

**FINE ENFORCEMENT LEGISLATION (AMENDMENT)  
ACT 1989 No. 196**

NEW SOUTH WALES



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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 435  
LECTURE 10  
SPECIAL RELATIVITY  
PART 2  
RELATIVISTIC MECHANICS  
RELATIVISTIC ENERGY AND MOMENTUM  
RELATIVISTIC COLLISIONS

**FINE ENFORCEMENT LEGISLATION (AMENDMENT)  
ACT 1989 No. 196**

**NEW SOUTH WALES**



**Act No. 196, 1989**

An Act to amend the Justices Act 1902, the Community Service Orders Act 1979, the Children (Community Service Orders) Act 1987 and the Children (Criminal Proceedings) Act 1987 and other Acts with respect to procedures for, and other aspects relating to, the enforcement of fines and other amounts. [Assented to 21 December 1989]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Fine Enforcement Legislation (Amendment) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendments**

3. (1) Each Act specified in Schedules 1-6 is amended as set out in those Schedules.

(2) Matter appearing as explanatory notes in any of the Schedules does not form part of this Act.

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**SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902 No. 27**

(Sec. 3)

(1) Section 86A (**Definitions**):

(a) Omit paragraph (a) of the definition of "authorised justice", insert instead:

(a) a Magistrate or a Children's Magistrate;

(b) After the definition of "authorised justice", insert:

**"fine defaulter"**, in relation to a warrant of commitment issued under section 87, means the person in respect of whom the warrant was issued.

(2) Section 87 (**Warrant of commitment for non-payment**):

Omit section 87 (4) and (5), insert instead:

(4) A warrant under this section may not be issued:

(a) in relation to a conviction or order with respect to:



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

- (i) an offence under the Traffic Act 1909 or an offence prescribed for the purposes of section 18B of that Act; or
- (ii) an offence under any prescribed provision of an Act or a statutory instrument,

unless the authorised justice has been otherwise notified in accordance with the regulations; or

- (b) in such circumstances as may be prescribed for the purposes of this subsection.

(5) Except as provided by subsection (6), a warrant under this section in respect of a person who was at the time of the conviction or order to which the warrant relates under the age of 18 years and who is not at the time it is issued of or above the age of 21 years, or who is at the time the warrant is issued subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987, is to commit the person to the control of the Minister administering the Children (Detention Centres) Act 1987, but is otherwise to be in accordance with subsection (1).

(6) A warrant under this section in respect of a person who is, at the time it is issued, remanded to or imprisoned in a prison is to commit the person to prison and is to be in accordance with subsection (1).

(7) A warrant referred to in subsection (5) is to be taken to be an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987. This has the effect of making the warrant a detention order for the purposes of the Children (Detention Centres) Act 1987.

(8) Despite subsections (5) and (7), a warrant under this section in respect of a person who is, at the time it is executed, of or above the age of 21 years and who is not subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 is to be taken to commit the person to prison.

(9) For the purposes of the execution of a warrant issued under this section, the apparent age of the person in

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

respect of whom it is issued is, in the absence of positive evidence as to age, to be taken to be the age of the person.

(3) Section 89 (**Form and contents of warrant**):

Omit "Every", insert instead "Except as provided by section 87, every".

(4) After section 89A, insert:

**Fine default procedures after issue of warrant of commitment**

89B. (1) Before a warrant of commitment issued under section 87 is executed, the fine defaulter must be given oral notice in accordance with this section.

(2) Notice is to be given to the fine defaulter that the warrant will not be executed if, within 7 days of the notice being given, the fine defaulter:

- (a) pays the amount payable in satisfaction of the warrant; or
- (b) applies to an authorised justice to allow further time for the payment of the whole or any part of that amount; or
- (c) applies to an authorised justice for a community service order under the Community Service Orders Act 1979 or the Children (Community Service Orders) Act 1987, as the case requires.

(3) A fine defaulter given notice under this section may, not more than 7 days after being given notice, make an application of a kind referred to in subsection (2).

(4) Notice under this section may be given by a person seeking to execute a warrant of commitment or otherwise.

(5) An application for an order of a kind referred to in subsection (2) (c) by a fine defaulter who was, at the time of the conviction or order to which the application relates, of or above the age of 18 years is to be dealt with under the Community Service Orders Act 1979.



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

(6) This section and section 89C do not apply to a warrant in respect of a fine defaulter if the fine defaulter is under detention in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to or imprisoned in a prison.

**Effect of action by fine defaulter on warrant of commitment**

89C. (1) A warrant of commitment issued under section 87 may not be executed until at least 7 days after notice is given in accordance with section 89B.

(2) A warrant issued under section 87 is revoked:

(a) on payment by the fine defaulter of the amount payable in satisfaction of the warrant within 7 days of notice being given under section 89B; or

(b) if a fine defaulter makes an application to an authorised justice for further time to pay within the time specified in a notice given under section 89B and the authorised justice allows further time for payment; or

(c) if a fine defaulter makes an application within the time specified in a notice given under section 89B for a community service order or a children's community service order and such an order is made.

(3) A further warrant of commitment may be issued under section 87 if a fine defaulter who makes an application for further time to pay fails to pay the amount payable within the time allowed.

(4) This section and section 89B do not apply to a warrant issued as referred to in subsection (3).

