



# **CRIMINAL LAW (ENFORCEMENT OF FINES) ACT, 1987**

**No. 49 of 1987**

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No. 49 of 1987

**An Act to amend the law relating to the enforcement of fines and other monetary orders made by courts in the exercise of criminal jurisdiction; to amend the Criminal Law Consolidation Act, 1935 and the Justices Act, 1921; and for other purposes.**

*[Assented to 30 April 1987]*

The Parliament of South Australia enacts as follows:

1. This Act may be cited as the "Criminal Law (Enforcement of Fines) Act, 1987". Short title.

2. (1) This Act will come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation fixing the day on which this Act is to come into operation, suspend specified provisions of this Act until a subsequent day fixed in the proclamation or a day to be fixed by subsequent proclamation.

3. In this Act—

Interpretation.

"business day" means any day except a Saturday, Sunday or public holiday:

"court" means—

- (a) the Supreme Court;
- (b) a District Criminal Court;
- or
- (c) a court of summary jurisdiction:

"the Director" means the Executive Director, Department of Correctional Services:

"fine" means a monetary sum, or the aggregate of a number of monetary sums, that a person is ordered to pay on being convicted, or adjudged guilty, of an offence or on estreatment of a recognizance and, where such a sum has been partially paid, includes the outstanding balance of that sum but does not include

a levy imposed under the Criminal Injuries Compensation Act, 1978:

“the proper officer” means—

- (a) in relation to the Supreme Court or a District Criminal Court—the Sheriff;
- (b) in relation to a court of summary jurisdiction—the clerk of the court.

Imprisonment in default of payment of fines.

4. Where a term of imprisonment is to be fixed for the enforcement, or in default of payment, of a fine, the term must be fixed subject to the following limits:

- (a) if the amount of the fine does not exceed \$50—the term of imprisonment must not exceed one day;
- (b) if the amount of the fine exceeds \$50—the term of imprisonment must not exceed a period calculated on the basis on one day’s imprisonment for every multiple of \$50 comprised in the amount of the fine with a further one day’s imprisonment for any remainder left after division of the amount of the fine by \$50;
- (c) the term of imprisonment must not in any case exceed six months.

Application to work off fine by community service.

5. (1) If the payment of a fine would cause severe hardship, the person liable to pay the fine may apply for permission to work off the fine by community service.

(2) An application under this section—

- (a) must be made in writing to the proper officer of the court by which the fine was imposed;

and

(b) must include—

- (i) a statement of the applicant’s assets and liabilities;
- (ii) a statement of the applicant’s income and recurrent expenditure;
- (iii) the prescribed information.

(3) The information contained in the application must be verified by statutory declaration.

(4) If the proper officer is satisfied that the payment of the fine would cause severe hardship to the applicant or his or her dependants, the proper officer must, within two business days after reaching that decision, refer the application to the Director.

(5) If a position for the applicant at a community service centre is currently available or will become available within a reasonable period, the Director may permit the applicant to enter into an undertaking in a form and in terms approved by the Director to perform community service.

(6) The undertaking must comply with the following provisions:

- (a) the period of the community service will be determined as follows:
  - (i) if the amount of the fine is \$100 or less—the period of community service will be eight hours;

- (ii) if the amount of the fine exceeds \$100—the period of community service will be calculated on the basis of eight hours' community service for each multiple of \$100 comprised in the amount of the fine with a further eight hours' community service for any remainder after division of the amount of the fine by \$100;

and

- (b) the community service must be performed over a period not exceeding eighteen months.

(7) Where a person enters into an undertaking under this section—

- (a) the Director must, within two business days of the date of the undertaking, file a copy of the undertaking with the proper officer of the court by which the fine was imposed;

and

- (b) any process for enforcement of the fine will be suspended unless and until notice of the cancellation of the undertaking is filed under this section.

(8) If the proper officer of a court is not satisfied that payment of a fine would cause severe hardship to an applicant or his or her dependants, the proper officer must give the applicant written notice to that effect and the applicant may, within seven days after receiving the notice, apply to the court by which the fine was imposed for a review of the decision.

(9) If the court is of the opinion that the evidence supports a finding of severe hardship it may—

- (a) reverse the proper officer's decision;

and

- (b) give such incidental directions as the case may require,

(and no appeal will lie against a decision or direction of the court under this subsection).

(10) If a person fails to comply with the terms of an undertaking under this section, the Director may, by notice in writing to that person, cancel the undertaking.

(11) The Director must file a copy of the notice of cancellation with the proper officer of the court by which the fine was imposed together with a statement of the period of community service (if any) served by the applicant before the date of cancellation (and the period will be expressed in multiples of eight hours, so that if the period amounts to less than eight hours it will be ignored, as will any remainder of less than eight hours).

(12) Where a person completes the entire period of community service to be performed in pursuance of an undertaking, the Director must file a notice of that fact with the proper officer of the court by which the fine was imposed.

(13) Any notice to be given under this section may be given personally or by post.

(14) This section does not apply to a fine exceeding \$2 000.

Reduction of fine  
by imprisonment  
or community  
service.

6. (1) If a person is imprisoned on default of payment of a fine, the amount of the fine is reduced by \$50 or the balance of the fine (whichever is the lesser) for each day of imprisonment completed by the prisoner.

(2) If a person completes six months' imprisonment in default of payment of a fine, the fine is entirely extinguished.

(3) A person who is imprisoned solely for non-payment of a fine will be released from prison if the balance of the fine (in cash or a banker's cheque) is tendered to the superintendent of the prison.

(4) If a person performs community service in pursuance of an undertaking under this Act, the amount of the relevant fine is reduced by \$100 or the balance of the fine (whichever is the lesser) for each eight hours' community service completed by that person.

(5) The Director will release a person from such an undertaking if the balance of the fine (in cash or a banker's cheque) is tendered to the Director.

(6) Notwithstanding the foregoing provisions, a person cannot diminish a civil liability by undergoing imprisonment or performing community service.

Regulations.

7. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) A regulation may impose a fine not exceeding \$2 000 for breach of or non-compliance with the regulation.

## SCHEDULE 1

*Transitional Provision*

This Act applies to fines imposed before or after the commencement of this Act but does not affect a term of imprisonment for the enforcement, or in default of payment, of a fine fixed before the commencement of this Act.

## SCHEDULE 2

*Consequential Amendments*

The Criminal Law Consolidation Act, 1935, is amended by striking out subsection (2) of section 300a.

The Justices Act, 1921, is amended—

(a) by striking out from section 81 (1) "subject to the provisions of this section";

and

(b) by striking out subsections (2) and (3) of section 81.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor