

NORTHERN TERRITORY OF AUSTRALIA

FINES AND PENALTIES (RECOVERY) AND OTHER LEGISLATION
AMENDMENT ACT 2011

Act No. 43 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 43 of 2011

An Act to amend the *Fines and Penalties (Recovery) Act* and other legislation

[Assented to 21 December 2011]
[Second reading 19 October 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Fines and Penalties (Recovery) and Other Legislation Amendment Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Fines and Penalties (Recovery) Act

3 Act amended

This Part amends the *Fines and Penalties (Recovery) Act*.

4 Section 3 amended

- (1) Section 3(1)(c)

omit

of the Commonwealth where a request has been made under Part 6

insert

under an order of a court of the State or other Territory in proceedings for an offence

- (2) Section 3(1)(d), after "a court"

insert

(whether in the Territory or in a State or another Territory)

5 Section 5 amended

- (1) Section 5

omit

, unless the contrary intention appears

- (2) Section 5

insert (in alphabetical order)

courtesy letter, see section 15(1).

order for restitution or compensation, see section 6(1)(da).

- (3) Section 5, definition ***law enforcement officer***, after "includes"

insert

the following

- (4) Section 5, definition ***law enforcement officer***, paragraph (g)

omit

and

6 Section 6 amended

After section 6(1)(d)

insert

(da) an order for restitution by monetary forfeiture, or monetary compensation, made by a court in proceedings for an offence (an ***order for restitution or compensation***);

7 Sections 12A and 12B inserted

After section 12

insert

12A Application for further time to pay

- (1) An application for further time to pay the penalty under an infringement notice may be made to the enforcement agency that issued the notice by or on behalf of the person to whom the notice was directed.
- (2) The application may be made at any time before a penalty enforcement order is made in relation to the penalty under the infringement notice, whether or not a courtesy letter has been issued in relation to the penalty.
- (3) The enforcement agency:
 - (a) may require the applicant to provide information or documents in support of the application (including documents relating to the identity and financial means of the applicant); and
 - (b) may refuse to deal with the application if the information or documents are not provided.
- (4) When dealing with the application, the enforcement agency must:
 - (a) comply with any requirements prescribed by regulation for this section; and
 - (b) have regard to any relevant guidelines under section 114.
- (5) The decision of the enforcement agency about the application is final and may not be appealed against, reviewed or called into question in any court or tribunal.
- (6) The Fines Recovery Unit may enter into arrangements with an enforcement agency under which the Unit acts for the agency in dealing with an application under this section.

- (7) If the Fines Recovery Unit enters into arrangements mentioned in subsection (6), a reference in this section to an enforcement agency is taken to include a reference to the Unit.

12B Enforcement agency may allow further time

- (1) If an application is made by a person under section 12A in relation to an infringement notice, the enforcement agency may allow further time to pay the penalty under the notice if the agency considers it appropriate to do so.
- (2) For subsection (1), the enforcement agency may enter into arrangements with the person for:
- (a) extending the time for payment of the whole penalty; or
 - (b) paying the penalty by instalments in the amounts, and at the times, as the agency specifies.
- (3) If a courtesy letter has been issued in relation to the infringement notice, the prescribed costs of the courtesy letter must be included in the total amount to be paid under any arrangements for further time to pay the penalty.
- (4) If an instalment is not paid by the specified time, the remaining instalments become due and payable unless the enforcement agency decides otherwise.
- (5) An arrangement allowing the person further time to pay, or allowing the penalty to be paid by instalments:
- (a) may be amended or revoked on another application by the person or on the enforcement agency's own initiative; and
 - (b) is cancelled if a penalty enforcement order is made against the person in relation to the penalty.
- (6) If the Fines Recovery Unit has entered into arrangements as mentioned in section 12A(6), a reference in this section to an enforcement agency is taken to include a reference to the Unit.

8 Section 13 amended

Section 13, after "notice,"

insert

or the further time allowed under section 12B,

9 Section 14 amended

Section 14

omit

all words after "period"

insert

specified in the notice, or the further time allowed under section 12B, enforcement action may be taken under this Act unless the notice is withdrawn.

10 Section 15 amended

(1) Section 15(1)

omit

all words from "specified," to "courtesy letter"

insert

specified in the notice, or the further time allowed under section 12B, the officer may serve, in accordance with section 17, a letter (a ***courtesy letter***)

(2) After section 15(2)

insert

(3) The Fines Recovery Unit may enter into arrangements with an enforcement agency under which the Unit acts for the agency in issuing and withdrawing courtesy letters.