**Enforcement of amounts payable to "private payees"**

89D. (1) This section applies to a person or body entitled, by or under an Act, to receive payment or the proceeds of a fine, penalty, costs or other amount payable by virtue of:

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

(a) a conviction or order in proceedings before a Local Court or Children's Court; or

(b) an enforcement order under Division 2 of Part 4B.

(2) Payment of any such amount may, except as provided by this section, be enforced by a person or body to whom or to which this section applies as though it were an amount payable by virtue of a judgment for the payment of that amount under the Local Courts (Civil Claims) Act 1970.

(3) A person or body to whom this section applies may not take action under subsection (2):

(a) in relation to an amount payable in respect of an offence referred to in section 87 (4) (a), unless the person or body has been otherwise notified in accordance with the regulations; or

(b) in relation to any amount payable, if a warrant of commitment has been issued under section 87 in respect of the amount.

(4) If a person or body takes action under subsection (2), no further action may be taken under this Act in respect of the amount payable or the person by whom the amount is payable.

(5) The remedy conferred by this section on a person or body to whom or to which this section applies is not in any way limited by the provisions of any other Act.

(6) This section does not apply to an amount payable by a person who is under the age of 18 years.

(7) Nothing in section 82 affects the operation of this section.

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

(5) Section 90 (**Further time etc. may be allowed for payment**):

(a) Section 90 (2):

After "order" where firstly occurring, insert "and notice in respect of the warrant has not been given under section 89B".

(b) After section 90 (2), insert:

(2A) If an application of a kind referred to in section 89B (2) (b) is made to an authorised justice, the authorised justice may, if it appears to the authorised justice expedient to do so, where appropriate, make an order referred to in subsection (1).

(c) Section 90 (3):

Omit "subsections (1) and (2)", insert instead "subsections (1), (2) and (2A)".

(6) Section 91A (**Imprisonment under several default warrants**):

After section 91A (4), insert:

(5) Except in relation to a warrant referred to in section 87 (6), this section does not apply to a person who is under the age of 18 years.

(7) Second Schedule (**Savings, transitional and other provisions**):

After Part 3, insert:

**PART 4 - TRANSITIONAL AND OTHER  
PROVISIONS CONSEQUENT ON ENACTMENT  
OF FINE ENFORCEMENT LEGISLATION  
(AMENDMENT) ACT 1989**

**Definitions**

7. In this Part:



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

**"appointed day"**, in relation to a provision of this Part, means the day on which the provision commences;

**"existing fine defaulter"** means:

- (a) a person by whom a fine, penalty, costs or other amount was before 18 January 1988 adjudged in proceedings before a court exercising jurisdiction under the Child Welfare Act 1939 to be payable; or
- (b) a person:
  - (i) who (by virtue of an enforcement order made against the person under Division 2 of Part 4B before 18 January 1988) was required to pay a fine, penalty, costs or other amount of money; and
  - (ii) who was a child or young person, within the meaning of the Child Welfare Act 1939, at the time the alleged offence to which the order relates was committed, and by or on behalf of whom the fine, penalty, costs or other amount of money has not been paid, whether or not an existing warrant has been issued in respect of the person;

**"existing warrant"** means:

- (a) an order made under the Child Welfare Act 1939 purporting to commit a person to or order the detention of a person in an institution within the meaning of that Act; or
- (b) a warrant of commitment that has been issued in default of payment of a fine, penalty, costs or other amount adjudged, in proceedings before a court exercising jurisdiction under the Child Welfare Act 1939, to be payable, but that has not been executed.

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

**Regulations**

8. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Fine Enforcement Legislation (Amendment) Act 1989.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Orders made before commencement of legislation etc.**

9. (1) A community service order made under Part 3 of the Community Service Orders Act 1979 or under section 5A of the Children (Community Service Orders) Act 1987 and in force immediately before the appointed day is to continue in force, expire, be dealt with and be enforced on breach as though the Fine Enforcement Legislation (Amendment) Act 1989 had not been enacted.

(2) This Act and the Children (Criminal Proceedings) Act 1987 apply to an order referred to in subclause (1) as though the Fine Enforcement Legislation (Amendment) Act 1989 had not been enacted.



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

(3) The provisions of this Act and, where applicable, the provisions of the Community Service Orders Act 1979, the Children (Community Service Orders) Act 1987 and the Children (Criminal Proceedings) Act 1987 apply to a person subject to an order referred to in subclause (1), or who breaches such an order, as though the Fine Enforcement Legislation (Amendment) Act 1989 had not been enacted.

**Warrants issued under section 87 but not executed before commencement of section 89B etc.**

10. The provisions of this Act, the Children (Community Service Orders) Act 1987, the Community Service Orders Act 1979 and the Children (Criminal Proceedings) Act 1987, as respectively amended by the Fine Enforcement Legislation (Amendment) Act 1989, apply to a warrant issued under section 87 before the appointed day and that is not revoked or executed before that day in the same way as they apply to a warrant issued under section 87 after the commencement of this clause.

**Application of provisions to "private payees"**

11. (1) Section 89D applies to a fine, penalty, costs or other amount payable before the appointed day by virtue of:

- (a) a conviction or order in proceedings before a Local Court or Children's Court; or
- (b) an enforcement order under Division 2 of Part 4B, in the same way as it applies to any such amount that becomes payable after the commencement of that section.

