



TASMANIA

**JUSTICES AMENDMENT (FINE DEFAULTERS)
ACT 1993**

No. 10 of 1993

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**JUSTICES AMENDMENT (FINE DEFAULTERS) ACT
1993**

No. 10 of 1993

AN ACT to amend the *Justices Act 1959* and the *Probation of Offenders Act 1973*

[Royal Assent 20 April 1993]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Justices Amendment (Fine Defaulters) Act 1993*.

Commencement

2—This Act commences on a day to be proclaimed.

Principal Act

3—In this Act, the *Justices Act 1959** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 (1) of the Principal Act is amended by inserting after the definition of “order” the following definition:—

“**pecuniary sum**” means a sum of money in respect of which a warrant is issued under section 80 (1), including the prescribed costs of the warrant and of a warrant of commitment issued under section 80 (2) (c) or 82 (1), as the case may require;

Sections 78, 79 and 80 substituted and sections 81, 82 and 83 inserted

5—Sections 78, 79 and 80 of the Principal Act are repealed and the following sections are substituted:—

Time for payment of fines and enforcement of payment

78—(1) On adjudging a defendant to pay a sum of money, with or without costs, or for costs alone, the justices must, by order—

- (a) require payment of that sum forthwith; or
- (b) specify a period within which that sum is to be paid; or
- (c) direct that that sum be paid in instalments of a specified amount, at specified times or at specified intervals.

(2) If the justices have failed to make any such order relating to payment of a sum of money, they are to be taken to have specified a period of 14 days within which that sum is to be paid.

* No. 77 of 1959. For this Act, as amended to 1 May 1982, see the continuing Reprint of Statutes. Subsequently amended by Nos. 33 and 51 of 1982, Nos. 45 and 75 of 1983, Nos. 29, 48 and 55 of 1984, Nos. 9, 51 and 121 of 1985, Nos. 45, 77, 93 and 115 of 1986, Nos. 45, 57 and 82 of 1987, Nos. 8 and 15 of 1988, Nos. 13 and 34 of 1989, Nos. 5 and 13 of 1990 and Nos. 41, 43 and 46 of 1991 and Nos. 15 and 21 of 1992.

(3) If, where the justices have directed that a defendant pay a sum of money in instalments, the defendant defaults in payment of an instalment, the whole of the balance of that sum becomes due and payable on that default.

Variation of time or manner of payment

79—(1) A defendant who has been adjudged to pay a sum of money, with or without costs, or for costs alone by justices may, within any period allowed under section 78 for payment of that sum, apply to a justice for an order varying the time or manner of payment of that sum.

(2) On an application under subsection (1)—

- (a) a justice may make such order as may be appropriate; and
- (b) the order has effect as if it had been made by justices under section 78.

Failure to pay sum within time granted

80—(1) Where a defendant who has been adjudged to pay a sum of money is in default of payment of that sum, a clerk of petty sessions may issue a warrant to apprehend the defendant and bring the defendant before justices.

(2) Where a defendant against whom a warrant has been issued pursuant to subsection (1) fails to pay the sum of money in respect of which the warrant is issued, together with the prescribed costs of the warrant, the justices may, on the defendant being brought before them—

- (a) make a community service order against the defendant specifying the amount of community service or other activity that the defendant is required to do calculated in accordance with section 83; or
- (b) direct that proceedings be taken against the defendant pursuant to a memorandum of the conviction or order transmitted under section 92A (1); or
- (c) issue a warrant of commitment against the defendant for a term of imprisonment calculated in accordance with section 81 in respect of the sum outstanding.

(3) A community service order may not be made under subsection (2) (a) in respect of a fine imposed for a breach of another community service order.

(4) Where a defendant is sentenced under subsection (2) (c), the justices may suspend the execution of a warrant of commitment in respect of that imprisonment for a period not exceeding 6 months for the purpose of allowing the defendant to pay the sum outstanding and any such suspension may be made on such conditions as the justices think fit.

(5) A term of imprisonment to which a defendant is sentenced under subsection (2) (c) is not to be served concurrently with any other term of imprisonment to which the defendant has been, or is liable to be, sentenced.

(6) If any proceedings under subsection (2) are adjourned, the justices may admit the defendant to bail.

(7) Section 26 does not apply to the issue of a warrant to apprehend under subsection (1).

Calculation of term of imprisonment

81—A term of imprisonment to which a defendant is sentenced under section 80 (2) (c) or 82 (1) is to be calculated at the rate of one day of imprisonment for each prescribed unit of the pecuniary sum or the balance outstanding, as the case may require.

