



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

**No. 143, 2010**

***An Act to amend the *Service and Execution of  
Process Act 1992*, and for related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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

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***An Act to amend the *Service and Execution of Process Act 1992*, and for related purposes***

*[Assented to 15 December 2010]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Service and Execution of Process Amendment (Interstate Fine Enforcement) Act 2010*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<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.	15 December 2010
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.	15 June 2011

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **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.

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

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

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

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

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

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

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

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

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

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

## 111 Constitution of courts

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

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

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

### **112 Request for registration**

- (1) A fine enforcement officer of the originating State for a fine may request registration of the fine in another State if:
  - (a) the liability of the offender to pay the fine has not been fully discharged; and
  - (b) there is reason to believe that the offender is resident in, or appears to be resident in, the other State; and
  - (c) the fine is any of the following:
    - (i) a post-commencement fine;
    - (ii) a pre-commencement fine that is related to a post-commencement fine;
    - (iii) a pre-commencement serious fine.
- (2) The request must:
  - (a) be in writing; and
  - (b) be made to a fine enforcement officer of the other State; and
  - (c) be accompanied by a copy of the order, however described, of the court imposing the fine; and
  - (d) be accompanied by, or include:
    - (i) a statement by a fine enforcement officer of the originating State stating that the liability of the offender to pay the fine has not been fully discharged, and specifying the amount of the fine that remains unpaid;
    - (ii) if the fine is a pre-commencement serious fine—a statement by a fine enforcement officer of the originating State stating why the originating State considers the fine is a serious fine.
- (3) A single request under subsection (1) may relate to more than one fine, in which case this section applies to each of the fines to which the request relates.
- (4) A request cannot be made under this section for registration of a fine that is already registered in another State.

## 113 Registration

### *Registration*

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

### *Related fines*

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

## 114 Effect of registration

### *Effect*

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

### *Enforcement only by registering State*

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

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

### *Fine capable of enforcement*

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

*No imprisonment*

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

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

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

*Obligation to initiate amendment*

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

*Amendment*

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

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

*Obligation to initiate cancellation*

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

*Option to initiate cancellation*

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

*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.

*Cancellation of registration of related fine*

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

**120 Challenge to imposition of fine**

*Challenge in accordance with laws of originating State*

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

*Offender to notify registering State*

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

*Certain fines cannot be enforced during challenge*

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

*Cancellation of registration if challenge upheld*

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

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

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

## **Division 4—Miscellaneous**

### **121 Operation of State laws**

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

### **122 Saving**

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

## **2 Transitional—fines**

- (1) This item applies if, before commencement, a warrant of apprehension has been issued in relation to a fine under section 112 of the old law.
  - (2) This item does not apply if the liability to pay the fine has been fully discharged (whether because of payment of the fine, remission of the fine, service of a term of imprisonment in relation to the fine, the grant of a pardon in respect of the relevant offence, or otherwise).
  - (3) The new law has effect in relation to the fine as if the fine had been imposed after commencement.
  - (4) If, immediately before commencement:
    - (a) a warrant of apprehension or commitment is in effect under Part 7 of the old law in relation to the fine—the warrant ceases to have effect immediately after commencement; and
    - (b) proceedings under Part 7 of the old law in relation to the fine have not been finally determined—the proceedings must not be continued after commencement; and
    - (c) a person is remanded on bail under Part 7 of the old law in relation to the fine—the person must be released as soon as practicable after commencement, unless the person is on remand for some other cause; and
    - (d) a person is serving a period of imprisonment, or is in custody, under Part 7 of the old law in relation to the fine—the person must be released as soon as practicable after commencement unless the person is in custody for some other cause.
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(5) In this item:

**commencement** means the commencement of this Schedule.

**new law** means the *Service and Execution of Process Act 1992* as in force immediately after commencement.

**old law** means the *Service and Execution of Process Act 1992* as in force immediately before commencement.

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

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

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## Schedule 2—Consequential amendments

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

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

Omit “(other than section 125)”.

#### **2 Section 81**

Repeal the section, substitute:

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

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

### *Transfer of Prisoners Act 1983*

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

Omit “and”.

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

Repeal the subparagraph.

#### **5 Application**

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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*[Minister's second reading speech made in—  
Senate on 29 September 2010  
House of Representatives on 25 November 2010]*

(168/10)

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