(2) A person or body to whom section 89D applies may not take action under section 89D (2) in respect of an amount for which a children's community service order or a community service order was made before the appointed day under section 5A of the Children (Community Service Orders) Act 1987 or section 26A or 26B of the Community Service Orders Act 1979.

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902  
No. 27 - *continued*

**Construction of certain references in existing warrants**

12. In an existing warrant:

- (a) a reference (however expressed) to an institution or a shelter, or an institution or a shelter of a particular kind, is to be read as a reference to a detention centre within the meaning of the Children (Detention Centres) Act 1987 or, if the person the subject of the warrant is of or above the age of 21 years or remanded to or imprisoned in a prison, as a reference to a prison; and
- (b) a reference (however expressed) to the superintendent of an institution or the keeper or other person in charge of a shelter is to be read as a reference to the superintendent of a detention centre within the meaning of the Children (Detention Centres) Act 1987 or the keeper of a prison, as the case requires.

**Procedures in relation to existing fine defaulters**

13. (1) Without limiting the generality of section 30 of the Interpretation Act 1987, a warrant may be issued under and subject to section 87 of this Act in respect of an existing fine defaulter.

(2) The provisions of this Act, the Children (Community Service Orders) Act 1987, the Community Service Orders Act 1979 and the Children (Criminal Proceedings) Act 1987, as respectively amended by the Fine Enforcement Legislation (Amendment) Act 1989, apply to existing warrants, and warrants issued after the appointed day in respect of existing fine defaulters, in the same way as they apply to warrants issued in respect of fine defaulters under section 87 after the appointed day.

**Other provisions relating to existing warrants**

14. An existing warrant which is, by virtue of clause 12, to be read as committing a person to a detention centre is

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

to be taken to be an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987. This has the effect of making the warrant a detention order for the purposes of the Children (Detention Centres) Act 1987.

SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE ORDERS ACT 1979 No. 192

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Omit the definition of "authorised Justice", insert instead:

**"authorised Justice"** means:

(a) a Magistrate; or

(b) a justice employed in the Attorney General's Department; or

(c) a justice employed in a prescribed office;

(b) Section 3 (1), definition of "community service order":

From paragraph (a), omit ", 26A or 26B", insert instead "or 26A".

(c) Section 3 (1), definition of "community service order":

From paragraph (b), omit "or 26B" where secondly occurring.

(2) Omit sections 26A and 26B, insert instead:

**Community service work in default of payment of fine etc.**

26A. (1) An authorised Justice may, on application by a person in accordance with section 89B of the Justices Act 1902, make an order in the prescribed form requiring the person to perform community service work in order to work off the amount payable in satisfaction of a warrant of commitment issued under section 87 of that Act.

(2) The decision whether or not to make the order is in the authorised Justice's discretion, and no appeal lies



SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE  
ORDERS ACT 1979 No. 192 - *continued*

against the authorised Justice's decision not to make an order in a particular case.

(3) An order may not be made in respect of a person under detention in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to a prison or serving a term of imprisonment (whether by way of periodic detention or otherwise).

(4) Notice of the order is to be given, in accordance with the regulations, to the person in respect of whom the order is made.

(5) Section 11 applies to a community service order under this Part in the same way as it applies to a community service order under Part 2 and, in the application of that section, a reference to a court is to be read as a reference to an authorised Justice.

(3) Section 26C (**Number of hours of community service work**):

Omit section 26C (1) and (2), insert instead:

(1) If an authorised Justice makes a community service order under section 26A, the number of hours to be specified in the order as the number of hours of community service work to be performed by the person in respect of whom the order is made is to be calculated at the rate of one hour for each \$12.50 of the amount payable by the person but is not to exceed 300 hours.

(4) Section 26D (**Place etc. and time for presentation for work and conditions of order**):

Omit "a prescribed officer", insert instead "an authorised Justice".

SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE  
ORDERS ACT 1979 No. 192 - *continued*

- (5) Omit section 26E, insert instead:

**Notification to Director-General of making of order**

26E. (1) An authorised Justice who makes a community service order must cause a copy of the order to be sent to the Director-General.

(2) The failure of the authorised Justice to cause a copy of a community service order to be sent to the Director-General does not invalidate the order.

- (6) Section 26H (**Duration of community service order**):

- (a) Omit section 26H (b), insert instead:

(b) the expiration of a period of 12 months commencing on the date on which the order was made or, if that period is extended pursuant to subsection (2), the expiration of that period as so extended;

- (b) At the end of section 26H, insert:

(2) If, on the application of a person in respect of whom a community service order is in force or the assigned officer, it appears to the Director-General that it would, having regard to circumstances that have arisen since the order was made, be in the interests of justice to do so, the Director-General may extend the period during which the order remains in force.

(3) The Director-General must, on application being made under this section, extend the period during which a community service order remains in force if any part of the amount in respect of which the order was made has not been worked off.

- (7) Section 26I (**Satisfaction of certain orders by payment**):

Section 26I (b):

Omit "unpaid amount referred to in section 26A or an amount payable as referred to in section 26B", insert instead "amount referred to in section 26A".

SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE  
ORDERS ACT 1979 No. 192 - *continued*

**[Explanatory note: This amendment is made as a consequence of a change in the language used in section 26A.]**

(8) Section 26J (**Subsequent convictions - fine defaulters**):

Before "sentenced", insert "detained in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to a prison or".

