

## **Magistrates' Court (Infringements) Bill**

### **Circulation Print**

#### **EXPLANATORY MEMORANDUM**

- Clause 1 sets out the main purposes of the Act.
- Clause 2 provides for the commencement of the Act.
- Clause 3 amends section 82D of the Act. Sheriff's officers are empowered to break and enter in search of property when executing a penalty enforcement warrant (section 82D(1)(a) of the Act). The Bill amends the Act to make it clear that where peaceful entry to search for property is refused and the person named in the warrant claims not to have any property that can be seized, the sheriff's officer is not obliged to then break and enter in search of property when the officer reasonably believes that the person does not have sufficient property to satisfy the sums named in the warrant.
- Clause 4 inserts a new Subdivision 8 into Division 3 of Part 4.

Where sheriff's officers attend an address provided on a warrant, people located at that address can be uncooperative and refuse to give their name. Sheriff's officers have no formal power to request a person's name and address, nor the production of identifying documents such as a driver licence. The Bill gives sheriff's officers a power to request the name and address of a person who they reasonably believe to be the defendant named in the warrant. A failure to comply with such a request is an offence. If the sheriff's officer believes on reasonable grounds that the information provided is false, they may ask for evidence.

The clause gives sheriff's officers a power to temporarily restrain a person who hinders the execution of a warrant.

Periodically, sheriff's officers are engaged in joint operations with police at road blocks to identify drivers with unpaid infringements. The Bill gives sheriff's officers the power to require motorists to remain and produce their licences whilst being checked at police road blocks.

- Clause 5 enables the sheriff, the PERIN Court, contractors and sub-contractors to request information that may assist in their enforcement activities.
- Clause 6 provides that the sheriff may dispose of unclaimed property that the sheriff has seized or which comes into the possession of the sheriff. It is currently unclear what powers the sheriff has to dispose of unclaimed property.
- Clause 7 provides that the PERIN procedure may be used for certain Commonwealth offences that apply as laws of Victoria. For example, the **Road Transport (Dangerous Goods) Act 1995** applies provisions of the **Road Transport Reform (Dangerous Goods) Act 1995 (Cth)** as laws of Victoria. Under the current definition on "infringement notice" in the Act, infringements issued for offences against the applied Commonwealth provisions are not offences for which the PERIN procedure may be used. The Bill amends the Act to provide that infringements issued for offences against Commonwealth laws applied as laws of Victoria can be enforced by registration for enforcement with the PERIN Court.
- Clause 8 amends the Act to facilitate instalment arrangements. Currently, issuing agencies do not accept payment by instalments, although some provide an extension of time to pay. One reason agencies do not grant instalment arrangements is because the PERIN Court cannot accept the registration of part of an infringement. If a person defaults on an instalment arrangement, an issuing agency cannot collect the part paid infringement through the PERIN system. The Bill overcomes this by enabling part paid infringements to be registered with the PERIN system for enforcement.
- Clause 9 deals with applications for revocation of enforcement orders.

Clause 10 allows the registrar of the PERIN Court to revoke an enforcement order on his or her own initiative. This power will enable the registrar to remit matters that would be more appropriately dealt with in open Court, despite no application for revocation being made. Revocation could be made under this provision when the defaulter has a disability and is not being represented by an advocate, for example. This will enable vulnerable defaulters to be diverted from the PERIN system to open Court where their personal circumstances can be taken into account in sentencing.

Clause 11 amends the Act to provide that enforcement orders expire five years after they are made if the warrant is not executed within five years. The effect of this expiry is that any unpaid infringements and costs in the order are to be written off for accounting purposes.

Enforcement orders in relation to which a time to pay arrangement or an instalment arrangement exists do not expire five years after they are made. Instead, they expire—

- once all money owing under them is paid; or
- if all of the payments made under an instalment arrangement or a time to pay arrangement have not been made, five years after the last payment was made.

Expired enforcement orders can be re-instated. They can be re-instated by the relevant enforcement agency applying to the registrar of the PERIN Court. This will allow the money owing under an enforcement order to be recovered where a defendant against whom the order is made is located after the order has expired.

Clause 12 applies the new clauses 10A, 14A and 14B to penalty notices.

Clause 13 provides for a new Court hearing procedure for people arrested on penalty enforcement warrants. Currently, continued default in paying an infringement penalty results in the execution of a penalty enforcement warrant against the defaulter. This warrant authorises the sheriff to seize and sell property to cover the amount of the infringement penalty plus prescribed costs. Where there is insufficient property to satisfy the outstanding amount, it permits sheriff's officers to arrest the defendant and take him or her into custody. The person is then imprisoned for

one day for every \$100 (or part thereof) owing. The term of imprisonment is imposed automatically by the Act rather than by the decision of a Court.

Under current arrest processes, the defendant is assessed for a community custodial permit (CCP) under the **Corrections Act 1986**. If a defendant meets the criteria for a CCP he or she is released to report at a community correction centre to undertake supervised community work. Those who do not meet the criteria are imprisoned.

The Bill amends the Act to provide for a hearing for defaulters who do not receive a CCP. This hearing will provide a judicial mechanism for reviewing whether imprisonment is a suitable sanction. It is an opportunity to tailor sanctions for those who suffer from a mental disorder or intellectual impairment or who are experiencing exceptional circumstances.

Where a person is arrested and does not qualify for a CCP, they will have a hearing in the Magistrates' Court. Where a defendant does not appear before the Court for a hearing within 48 hours of arrest, they will be released to appear at a set hearing date. Where a person does not appear at the hearing date, the Court may issue a warrant of arrest directed to the sheriff. The sheriff's officers should locate and arrest the defendant and bring him or her before the Court.

Where the Court is satisfied that the offending or the default in payment is due to a mental disorder or an intellectual impairment and the defendant has no means to pay or a reasonable excuse not to pay, the Court may dismiss the matter in whole or in part. Alternatively, the Court may adjourn the hearing of the matter for up to 6 months on any conditions the Court thinks fit. After such an adjournment, if the conditions have been satisfied and the defendant has no means to pay or a reasonable excuse not to pay, the Court may dismiss the matter in whole or in part.

Where there are exceptional circumstances, the Court may grant a CBO. In ordering imprisonment, the Court may impose a maximum term of the default rate (one day per every \$100 or part thereof owing). Alternatively, the Court may reduce the term by up to two thirds of the original term, taking into account the defendant's circumstances. A person brought before the

Court under the new provisions bears the onus of satisfying the Court with respect to any matter before the Court.

- Clause 14 provides for the transitional provisions. The amendments made by the Bill apply to infringement notices, enforcement orders and warrants issued prior to the commencement of the Bill. This is to maintain consistent procedures that are to be used in relation to each defendant. For example, some defendants will have warrants issued against them before and after the commencement of this Bill. If warrants issued before and after the commencement of this Bill are executed against a defendant, it is important that the same procedures apply to all the warrants.
- Clause 15 amends the **Sentencing Act 1991** to clarify that PERIN sentences of imprisonment are to be served cumulatively.
- Clause 16 provides a transitional provision for the amendment to the **Sentencing Act 1991** made by clause 15.
- Clause 17 amends the definition of "security interest" in the **Chattel Securities Act 1987**.
- Clause 18 provides a transitional provision for the amendment to the **Chattel Securities Act 1987** made by clause 17.

