

Serial 129  
Fines and Penalties (Recovery) Amendment Bill 2015  
Mr Elferink

A Bill for an Act to amend the *Fines and Penalties (Recovery) Act*, and for  
related purposes



# NORTHERN TERRITORY OF AUSTRALIA

## FINES AND PENALTIES (RECOVERY) AMENDMENT ACT 2015

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Act No. [ ] of 2015

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. [ ] of 2015

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An Act to amend the *Fines and Penalties (Recovery) Act*, and for related purposes

[Assented to [ ] 2015]  
[Second reading [ ] 2015]

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) Amendment Act 2015*.

### 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*.

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**4 Section 5 amended**

Section 5

*insert (in alphabetical order)*

**authorised person** means one of the following:

- (a) a bailiff;
- (b) the Director;
- (c) a Deputy Director appointed under section 29(2).

**immobilisation officer** means one of the following:

- (a) an authorised person;
- (b) a person authorised by the Director under section 66B.

**immobilisation period**, for Part 5, Division 7A, see section 66C(1)(a).

**5 Section 6A inserted**

After section 6, in Part 1

*insert*

**6A Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 6A*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

**6 Section 11 amended**

Section 11(2) and (3)

*omit, insert*

- (2) When giving a requirement under subsection (1), the appropriate officer must warn the person it is an offence to contravene the requirement unless the person has a reasonable excuse.

- (3) A person commits an offence if the person:
- (a) contravenes a requirement given to the person under subsection (1); and
  - (b) was given a warning under subsection (2) in relation to the requirement.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

## **7 Section 33 amended**

Section 33(2) and (3)

*omit, insert*

- (2) When giving a requirement under subsection (1), the officer must warn the person it is an offence to contravene the requirement unless the person has a reasonable excuse.
- (3) A person commits an offence if the person:
- (a) contravenes a requirement given to the person under subsection (1); and
  - (b) was given a warning under subsection (2) in relation to the requirement.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

## **8 Section 34 repealed**

Section 34

*repeal*

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**9 Section 41 amended**

- (1) Section 41(1)(b), after "74"  
*insert*  
or 78A
- (2) Section 41(2)(c)  
*omit*  
order.  
*insert*  
order;
- (3) After section 41(2)(c)  
*insert*  
(d) the amount prescribed for the service of a community work order by a bailiff under Division 9.
- (4) Section 41(3), after "74"  
or 78A

**10 Section 53 amended**

- (1) Section 53(1)(b), after "74"  
*insert*  
or 78A
- (2) Section 53(2)(c)  
*omit*  
order.  
*insert*  
order;



- (3) After section 53(2)(c)

*insert*

- (d) the amount prescribed for the service of a community work order by a bailiff under Division 9.

- (4) Section 53(3), after "74"

or 78A

#### **11 Section 55 amended**

Section 55(2), after "74"

*insert*

or 78A

#### **12 Section 62 amended**

- (1) Section 62(1)

*omit*

a body corporate which is

- (2) Before section 62(2)(a)

*insert*

(aa) if the fine defaulter is an individual:

- (i) issue a licence to drive to the fine defaulter or renew the licence to drive of the fine defaulter; or

- (ii) test the fine defaulter for the purpose of issuing a licence to drive to the fine defaulter;

- (3) Section 62(2)(a), after "renew"

*insert*

or transfer

---

**13 Section 66 amended**

Section 66(1)

*omit, insert*

- (1) A fine defaulter may apply to the Fines Recovery Unit for written approval to transfer an interest in a motor vehicle of which the fine defaulter is the registered owner (or one of the registered owners) while the registration of the vehicle is suspended in accordance with this Division.

(1A) A fine defaulter commits an offence if:

- (a) the fine defaulter intentionally sells or otherwise transfers to another person an interest in a motor vehicle; and
- (b) the fine defaulter is the registered owner (or one of the registered owners) of the vehicle; and
- (c) the registration of the vehicle is suspended in accordance with this Division; and
- (d) the fine defaulter is reckless as to whether the Fines Recovery Unit has given written approval to the transfer of the vehicle.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(1B) Strict liability applies to subsection (1A)(b) and (c).