(9) Section 26K (**Breach of community service order for fine default**):

(a) Section 26K (1):

Omit "a prescribed officer", insert instead "an authorised Justice".

(b) Section 26K (2):

Omit "prescribed officer", insert instead "authorised Justice".

(c) Omit section 26K (3) and (4).

**[Explanatory note: These provisions are omitted as a consequence of orders being made by authorised Justices rather than prescribed officers.]**

(d) Section 26K (5):

Omit "prescribed officer", insert instead "assigned officer".

(e) After section 26K (6), insert:

(7) Sections 89B and 89C of the Justices Act 1902 do not apply to a warrant referred to in subsection (6).

**[Explanatory note: The effect of section 26K (6) will be to enable the warrant to be executed without notice first having to be given under section 89B of the Justices Act 1902.]**



**SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56**

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Insert in alphabetical order in section 3 (1):

**"authorised justice"** means:

- (a) a Magistrate or Children's Magistrate; or
- (b) a justice employed in the Attorney General's Department; or
- (c) a justice employed in a prescribed office;

(b) Section 3 (1), definition of "children's community service order":

Omit "a prescribed officer", insert instead "an authorised justice".

(2) Omit section 5A, insert instead:

**Community service work in default of payment of fine**

5A. (1) An authorised justice may, on application by a person to whom this Act applies in accordance with section 89B of the Justices Act 1902, make an order in the prescribed form requiring the person to perform community service work in order to work off the amount payable in satisfaction of a warrant of commitment issued under section 87 of that Act.

(2) The decision whether or not to make the order is in the authorised justice's discretion, and no appeal lies against the authorised justice's decision not to make an order in a particular case.

(3) An order may not be made in respect of a person already under detention in or remanded to a detention centre within the meaning of the Children (Detention Centres) Act 1987 or remanded to or imprisoned in a prison.

(3) Section 10 (**Children's community service orders may run concurrently**):

Omit "prescribed officers", insert instead "authorised justices".



**SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued***

**(4) Section 11 (Conditions that may be attached to children's community service orders):**

Omit "prescribed officer", insert instead "authorised justice".

**(5) Section 12 (Preparation and service of copies of children's community service orders):**

**(a) Section 12 (3):**

Omit "A prescribed officer", insert instead "An authorised justice".

**(b) Section 12 (4):**

Omit "a prescribed officer", insert instead "an authorised justice".

**(6) Section 13 (Number of hours of community service work):**

**(a) Section 13 (1):**

Omit "or prescribed officer", insert instead "or authorised justice".

**(b) Omit section 13 (2A) and (2B), insert instead:**

(2A) The number of hours of community service work to be performed by a person in respect of whom a children's community service order is made by an authorised justice is to be calculated at the rate of one hour for each \$12.50 of the amount payable by the person but is not to exceed 100 hours.

**(c) Section 13 (4):**

Omit "a prescribed officer", insert instead "an authorised justice".

**(d) Section 13 (4):**

Omit "or prescribed officer", insert instead "or an authorised justice".

SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued*

- (7) Section 14 (**Place etc. and time for presentation for work**):
- (a) Section 14:  
Omit "or prescribed officer", insert instead "authorised justice".
  - (b) Section 14 (a):  
After "commenced;", insert "and".
  - (c) Section 14 (b):  
Omit "herself; and", insert instead "herself".
  - (d) Omit section 14 (c).
- (8) Section 17 (**Obligations of persons subject to children's community service orders**):
- Section 17 (a):  
After "such times", insert "and such places".
- (9) Omit the heading to Part 4, insert instead:

**PART 4 - EXTENSION AND REVOCATION OF CHILDREN'S COMMUNITY SERVICE ORDERS**

- (10) Section 20 (**Extension of children's community service orders**):
- (a) Section 20 (1):  
Omit "Children's Court" wherever occurring, insert instead "Director-General".
  - (b) Omit section 20 (2) and (3).

[Explanatory note: The amendments in items (7)-(10) remove, and are consequential on the removal of, the requirement that a children's community service order specify the area within which community service work is to be performed. Instead, this is to be determined by the assigned officer.]

SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued*

(11) Section 21 (**Revocation etc. of children's community service orders on application**):

Section 21 (3) (a):

Omit "a prescribed officer", insert instead "an authorised justice".

(12) Section 22 (**Revocation of children's community service orders on being dealt with for other offences**):

Section 22 (3):

Omit "a prescribed officer", insert instead "an authorised justice".

(13) Section 22A (**Satisfaction of certain orders by payment**):

(a) Omit "a prescribed officer", insert instead "an authorised justice".

(b) Section 22A (b), (c), (d):

Omit "unpaid" wherever occurring.

**[Explanatory note: This amendment is made as a consequence of a change in the language used in section 5A.]**

(14) Section 22B (**Satisfaction of certain orders by detention**):

(a) Section 22B (1):

Omit "a prescribed officer", insert instead "an authorised justice".

(b) Section 22B (1):

After "1987", insert "or is remanded to a detention centre or remanded to or imprisoned in a prison".

**[Explanatory note: This amendment is made to enable orders to be satisfied where people are detained on remand and in places other than detention centres.]**



SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued*

- (15) Section 25 (**Issue of summons or warrant - failure to comply with children's community service orders made by court**):

Omit section 25 (3).