(4) If the Fines Recovery Unit enters into arrangements mentioned in subsection (3), a reference in this section to an appropriate officer is taken to include a reference to the Unit.

11 Section 19 amended

Section 19, after "letter,"

insert

or the further time allowed under section 12B,

12 Section 22 amended

(1) Section 22

omit

If

insert

(1) If

(2) After section 22(1)

insert

(2) The proceedings mentioned in subsection (1) must be commenced as follows:

(a) if, apart from this subsection, proceedings for prosecuting the offence would be required to be commenced within a period of 12 months or less after the offence is alleged to have been committed – within 12 months after the offence is alleged to have been committed;

(b) otherwise – before the expiry of the period within which the proceedings must be commenced.

13 Section 26 amended

Section 26(2)

omit, insert

(2) For subsection (1), the Fines Recovery Unit may enter into arrangements with the person for:

(a) extending the time for payment of the whole fine; or

(b) paying the fine by instalments in the amounts, and at the times, as the Unit specifies.

14 Section 28 amended

- (1) Section 28(4)
- omit*
- all words from "other bodies" to "those bodies"
- insert*
- an enforcement agency to recover an amount due to the agency
- (2) After section 28(4)
- insert*
- (5) The Fines Recovery Unit may act for a person to recover money payable to the person under an order for restitution or compensation.
- (6) The Fines Recovery Unit may act for a State or another Territory to enforce a fine imposed by a court of the State or Territory:
- (a) in relation to a body corporate – if a request has been made under Part 6; or
- (b) if a request for registration of the fine has been made to the Unit under the *Service and Execution of Process Act 1992* (Cth).

15 Section 35 amended

- (1) Section 35(2), definition ***outstanding fine***
- omit*
- all words after "been"
- insert*
- paid:
- (a) within the time specified in section 23; or
- (b) in accordance with arrangements made under section 26(2) for further time to pay the fine.

-
- (2) Section 35(2), definition ***outstanding penalty under an infringement notice***, paragraph (a)

omit

all words after "been"

insert

paid:

- (i) within the time specified in the courtesy letter sent in relation to the infringement notice; or
- (ii) in accordance with arrangements made under section 12B(2) for further time to pay the penalty; and

16 Section 37 amended

- (1) Section 37(1)(c)

omit

passed;

insert

passed or, if an arrangement to allow further time to pay the penalty was entered into under section 12B(2), the arrangement has not been complied with; and

- (2) Section 37(1)(d)

omit

has not been paid;

insert

(including the prescribed costs in relation to the issue of the courtesy letter) has not been paid; and

- (3) Section 37(1)(f)

omit

all words from "filed" to "offence."

insert

filed; and

- (4) After section 37(1)(f)

insert

- (g) not more than 12 months has passed since the offence is alleged to have been committed or – if the period within which proceedings for prosecuting the offence must be commenced is longer than 12 months – that period has not expired.

- (5) Section 37(1)(a) and (b), at the end

insert

and

17 Section 45 amended

After section 45(2)

insert

- (3) A matter must be listed with the Court of Summary Jurisdiction in accordance with subsection (2)(b)(iii) within 6 months after the granting of the application for annulment.

18 Section 60 amended

Section 60(3)

omit, insert

- (3) The Registrar of Motor Vehicles, or the Fines Recovery Unit on behalf of the Registrar, must notify the fine defaulter in writing about the suspension.
- (3A) Despite subsection (3), failure of a notification to reach the fine defaulter does not affect the suspension under this section of a licence to drive.

19 Section 61 amended

Section 61(3)

omit, insert

- (3) The Registrar of Motor Vehicles, or the Fines Recovery Unit on behalf of the Registrar, must notify the fine defaulter in writing about the suspension.

- (3A) Despite subsection (3), failure of a notification to reach the fine defaulter does not affect the suspension under this section of the registration of a vehicle.