**14 Divisions 7A and 7B inserted**

After section 66

*insert*

**Division 7A Immobilisation of motor vehicle****66A When enforcement action may be taken under this Division**

The Fines Recovery Unit may take enforcement action under this Division if:

- (a) a fine defaulter:
  - (i) has not paid a fine or penalty by the final date specified in the notice of the making of an enforcement order served on the fine defaulter; or

- (ii) has been granted additional time to pay by the Fines Recovery Unit but has not paid the fine or penalty by the extended due date; or
  - (iii) has been allowed by the Fines Recovery Unit to pay a fine or penalty by instalments but has not paid an instalment at the time specified by the Unit for payment of that instalment; and
- (b) the amount of the fine or penalty (including any enforcement costs) exceeds the amount prescribed by regulation; and
- (c) the fine defaulter is the registered owner (or one of the registered owners) of a motor vehicle.

**66B      Immobilisation officer**

The Director may authorise, in writing, a person to be an immobilisation officer.

**66C      Immobilisation of motor vehicle**

- (1) The Director may:
  - (a) determine to immobilise a motor vehicle of which a fine defaulter is the registered owner (or one of the registered owners) for a period not exceeding 7 days (the ***immobilisation period***); and
  - (b) authorise, in writing, an immobilisation officer to immobilise the vehicle.
- (2) An immobilisation officer may immobilise a motor vehicle by:
  - (a) attaching a device to the vehicle; or
  - (b) using any other means approved by the Director.
- (3) After the immobilisation officer has immobilised the vehicle, the officer must affix to the vehicle a notice that includes the following:
  - (a) a statement that the vehicle has been immobilised under this Act;
  - (b) the immobilisation period;
  - (c) information about what the fine defaulter may do to have the immobilisation removed.

**66D When motor vehicle may not be immobilised**

- (1) An immobilisation officer must not immobilise a motor vehicle:
- (a) at a place where the vehicle, if immobilised, could be a safety or traffic hazard; or
  - (b) at a place where the immobilisation officer reasonably believes the safety of the driver and any other occupants of the vehicle may be at risk; or
  - (c) if the Director has determined, and notified the officer, that it is otherwise inappropriate to immobilise the vehicle.

*Example for section 66D(1)(b)*

*At an isolated location.*

- (2) In this section:

**place** includes a road.

**66E Access to motor vehicle during immobilisation period**

A fine defaulter is not prevented from accessing an immobilised motor vehicle during the immobilisation period.

*Example for section 66E*

*A fine defaulter may access the vehicle to retrieve personal possessions.*

**66F Removal of immobilisation before end of immobilisation period**

- (1) The Director must direct an immobilisation officer to remove the immobilisation from a motor vehicle before the end of the immobilisation period if:
- (a) the fine defaulter has paid all outstanding amounts under an enforcement order or the order has otherwise been satisfied; or
  - (b) the Director reasonably believes immobilisation would cause undue inconvenience to a person other than the fine defaulter.
- (2) The Director may direct an immobilisation officer to remove the immobilisation from a motor vehicle although a fine defaulter has not paid all outstanding amounts under the enforcement order.

**66G Powers of immobilisation officer**

- (1) An immobilisation officer may, at any reasonable time of the day or night, enter and remain on any premises for the purpose of immobilising a motor vehicle of which a fine defaulter is the registered owner or removing an immobilisation.
- (2) However:
  - (a) an immobilisation officer who is a bailiff:
    - (i) may enter residential premises occupied only by a person other than the fine defaulter only with the permission of the occupier; and
    - (ii) may enter a part of residential premises that is a residential building only with the permission of the occupier; and
  - (b) any other immobilisation officer may enter residential premises only with the permission of the occupier.
- (3) If requested by an occupier of premises, an immobilisation officer must show the occupier the officer's written authorisation under section 66C(1)(b).
- (4) In this section:

**premises** includes any structure, building or place (whether built on or not).

**66H Moving of immobilised vehicle**

- (1) A person commits an offence if:
  - (a) a motor vehicle is immobilised under this Division; and
  - (b) the person intentionally moves the vehicle.