**[Explanatory note: This provision is omitted as a consequence of the insertion of a definition of "authorised justice" in section 3.]**

- (16) Section 26A (**Breach of fine default community service orders**):

- (a) Section 26A (1):

Omit "a prescribed officer" wherever occurring, insert instead "an authorised justice".

- (b) Section 26A (2):

Omit "prescribed officer", insert instead "authorised justice".

- (c) Omit section 26A (3) and (4).

**[Explanatory note: These provisions are omitted as a consequence of orders being made by authorised justices rather than prescribed officers.]**

- (d) Section 26A (5):

Omit "prescribed officer", insert instead "assigned officer".

- (e) Omit section 26A (6), insert instead:

(6) On revoking the order, the authorised justice may (having regard to the extent to which the unpaid amount of the fine, penalty, costs or other amount of money in respect of which the order was made exceeds the amount worked off by the performance of community service work in accordance with the order) issue a warrant under section 87 of the Justices Act 1902 committing the person:

- (a) if the person is under the age of 21 years, to the control of the Minister administering the Children (Detention Centres) Act 1987; or
- (b) if the person is of or above the age of 21 years, to prison,

**SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued***

for a period calculated in accordance with that section in respect of the unsatisfied balance.

(f) Section 26A (7):

Omit "referred to in subsection (6)", insert instead "issued in respect of a person referred to in subsection (6) (a)".

(g) After section 26A (7), insert:

(8) Sections 89B and 89C of the Justices Act 1902 do not apply to a warrant referred to in subsection (6).

**[ Explanatory note: The effect of section 26A (8) will be to enable the warrant to be executed without notice first having to be given under section 89B of the Justices Act 1902.]**

(17) **Section 27 (Notification of extension or revocation of children's community service orders):**

(a) Section 27 (a):

Omit "force;", insert instead "force; or".

(b) Omit section 27 (b).

(c) Omit ", amendment".

**SCHEDULE 4 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) AMENDMENT ACT 1988 No. 9**

(Sec. 3)

**Section 4 (Existing fine defaulters):**

(a) Omit section 4 (4)-(9).

(b) Section 4 (10):

Omit "or the making of an order in respect of a fine defaulter pursuant to an application under this section".

**SCHEDULE 5 - AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 No. 55**

(Sec. 3)

(1) Section 37 (**Term of control order**):

(a) Omit section 37 (1) (b), insert instead:

(b) in the case of an order arising from a warrant issued under section 87 of the Justices Act 1902 in respect of a person detained in or remanded to a detention centre - when the warrant is issued; or

(b) Section 37 (1) (c):

After "Children (Community Service Orders) Act 1987", insert "or, not being a warrant referred to in paragraph (b), issued under section 87 of the Justices Act 1902".

(2) After section 41, insert:

**Enforcement of fines etc.**

41A. Without affecting the generality of section 27, Subdivision 8 of Division 2 of Part 4 of the Justices Act 1902 applies to a conviction or order in proceedings before the Children's Court in which it is adjudged that a fine, penalty, costs or other amount of money be paid and so applies with any necessary modifications.

**SCHEDULE 6 - AMENDMENT OF PERIODIC DETENTION OF PRISONERS ACT 1981 No. 18**

(Sec. 3)

Section 34 (**Regulations**):

(a) Section 34 (1) (l):

Omit "Act; and", insert instead "Act".

(b) Omit section 34 (1) (m).

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[*Minister's second reading speech made in -  
Legislative Assembly on 28 November 1989  
Legislative Council on 7 December 1989*]



FIRST PRINT

**FINE ENFORCEMENT LEGISLATION (AMENDMENT) BILL  
1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are:

- \* to revise the system for the enforcement of the payment of fines and other amounts by removing the requirement that fine defaulters be given community service orders and instead to make provision for new procedures relating to fine defaulters; and
- \* to make amendments enabling fine defaulters over the age of 18 years but under 21 years to be dealt with as adults rather than children; and
- \* to enable certain persons or bodies entitled to receive payment of fines to recover those fines through civil action as an alternative to other procedures; and
- \* to provide that certain persons convicted of prostitution offences (under Part 3 of the Summary Offences Act 1988) and ordered to pay fines are, on non-payment of the fines, to be committed to prison rather than being able to take advantage of options available to other fine defaulters; and
- \* to make other consequential amendments relating to fine defaulters.

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**Clause 1 specifies the short title of the proposed Act.**

**Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.**

**Clause 3 is a formal provision which gives effect to the Schedules of amendments.**

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## *Fine Enforcement Legislation (Amendment) 1989*

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### AMENDMENTS

The following Acts are amended:

- \* Justices Act 1902
- \* Community Service Orders Act 1979
- \* Children (Community Service Orders) Act 1987
- \* Children (Community Service Orders) Amendment Act 1988
- \* Children (Criminal Proceedings) Act 1987
- \* Periodic Detention of Prisoners Act 1981

### CHANGES IN FINE ENFORCEMENT SYSTEMS GENERALLY

#### Schedule 1 - Amendment of Justices Act 1902 No. 27

The Act is amended to set out new procedures relating to fine defaulters. A warrant of commitment in respect of a fine defaulter may not be executed unless 7 days notice is given to the fine defaulter. On being given notice, a fine defaulter must pay the fine, apply for further time to pay or apply for a community service order or children's community service order to work off the amount payable. If payment, or an application, is not made within 7 days, the warrant may be executed and the fine defaulter imprisoned (Schedule 1 (4), proposed sections 89B, 89C). If the amount is paid, or further time to pay is allowed or a community service order or children's community service order is made, the warrant is revoked. Formerly, a community service order was required to be issued in respect of a fine defaulter before a warrant of commitment could be executed. A warrant of commitment may not be issued in respect of traffic or parking offences until an authorised justice is notified that action will not be taken against the offender's licence (Schedule 1 (2)).

