amendments) for the purposes of section 26A of the Community Service Orders Act 1979 or section 5A of the Children (Community Service Orders) Act 1987 and pending immediately before the repeal of section 89B is taken to have been made under section 89C as inserted by the fine default amendments.

Revival of warrants

22. Nothing in the fine default amendments operates to revive any warrant of commitment that has been recalled, withdrawn or revoked.

Rate at which amounts are worked off under CSO

23. The amendments made by the fine default amendments to section 26C of the Community Service Orders Act 1979 and section 13 of the Children (Community Service Orders) Act 1987 apply only in respect of hours of community service work worked after the commencement of those amendments.

**SCHEDULE 2—AMENDMENT OF PERIODIC DETENTION
OF PRISONERS ACT 1981**

(Sec. 4)

(1) Section 4 (**Definitions**):

In the definition of “order for periodic detention” in section 4 (1), after “section 5 (1)”, insert “or 5C”.

SCHEDULE 2—AMENDMENT OF PERIODIC DETENTION OF PRISONERS ACT 1981—*continued*

(2) Sections 5C, 5D:

After section 5B, insert:

Periodic detention order for fine defaulters

5C. (1) An authorised Justice may, on application by a person in accordance with section 89D of the Justices Act 1902, commit the person to prison by warrant under section 87 of that Act for the appropriate term of imprisonment and make an order requiring the person to serve the term of imprisonment by way of periodic detention.

(2) The “**appropriate term of imprisonment**” is the term that contains the number of detention periods calculated at the rate of one detention period for every 2 prescribed units (as referred to in section 87 (3) of the Justices Act 1902) or part of 2 prescribed units of the amount required to be paid in respect of the liability to which the application relates, with a maximum number of detention periods of 45 in respect of any particular liability.

(3) The decision whether or not to grant an application under this section is in the authorised Justice’s discretion, and no appeal lies against the authorised Justice’s decision not to grant an application in a particular case. This subsection is subject to section 89F (Guidelines for exercise of functions by Justices) of the Justices Act 1902.

(4) An authorised Justice is not to make an order for periodic detention under this section in respect of a person unless satisfied that there is accommodation available at a prison for the person to serve the sentence by way of periodic detention.

(5) In the application of this Act to an order for periodic detention under this section:

- (a) a reference to a court having made the order is to be read as a reference to an authorised Justice having made the order; and
- (b) a reference to a sentence of imprisonment to be served by way of periodic detention or to which an order for periodic detention relates is to be read as a reference to the committal of the person to prison as referred to in section 87 of the Justices Act 1902, and a reference to

SCHEDULE 2—AMENDMENT OF PERIODIC DETENTION OF PRISONERS ACT 1981—*continued*

the court that imposed the sentence is to be read as a reference to the authorised Justice who so committed the person to prison; and

- (c) the powers of a court under section 25 or 27 may be exercised by any authorised Justice.

(6) In this section “**authorised Justice**” has the meaning given by section 86A of the Justices Act 1902.

Conversion of fine default warrants for periodic detainees

5D. (1) If a warrant of commitment issued under section 87 of the Justices Act 1902 is outstanding against a person when the person is a periodic detainee, the person is taken to have applied under section 89D of that Act for an order for periodic detention under section 5C in respect of that warrant.

(2) Such an application is taken to have been granted under section 5C and an order for periodic detention made accordingly.

(3) If an order for periodic detention under section 5C is cancelled, the warrant of commitment to which the order relates is taken to commit the person to prison for the remainder of the term for which the warrant was or would have been originally issued under section 87 of the Justices Act 1902 (taking into account the requirements of section 90A of that Act).

- (3) Section 25 (**Cancellation of orders for periodic detention otherwise than on subsequent conviction**):

After section 25 (3D), insert:

(3E) If the order is an order made under section 5C (Periodic detention for fine defaulters) and the periodic detainee is not subject to an order under section 5 (1), references in subsections (3A)–(3D) to 3 or more detention periods are to be read as references to 1 or more detention periods and those subsections are to be appropriately adapted to give effect to this subsection.