Maximum penalty: 100 penalty units.
- (2) Strict liability applies to subsection (1)(a).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**66J Interference with immobilisation**

- (1) A person commits an offence if:
  - (a) a motor vehicle is immobilised under this Division; and

- (b) the person intentionally removes or tampers with the immobilisation of the vehicle.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(a).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

#### **66K Protection from liability**

- (1) An immobilisation officer is not civilly or criminally liable for an act done or omitted to be done by the officer in good faith in the exercise of a power or performance of a function as an immobilisation officer.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

### **Division 7B Publication of name of fine defaulter**

#### **66L When enforcement action taken under this Division**

The Fines Recovery Unit may take enforcement action under this Division if:

- (a) one of the following applies:
  - (i) a fine defaulter has not paid a fine or penalty by the final date specified in the notice of making of an enforcement order served on the fine defaulter;
  - (ii) a fine defaulter has been granted additional time to pay by the Fines Recovery Unit but has not paid the fine or penalty by the extended due date;
  - (iii) a fine defaulter has been allowed by the Fines Recovery Unit to pay a fine or penalty by instalments but has not paid an instalment at the time specified by the Unit for payment of that instalment; and

- (b) the amount of the fine or penalty (including any enforcement costs) exceeds the amount prescribed by regulation.

**66M Publication of name of fine defaulter**

- (1) The Fines Recovery Unit may publish on its website the following details in relation to a fine defaulter:
  - (a) the full name;
  - (b) the suburb of residence;
  - (c) the amount owed as specified in the enforcement order.
- (2) However, the Fines Recovery Unit must not publish the details of a fine defaulter under subsection (1) if:
  - (a) the fine defaulter is a person who is under the age of 18 years;  
or
  - (b) the fine defaulter is a protected person as defined in section 4 of the *Domestic and Family Violence Act*, or
  - (c) publication of the details would endanger the safety of the fine defaulter or any other person.

**66N Removal of fine defaulter's details**

- (1) The Fines Recovery Unit must remove the details of a fine defaulter from its website if the fine defaulter has paid all outstanding amounts under an enforcement order served on the defaulter or the order has otherwise been satisfied.
- (2) The Fines Recovery Unit may remove the details of a fine defaulter from its website although the fine defaulter has not paid all outstanding amounts under an enforcement order.

**15 Section 78 amended**

- (1) Section 78(2)
  - omit*
  - a bailiff
  - insert*
  - an authorised person

---

(2) Section 78(3)

*omit*

A bailiff

*insert*

An authorised person

**16 Section 78A inserted**

After section 78

*insert*

**78A Bailiff's costs payable**

- (1) The enforcement costs payable by a fine defaulter in relation to the service of a community work order by a bailiff are the costs and expenses:
  - (a) reasonably incurred by a bailiff in relation to the service of a community work order under this Division; and
  - (b) approved by the Fines Recovery Unit.
- (2) The amount of those costs and expenses is to be determined in accordance with the scale applicable to the enforcement of judgment debts under the *Local Court Regulations* but is to be reduced by any amount prescribed in relation to bailiff's costs under section 41(2)(d) or 53(2)(d) as payable to the Territory.
- (3) For the purposes of this section, the Fines Recovery Unit has the functions of a Registrar of the Local Court in relation to the approval of those costs and expenses.
- (4) Enforcement costs recoverable under this section are payable to the bailiff concerned and, if paid to the Territory, may be paid by the Fines Recovery Unit to the bailiff.
- (5) The Local Court may review a decision of the Fines Recovery Unit in respect of enforcement costs in the same manner as provided by rule 4.04 of the *Local Court Rules* in respect of the decision of a Registrar.



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**17 Section 95 amended**

- (1) Section 95(6)(b)  
*omit*  
and
- (2) Section 95(6)(c)  
*omit*
- (3) After section 95(6)  
*insert*
- (7) However, while further enforcement action is suspended:
- (a) if a suspension of the fine defaulter's licence to drive or vehicle registration has been imposed under Division 7:
    - (i) the Fines Recovery Unit must advise the Registrar of Motor Vehicles that any suspension is to be lifted (unless the licence or registration is also suspended under this Act for the enforcement of another order); and
    - (ii) the Registrar of Motor Vehicles must (unless the licence or registration is also suspended under this Act for the enforcement of another order or is suspended under another Act) lift the suspension; and
  - (b) if enforcement action has been taken under section 62:
    - (i) the Fines Recovery Unit must request the Registrar of Motor Vehicles to cease the enforcement action; and
    - (ii) the Registrar of Motor Vehicles must cease the enforcement action; and
  - (c) if a motor vehicle owned by the fine defaulter has been immobilised under section 66C, the Director must direct an immobilisation officer to remove the immobilisation; and
  - (d) if the fine defaulter's details are published under section 66M – the Fines Recovery Unit must remove the details from its website.