Provision is also made for outstanding warrants issued in respect of children before 18 January 1988, or which could be issued in relation to children who were fine defaulters before that day, to be dealt with under the new procedures (Schedule 1 (7), proposed clauses 12-14, Second Schedule).

Other amendments are made by Schedule 1 (1), (3), (5), (6) and (7) as a consequence of the above amendments.

#### Schedule 2 - Amendment of Community Service Orders Act 1979 No. 192

Provisions requiring the making of a community service order in respect of a fine defaulter on default, or on application by a fine defaulter on the issue of a warrant of commitment, are repealed and replaced by proposed section 26A which enables a community service order to be made on application by a fine defaulter under proposed section 89B of the Justices Act 1902 (Schedule 2 (2)).

The number of hours of community service work specified by an order is to be calculated at the rate of one hour for each \$12.50 owed but is not to exceed 300 hours (Schedule 2 (3)).

A community service order is to be able to be extended on application to the Director-General of Corrective Services (Schedule 2 (6)).

## *Fine Enforcement Legislation (Amendment) 1989*

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On breach of a community service order by a fine defaulter, an authorised Justice may revoke the order and issue a warrant committing the fine defaulter to prison (Schedule 2 (9)).

Other amendments are made by Schedule 2 (1), (4), (5), (7) and (8) as a consequence of the above amendments. Explanations of some consequential amendments are contained in the Bill.

### **Schedule 3 - Amendment of Children (Community Service Orders) Act 1987 No. 56**

The provision requiring the making of a children's community service order in respect of a fine defaulter is repealed and replaced by proposed section 5A which enables a children's community service order to be made on application by a fine defaulter under proposed section 89B of the Justices Act 1902 (Schedule 3 (2)).

The number of hours of community work specified by an order is to be calculated at the rate of one hour for each \$12.50 owed but is not to exceed 100 hours (Schedule 3 (6)).

Children's community service orders will no longer be required to specify the area in which the community service work is to be carried out. A children's community service order is to be able to be extended on application to the Director-General of the Department of Family and Community Services (Schedule 3 (10)).

On breach of a children's community service order by a fine defaulter, an authorised justice may revoke the order and issue a warrant committing the fine defaulter to the control of the Minister administering the Children (Detention Centres) Act 1987 or prison, as appropriate (Schedule 3 (16)).

Other amendments are made by Schedule 3 (1), (3)-(5), (7)-(9), (11)-(15) and (17) as a consequence of the above amendments. Explanations of some consequential amendments are contained in the Bill.

### **Schedule 4 - Amendment of Children (Community Service Orders) Amendment Act 1988 No. 9**

Section 4 is amended as a result of the enactment of proposed clauses 12-14 in the Second Schedule to the Justices Act 1902 which contain procedures for dealing with existing fine defaulters who were children at the time of becoming fine defaulters and who were previously dealt with in this section.

### **Schedule 5 - Amendment of Children (Criminal Proceedings) Act 1987 No. 55**

This Act is amended as a result of the amendments relating to fine default procedures. The provisions of the Justices Act 1902 relating to the issue of warrants of commitment and fine defaulters are applied to a conviction or order in the Children's Court by which it is adjudged that a fine, penalty, costs or other amount is payable (see proposed section 41 A).



*Fine Enforcement Legislation (Amendment) 1989*

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**Schedule 6 - Amendment of Periodic Detention of Prisoners Act 1981 No. 18**

This Act is amended as a consequence of the substitution of section 26A of the Community Service Orders Act 1979.

**FINE DEFAULTERS OVER 18 BUT UNDER 21  
TO BE DEALT WITH AS ADULTS**

This is implemented by amendments to the Justices Act 1902 and the Children (Community Service Orders) Act 1987.

The Justices Act 1902 is amended to provide that a fine defaulter who is of or above the age of 18 who applies for a community service order under proposed section 89B is to be dealt with under the Community Service Orders Act 1979 rather than the Children (Community Service Orders) Act 1987 (Schedule 1 (4)). A warrant of commitment issued in respect of any such fine defaulter is to be taken to commit the fine defaulter to a prison rather than to a detention centre (Schedule 1 (2)).

The Children (Community Service Orders) Act 1987 is amended to provide that a fine defaulter who is of or above the age of 18 years and in respect of whom, on breach of a children's community service order, a warrant of commitment is issued is to be committed to prison (Schedule 3 (16)).

**RECOVERY OF FINES BY "PRIVATE PAYEES"**

The Justices Act 1902 is amended to insert proposed section 89E (Schedule 1 (4)). The proposed section enables a person or body that is entitled to receive payment or the proceeds of a fine, penalty, costs or other amount by virtue of a judgment or conviction or order in a Local Court or Children's Court or an enforcement order made under the Justices Act 1902 to enforce the judgment, order or enforcement order as though the amount payable were payable by virtue of a civil judgment under the Local Courts (Civil Claims) Act 1970. Such action cannot be taken if a warrant of commitment has been issued. If action is taken under the proposed section, the person or body taking the action may not use the other fine default procedures contained in the Justices Act 1902 to recover the amount payable and any outstanding warrant is revoked.