20 Section 62 amended

Section 62(1) to (4)

omit, insert

- (1) This section applies if the Fines Recovery Unit requests the Registrar of Motor Vehicles to take enforcement action by refusing to perform a function in relation to a body corporate which is a fine defaulter.
- (2) The Registrar of Motor Vehicles may refuse to perform one or more of the following functions in relation to the fine defaulter:
- (a) register, or renew the registration of, a vehicle in the name of the fine defaulter;
 - (b) grant a motor vehicle trader's licence to the fine defaulter, or renew such a licence;
 - (c) grant a temporary licence under section 137 of the *Motor Vehicles Act* to the fine defaulter;
 - (d) grant or renew a pastoral vehicle permit in relation to a vehicle owned by the fine defaulter;
 - (e) issue a number plate to the fine defaulter;
 - (f) a function prescribed by regulation for this section.
- (3) If the Registrar of Motor Vehicles takes enforcement action mentioned in subsection (2), the Registrar, or the Fines Recovery Unit on behalf of the Registrar, must notify the fine defaulter in writing about the enforcement action.
- (4) Despite subsection (3), failure of a notification to reach the fine defaulter does not affect any enforcement action taken under this section.

21 Section 76 amended

After section 76(1)

insert

- (1A) A community work order cannot be made under this Division in relation to an order for restitution or compensation.

22 Section 105 amended

Section 105(1)(c)

omit

23 Section 113 amended

Section 113(1), before paragraph (a)

insert

(aa) first – to the payment of any order for restitution or compensation (and if there is more than one such order – rateably between those orders);

24 Section 114 amended

After section 114(1)(a)

insert

(ab) the entering into of arrangements:

- (i) by the Fines Recovery Unit allowing a person further time to pay a fine (including any prescribed costs associated with enforcement action) under section 26(2); or
- (ii) by an enforcement agency or the Fines Recovery Unit allowing a person further time to pay the penalty under an infringement notice (including any prescribed costs associated with a courtesy letter or other enforcement action) under section 12B(2);

25 Section 115 amended

(1) Section 115, heading, after "**other**"

insert

person or

(2) After section 115(1)

insert

(1A) If the fine is an order for restitution or compensation, the Fines Recovery Unit must pay money received under the order to the person or body identified in the order as the recipient of an amount to be paid under the order unless the person or body cannot be

located after reasonable attempts have been made to locate the person or body.

26 Part 10, Division 1 heading inserted

Before section 120, in Part 10

insert

Division 1 Savings and transitional matters for Fines and Penalties (Recovery) Act 2001

27 Part 10, Division 2 inserted

After section 122

insert

Division 2 Transitional matters for Fines and Penalties (Recovery) and Other Legislation Amendment Act 2011

123 Orders for restitution or compensation

- (1) If a person is liable to pay an amount that is due in relation to an order for restitution or compensation made by a court before the commencement day, the Registrar of the court may refer the matter to the Fines Recovery Unit.
- (2) If the matter is referred to the Fines Recovery Unit under subsection (1), the Unit may:
 - (a) enter into arrangements with the person for:
 - (i) extending the time for payment of the whole amount; or
 - (ii) paying the amount by instalments in the amounts, and at the times, as the Unit specifies; or
 - (b) make a fine enforcement order under section 50 in relation to the person (whether or not an arrangement for further time to pay has been entered into).
- (3) If, in relation to an amount payable under an order mentioned in subsection (1), a warrant has been issued under the *Justices Act*, *Youth Justice Act* or *Sentencing Act* but has not been executed, the warrant is cancelled on the making of a fine enforcement order in relation to the amount.

(4) If a matter mentioned in subsection (1) is not referred to the Fines Recovery Unit under that subsection, sections 94 to 96 of the *Sentencing Act*, as in force immediately before the commencement day, continue to apply in relation to the matter as if those provisions had not been amended or repealed by this Act.

(5) In this section:

commencement day means the day on which section 27 of the *Fines and Penalties (Recovery) and Other Legislation Amendment Act 2011* commences.

28 Act further amended

The Schedule has effect.

Part 3 Amendment of Fines and Penalties (Recovery) Regulations

29 Regulations amended

This Part amends the *Fines and Penalties (Recovery) Regulations*.

30 Regulation 14 amended

Regulation 14

omit

\$12.50

insert

0.25 of the monetary value of a penalty unit

31 Regulation 15 amended

Regulation 15

omit

\$100

insert

the monetary value of 2 penalty units

Part 4 Amendment of other legislation

Division 1 Amendment of Motor Vehicles Act

32 Act amended

This Division amends the *Motor Vehicles Act*.

33 Section 102 amended

(1) Section 102(2A)

omit

all words after "in that"

insert

Act in relation to an enforcement order (as defined in section 5 of that Act), the Registrar:

- (a) must suspend the licence to drive of an individual who is a fine defaulter within the meaning of that Act; or
- (b) may suspend the registration of a vehicle of which the fine defaulter is a registered owner; or
- (c) may refuse to perform, in relation to a body corporate that is a fine defaulter, a function mentioned in section 62(2) of that Act;

until the Fines Recovery Unit advises the Registrar that the enforcement order has been satisfied or otherwise requests the Registrar to lift the suspension or to cease refusing to perform a function in relation to the fine defaulter.