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**18 Section 99 amended****(1) Section 99(1)**

*omit*

he or she

*insert*

the bailiff

**(2) Section 99(2) and (3)**

*omit, insert*

(2) When giving a requirement under subsection (1), the bailiff must warn the person it is an offence to contravene the requirement unless the person has a reasonable excuse.

(3) A person commits an offence if the person:

(a) contravenes a requirement given to the person under subsection (1); and

(b) was given a warning under subsection (2) in relation to the requirement.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

**19 Section 109A inserted**

Before section 110, in Part 9

*insert*

**109A Misleading information or document**

(1) A person commits an offence if:

(a) the person intentionally gives information to another person; and

(b) the other person is an official; and

(c) the person knows the information is misleading; and

- (d) the person knows the official is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) A person commits an offence if:

- (a) the person intentionally gives a document to another person; and
- (b) the other person is an official; and
- (c) the person knows the document contains misleading information; and
- (d) the person knows the official is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).

- (4) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the official's attention; and
- (b) to the extent to which the person can reasonably do so – gives the official the information necessary to remedy the misleading aspect of the document.

- (5) In this section:

***acting in an official capacity***, in relation to an official, means the official is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

***official*** means one of the following:

- (a) a law enforcement officer;
- (b) an authorised person;
- (c) an immobilisation officer;
- (d) an officer of the Fines Recovery Unit.

---

**20 Section 113 amended**

Section 113(1)(a), after "74"

*insert*

or 78A

**21 Part 10, Division 3 inserted**

After section 123

*insert*

**Division 3 Transitional matters for Fines and Penalties  
(Recovery) Amendment Act 2015****124 Definitions**

In this Division:

***amending Act*** means the *Fines and Penalties (Recovery) Amendment Act 2015*.

***commencement*** means the commencement of the amending Act.

**125 Offence provisions – before and after commencement**

- (1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement.
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (4) In this section:

***offence provisions*** means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

**126 Amendment of Part 5**

Subject to section 125, Part 5 of this Act, as amended by the amending Act, applies in relation to a fine imposed or a penalty incurred before or after the commencement.

## **Part 3                      Consequential Amendments**

### **Division 1                Amendment of Anti-Discrimination Act**

#### **22                      Act amended**

This Division amends the *Anti-Discrimination Act*

#### **23                      Section 19 amended**

After section 19(1)(q)

*insert*

(qa) the person's details being published under section 66M of the  
*Fines and Penalties (Recovery) Act*;

### **Division 2                Amendment of Fines and Penalties (Recovery) Regulations**

#### **24                      Regulations amended**

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

#### **25                      Regulation 11A inserted**

After regulation 11

*insert*

#### **11A                    Amounts for sections 66A and 66L of the Act**

For sections 66A(b) and 66L(b) of the Act, the amount is \$10 000.

#### **26                      Regulation 13 amended**

Regulation 13

*omit*

A bailiff

*insert*

An authorised person

**27 Schedule 3 replaced**

Schedule 3

*omit, insert***Schedule 3**

regulation 10

Enforcement Action	Amount (revenue units)
Making of a penalty enforcement order	67
Making of a fine enforcement order	67
Action taken by the Registrar of Motor Vehicles under Part 5, Division 7 of the Act	67
Immobilisation of a motor vehicle under Part 5, Division 7A of the Act	148
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Making of a property seizure order	67
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Action taken by a bailiff under Part 5, Division 8 of the Act	67
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Making and service of a community work order (other than by a bailiff)	148
Making of a community work order to be served by a bailiff	148
Service of a community work order by a bailiff	67
Issue of a warrant of commitment	67

**Part 4 Expiry of Act****28 Expiry of Act**

This Act expires on the day after it commences.