**PROSTITUTION OFFENCES**

The Justices Act 1902 is amended to insert proposed section 89D (Schedule 1 (4)). The proposed section provides that proposed sections 89B and 89C (which defer execution of warrants of commitment and provide for applications for community service orders) do not apply to persons who were of or above the age of 18 years at the time of committing offences under Part 3 of the Summary Offences Act 1988.

FIRST PRINT

**FINE ENFORCEMENT LEGISLATION (AMENDMENT)  
BILL 1989**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendments

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902 No. 27

SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE ORDERS ACT  
1979 No. 192

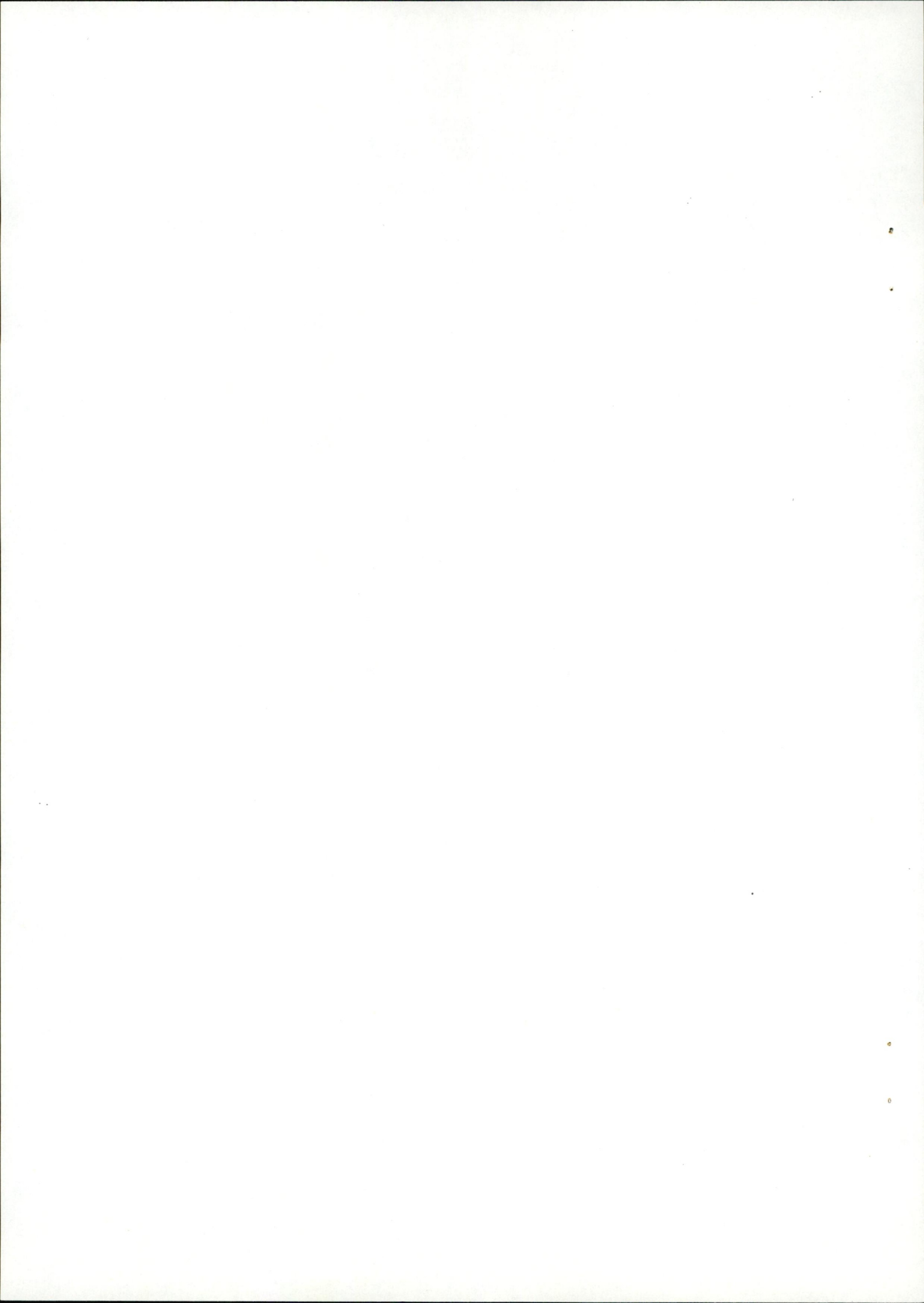
SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE  
ORDERS) ACT 1987 No. 56

SCHEDULE 4 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE  
ORDERS) AMENDMENT ACT 1988 No. 9

SCHEDULE 5 - AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS)  
ACT 1987 No. 55

SCHEDULE 6 - AMENDMENT OF PERIODIC DETENTION OF PRISONERS  
ACT 1981 No. 18

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**FINE ENFORCEMENT LEGISLATION (AMENDMENT)  
BILL 1989**

NEW SOUTH WALES



No. , 1989

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**A BILL FOR**

An Act to amend the Justices Act 1902, the Community Service Orders Act 1979, the Children (Community Service Orders) Act 1987 and the Children (Criminal Proceedings) Act 1987 and other Acts with respect to procedures for, and other aspects relating to, the enforcement of fines and other amounts.