SCHEDULE 2—AMENDMENT OF PERIODIC DETENTION OF PRISONERS ACT 1981—*continued***(4) Section 26 (Issue of warrant on cancellation of an order for periodic detention):**

At the end of section 26, insert:

(2) This section does not apply to an order for periodic detention under section 5C.

SCHEDULE 3—AMENDMENT OF COMMUNITY SERVICE ORDERS ACT 1979

(Sec. 5)

(1) Section 26A (Community service work in default of payment of fine etc.):**(a) Omit section 26A (1), insert instead:**

(1) An authorised Justice may, on application by a person in accordance with section 89C of the Justices Act 1902, make an order in the prescribed form requiring the person to perform community service work in order to work off the amount payable as adjudged by the conviction or order to which the application relates or (if a warrant of commitment is in force under section 87 of that Act) the amount payable in satisfaction of the warrant.

(1A) The amount payable in satisfaction of the warrant is for the purposes of this section not to include any part of that amount which is attributable to the costs of enforcing the conviction or order concerned.

(b) In section 26A (2), omit “The decision”, insert instead “Except as provided by subsection (2A), the decision”.**(c) After section 26A (2), insert:**

(2A) If an application by a person as referred to in this section is the first such application by the person in respect of the particular amount payable, the person is entitled to have an order made pursuant to the application, but this subsection does not affect the operation of subsection (3).

(2B) An authorised Justice must, in exercising or performing powers, authorities, duties or functions under this Act in respect of an application to which this section applies, comply with such guidelines (if any) as may be issued by the

SCHEDULE 3—AMENDMENT OF COMMUNITY SERVICE ORDERS ACT 1979—*continued*

Minister by order in writing published in the Gazette from time to time. The guidelines cannot limit the operation of subsection (2A).

- (2) **Section 26C (Number of hours of community service work):**
From section 26C (1), omit “\$12.50”, insert instead “\$15.00”.
- (3) **Section 26K (Breach of community service order for fine default):**
- (a) Omit section 26K (2).
 - (b) From section 26K (6), omit “in. respect of the unsatisfied balance”.
 - (c) Omit section 26K (7).

SCHEDULE 4—AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987

(Sec. 6)

- (1) **Section 5A (Community service work in default of payment of fine etc.):**
- (a) Omit section 5A (1), insert instead:
 - (1) An authorised Justice may, on application by a person to whom this Act applies in accordance with section 89C of the Justices Act 1902, make an order in the prescribed form requiring the person to perform community service work in order to work off the amount payable as adjudged by the conviction or order to which the application relates or (if a warrant of commitment is in force under section 87 of that Act) the amount payable in satisfaction of the warrant.
 - (1A) The amount payable in satisfaction of a warrant is for the purposes of this section not to include any part of that amount which is attributable to the costs of enforcing the conviction or order concerned.
 - (b) In section 5A (2), omit “The decision”, insert instead “Except as provided by subsection (2A), the decision”.

SCHEDULE 4—AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987—*continued*

(c) After section 5A (2), insert:

(2A) If an application by a person as referred to in this section is the first such application by the person in respect of the particular amount payable, the person is entitled to have an order made pursuant to the application, but this subsection does not affect the operation of subsection (3).

(2B) An authorised Justice must, in exercising or performing powers, authorities, duties or functions under this Act in respect of an application to which this section applies, comply with such guidelines (if any) as may be issued by the Minister by order in writing published in the Gazette from time to time. The guidelines cannot limit the operation of subsection (2A).

(2) Section 13 (**Number of hours of community service work**):
From section 13 (2A), omit “\$12.50”, insert instead “\$15.00”.

(3) Section 26A (**Breach of fine default community service order**):

(a) Omit section 26A (2).

(b) From section 26A (6), omit “in respect of the unsatisfied balance”.

(c) Omit section 26A (8).

SCHEDULE 5—AMENDMENT OF PRISONS ACT 1952

(Sec. 7)

Section 41 (**Expiration of sentence**):

Omit section 41 (3).

*[Minister’s second readings speech made in—
Legislative Council on 4 May 1994
Legislative Assembly on 11 May 1994 am]*