Failure to pay sum of money by defendant outside the jurisdiction

82—(1) Where—

(a) a defendant who has been adjudged to pay a sum of money defaults in payment of that sum; and

(b) a justice is satisfied that the defendant is no longer in Tasmania or that the usual place of residence of the defendant is outside Tasmania—

the justice may, on the application of the clerk of petty sessions, issue a warrant of commitment against the defendant for a term of imprisonment for a period calculated in accordance with section 81 in respect of the sum outstanding.

(2) A warrant of commitment may be issued in the circumstances specified in subsection (1), whether or not a warrant to apprehend has been issued under section 80 (1) in the absence of the defendant.

(3) Section 26 does not apply to an application for the issue of a warrant of commitment under subsection (1).

Community service orders

83—(1) This section applies to a community service order made under section 80.

(2) The amount of community service or other activity required to be performed under a community service order to which this section applies is to be calculated at the rate of 7 hours for each prescribed unit of the pecuniary sum or the balance outstanding, as the case may require.

(3) Where a community service order to which this section applies is made against a defendant, the defendant is required to do community service or other activity in accordance with the order.

(4) A defendant may be required to do community service or other activity pursuant to a community service order to which this section applies for more than 240 hours.

(5) Where a defendant performs community service or other activity pursuant to a community service order to which this section applies, the outstanding amount of the pecuniary sum is reduced by one prescribed unit for each 7 hours of community service or other activity performed by the defendant.

(6) If a defendant at any time pays to the Director of Corrective Services a part of the pecuniary sum then outstanding, the number of hours of community service or other activity to be performed is reduced by the proportion that the amount so paid bears to that outstanding sum (ignoring any fraction or part of an hour).

(7) Where a defendant is in breach of a community service order to which this section applies, the justices must, in sentencing the defendant to a term of imprisonment under the *Probation of Offenders Act 1973*, calculate the term at the rate of one day of imprisonment (or if some other number of days is prescribed, that number) for each 7 hours of community service or other activity not performed by the defendant.

(8) The application of the *Probation of Offenders Act 1973* extends to a community service order to which this section applies as if it had been made under that Act but this section has effect notwithstanding that Act.

Section 88 repealed

6—Section 88 of the Principal Act is repealed.

Section 89 amended (Amount in default reduced by imprisonment)

7—Section 89 of the Principal Act is amended by omitting subsections (1) to (4), both inclusive, and substituting the following subsections:—

(1) Where a person is committed to prison pursuant to a warrant of commitment issued under this Part, the amount in respect of which the warrant was issued is reduced by one prescribed unit for each day served in prison pursuant to the warrant.

(2) If the person at any time pays to the superintendent or gaoler of the prison the amount then outstanding under the warrant, together with the costs of issuing and executing the warrant, the sentence of imprisonment is wholly extinguished.

(3) If the person at any time pays to the superintendent or gaoler of the prison a part of the amount then outstanding under the warrant, the balance of the term of imprisonment remaining to be served is reduced by the proportion that the amount so paid bears to that outstanding amount (ignoring any fraction or part of a day).

(4) A superintendent or gaoler of a prison to whom money has been paid under this section must issue a receipt for the payment and forward the amount to the appropriate clerk of petty sessions.

(4A) Where a person has served a term of imprisonment fixed under this Part, the whole of the amount in respect of which the warrant of commitment was issued is extinguished.

Section 90 amended (Satisfaction of execution by payment)

8—Section 90 of the Principal Act is amended by omitting “78” and substituting “80 or 82”.

Section 11 of the *Probation of Offenders Act 1973* amended (Power to make community service orders)

9—Section 11 (1) of the *Probation of Offenders Act 1973** is amended by omitting “and with the person’s consent”.

Application of amendments

10—(1) The amendments to the Principal Act made by this Act extend to a person who has been adjudged to pay a sum of money, with or without costs, or for costs alone imposed before the commencement of this Act that was outstanding wholly or in part on that commencement, notwithstanding any period of imprisonment specified in an order made, or warrant issued, under the Principal Act as in force immediately before that commencement.

* No. 2 of 1973. For this Act, as amended to 1 August 1987, see the continuing Reprint of Statutes. Subsequently amended by No. 7 of 1988, No. 5 of 1990 and No. 43 of 1991.

(2) For the purposes of subsection (1), where on the commencement of this Act a person has served part of a term of imprisonment imposed in default of payment of a sum of money as mentioned in that subsection, the balance of that term is to be calculated in accordance with the amendments made by this Act, notwithstanding the period specified in the order or warrant by virtue of which he or she was committed to prison.

*[Second reading presentation speech made in:—
House of Assembly on 24 March 1993
Legislative Council on 31 March 1993]*