



Schedule 8

- 8.1 Schedule 8 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (the Bill) amends section 15A of the *Crimes Act 1914* (Cth) (the Crimes Act) to enable State and Territory fine enforcement agencies to take non-judicial enforcement action to enforce Commonwealth fines without first obtaining a court order, and to make related amendments to the Crimes Act.

Existing laws and practices

- 8.2 The Commonwealth does not have a fine enforcement agency and relies upon State and Territory agencies to enforce Commonwealth fines on its behalf.
- 8.3 Section 15A allows State and Territory laws to be applied to enforce fines against federal offenders in the same way that they are applied to State and Territory offenders.
- 8.4 In its current form section 15A(1) limits the actions that State and Territories can take on behalf of the Commonwealth. In particular, fine enforcement agencies cannot take certain types of enforcement action for fine default unless they first obtain a court order.
- 8.5 It has been recognised that having to obtain a court order is an expensive and time consuming process and can act as a disincentive.

Proposed legislative amendments

8.6 The Bill proposes an amendment to empower State and Territory fine enforcement agencies to enforce Commonwealth fines through non-judicial enforcement actions. These non-judicial enforcement actions proposed are:

- garnishment of a debt, wage or salary;
- a charge or caveat on property;
- seizure of property; or
- forfeiture of property.

8.7 The amendments will not affect other fine enforcement options that are currently available as an alternative to paying a fine such as voluntary community service or suspension of a person's driver's licence.

8.8 Additionally, if a court imposes a fine on a federal offender but at the same time makes an order that another penalty be imposed on the offender if arrangements have not been made pay the fine by a certain date, a proposed amendment clarifies that no further court order is required to enforce this penalty.

8.9 Finally the Bill proposes an amendment to provide retrospective authority for past actions taken by State and Territory fine enforcement agencies to enforce or recover fines from federal offenders by the way of garnishment of a debt, wage or salary; a charge or caveat on property; seizure of property; or forfeiture of property (or similar penalties) without first applying for a court order.

Other minor and technical amendments

8.10 Schedule 8 of the Bill will make a number of minor and technical amendments to the Crimes Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

Issues raised in consultation

8.11 No significant issues were raised in consultation regarding the prospective operation of the amendments proposed in Schedule 8 of the Bill.

- 8.12 The Senate Scrutiny of Bills Committee raised the retrospective application of amendments proposed in Schedule 8 of the Bill. It left to the consideration of the Senate as a whole whether the approach proposed in these amendments is appropriate. It noted that these provisions may be considered to trespass unduly on personal human rights and liberties, and drew Senators' attention to the Schedule 8 provisions.¹

Committee comment

- 8.13 The Committee notes that no significant issues were raised regarding the substance of the amendments proposed, and the Committee supports the prospective application of the amendments.
- 8.14 However the Committee is concerned about the retrospective application of the amendments that is contained in Items 5 and 7 of Schedule 8 of the Bill.
- 8.15 The Committee notes that the Explanatory Memorandum does refer to the retrospective application of amendments but provides only a brief justification for each Item.
- 8.16 Retrospectivity should not be used lightly and merits a thorough explanation. In regards to the retrospective application, the Committee requests an explanation on the need for this measure and clarification of the potential impact that this may have on individual rights and liabilities.

Recommendation 10

- 8.17 **The Committee recommends that the Minister for Justice provide an explanation to the House of Representatives regarding the need for the retrospective application of amendments proposed in Schedule 8 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011.**

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Chair

¹ Senate Scrutiny of Bills Committee, *Alert Digest No. 1*, 8 February 2012, p. 7.