(2) Section 102(7)

omit

all words after "a decision"

insert

, or action taken, under this section to the person in relation to whom the decision is made or the action is taken.

(3) After section 102(7)

insert

(7A) If the decision or action arises from a request by the Fines Recovery Unit as mentioned in subsection (2A), the Fines Recovery Unit may give the written notice on behalf of the Registrar.

Division 2 Amendment of Sentencing Act

34 Act amended

This Division amends the *Sentencing Act*.

35 Section 92 amended

Section 92(c)

omit

or compensation is, or costs are, to be paid

36 Section 94 amended

Section 94(1)

omit

all words after "an order"

insert

under this Division for non-monetary restitution of property may extend the time stated in the order within which the restitution is to be made.

Note for subsection (1)

An extension of time to pay, and enforcement of payment of, an order under this Division for the payment of money by way of restitution or compensation is dealt with by the Fines Recovery Unit under the Fines and Penalties (Recovery) Act.

37 Sections 95 and 96 repealed

Sections 95 and 96

repeal

Schedule Fines and Penalties (Recovery) Act further amended

section 28

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 1 heading, at the end		matters
section 3(1)(a)(ii) and (b), at the end		and
section 6(1) and (2)	the purposes of	
section 10(b)	notices,	notices;
sections 16(1)(a) and (b), 17(2)(a) and (b), 20(2)(a) to (c) and 24(5)(a), at the end		and
section 29(1) and (2)	an employee within the meaning of the <i>Public Sector Employment and Management Act</i>	a public sector employee
section 31(a) and (b), at the end		and
section 34, penalty provision	a natural person	an individual
Part 5, Division 1 heading, at the end		matters
section 41(1)(a)	action; and	action;
sections 43(3)(a) and 44(1)(a) and (4)(a), at the end		or
section 44(1)(c)	granted,	granted;

sections 45(2)(b)(i), 47(1)(a) and (b) and (2)(a) and 48(3)(a), at the end		and
section 48(3)(c)	application,	application;
section 51(1)(b) and (2)(b)	sentence,	sentence;
sections 55(1)(a) to (d), 57(3)(a) and (b) and 58(4)(a) and (b), at the end		and
section 59(1)(a), at the end		or
section 59(1)(c)	instalment,	instalment;
section 59(1)(e)	vehicle,	vehicle;
section 61(1)(b)	Act),	Act);
section 63(1)(b)	imposed,	imposed;
sections 66(1), penalty provision and 68(4)(a)	a natural person	an individual
section 68(7)(b)	required,	required;
section 68(11)(a), at the end		and
section 68(12)(a) and (b), at the end		or
section 68(12)(d)	produce,	produce;
section 72(1)(b)	defaulter,	defaulter;
section 72(4)(a) to (d), at the end		and
section 74(1)(b)	Unit,	Unit;
section 76(1)	a natural person	an individual
section 77(1)(b)	order,	order;

section 77(3)(b)	<i>Act,</i>	<i>Act,</i>
Part 5, Division 11 heading, at the end		matters
section 95(5)(b)	applicable),	applicable);
section 95(6)(a), at the end		and
section 95(6)(c)	lifted,	lifted;
section 100	, unless the contrary intention appears	
section 102(1)(b)	unpaid,	unpaid;
section 105(1)(d)	court,	court;
sections 106(1)(b) and 107(1)(b)	Territory),	Territory);
section 108	, unless the contrary intention appears	
Part 9 heading, at the end		matters
section 112(1)(b)	person,	person;
section 113(1)(a)	first	next
section 113(1)(b)	second	next
section 113(1)(c)	third	next
section 113(1)(d)	fourth	next
section 113(1)(e)	fifth	next
section 113(1)(f)	sixth	next
section 113(1)(g)	seventh	next
section 113(1)(h)	eighth	next
section 116(b)	officer,	officer;
section 119(3)(a) and (b), at the end		and

Part 10 heading, at the end		matters
section 120(1)(a) and (b), at the end		and
section 120(1)(d)	court,	court;
section 121(1)(b)	commenced,	commenced;
section 121(2)(b)	order,	order;
section 122(1)(a), at the end		and