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*Fine Enforcement Legislation (Amendment) 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Fine Enforcement Legislation (Amendment) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendments**

3. (1) Each Act specified in Schedules 1-6 is amended as set out in those Schedules.

(2) Matter appearing as explanatory notes in any of the Schedules does not form part of this Act.

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**SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902 No. 27**  
(Sec. 3)

(1) Section 86A (Definitions):

(a) Omit paragraph (a) of the definition of "authorised justice", insert instead:

(a) a Magistrate or a Children's Magistrate;

(b) After the definition of "authorised justice", insert:

"**fine defaulter**", in relation to a warrant of commitment issued under section 87, means the person in respect of whom the warrant was issued.

(2) Section 87 (Warrant of commitment for non-payment):

Omit section 87 (4) and (5), insert instead:

(4) A warrant under this section may not be issued:

(a) in relation to a conviction or order with respect to:



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

- (i) an offence under the Traffic Act 1909 or an offence prescribed for the purposes of section 18B of that Act; or
- (ii) an offence under any prescribed provision of an Act or a statutory instrument, unless the authorised justice has been otherwise notified in accordance with the regulations; or
- (b) in such circumstances as may be prescribed for the purposes of this subsection.

(5) Except as provided by subsection (6), a warrant under this section in respect of a person who is, at the time it is issued, under the age of 18 years or subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 is to commit the person to the control of the Minister administering the Children (Detention Centres) Act 1987, but is otherwise to be in accordance with subsection (1).

(6) A warrant under this section in respect of a person who is, at the time it is issued, under the age of 18 years and who is remanded to or imprisoned in a prison is to commit the person to prison and is to be in accordance with subsection (1).

(7) A warrant referred to in subsection (5) is to be taken to be an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987. This has the effect of making the warrant a detention order for the purposes of the Children (Detention Centres) Act 1987.

(8) Despite subsections (5) and (7), a warrant under this section in respect of a person who is, at the time it is executed, of or above the age of 18 years and who is not subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 is to be taken to commit the person to prison.

(9) For the purposes of the execution of a warrant issued under this section, the apparent age of the person in

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902  
No. 27 - *continued*

respect of whom it is issued is, in the absence of positive evidence as to age, to be taken to be the age of the person.

(3) Section 89 (**Form and contents of warrant**):

Omit "Every", insert instead "Except as provided by section 87, every".

(4) After section 89A, insert:

**Fine default procedures after issue of warrant of commitment**

89B. (1) Before a warrant of commitment issued under section 87 is executed, the fine defaulter must be given oral notice in accordance with this section.

(2) Notice is to be given to the fine defaulter that the warrant will not be executed if, within 7 days of the notice being given, the fine defaulter:

- (a) pays the amount payable in satisfaction of the warrant; or
- (b) applies to an authorised justice to allow further time for the payment of the whole or any part of that amount; or
- (c) applies to an authorised justice for a community service order under the Community Service Orders Act 1979 or the Children (Community Service Orders) Act 1987, as the case requires.

(3) A fine defaulter given notice under this section may, not more than 7 days after being given notice, make an application of a kind referred to in subsection (2).

(4) Notice under this section may be given by a person seeking to execute a warrant of commitment or otherwise.

(5) An application for an order of a kind referred to in subsection (2) (c) by a fine defaulter who is, at the time of being given notice under this section, of or above the age of 18 years is to be dealt with under the Community Service Orders Act 1979.



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

(6) This section and section 89C do not apply to a warrant in respect of a fine defaulter if the fine defaulter is under detention in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to or imprisoned in a prison.

**Effect of action by fine defaulter on warrant of commitment**

89C. (1) A warrant of commitment issued under section 87 may not be executed until at least 7 days after notice is given in accordance with section 89B.

(2) A warrant issued under section 87 is revoked:

- (a) on payment by the fine defaulter of the amount payable in satisfaction of the warrant within 7 days of notice being given under section 89B; or
- (b) if a fine defaulter makes an application to an authorised justice for further time to pay within the time specified in a notice given under section 89B and the authorised justice allows further time for payment; or
- (c) if a fine defaulter makes an application within the time specified in a notice given under section 89B for a community service order or a children's community service order and such an order is made.

(3) A further warrant of commitment may be issued under section 87 if a fine defaulter who makes an application for further time to pay fails to pay the amount payable within the time allowed.

(4) This section and section 89B do not apply to a warrant issued as referred to in subsection (3).

**Fine default provisions not to apply to certain offences**

89D. Sections 89B and 89C do not apply to a warrant of commitment issued in respect of a conviction for, or order or enforcement order relating to, an offence under Part 3 of the Summary Offences Act 1988 committed by a person



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

who was, at the time the offence was committed, of or above the age of 18 years.

**Enforcement of amounts payable to "private payees"**

89E. (1) This section applies to a person or body entitled, by or under an Act, to receive payment or the proceeds of a fine, penalty, costs or other amount payable by virtue of:

- (a) a conviction or order in proceedings before a Local Court or Children's Court; or
- (b) an enforcement order under Division 2 of Part 4B.

(2) Payment of any such amount may, except as provided by this section, be enforced by a person or body to whom or to which this section applies as though it were an amount payable by virtue of a judgment for the payment of that amount under the Local Courts (Civil Claims) Act 1970.

(3) A person or body to whom this section applies may not take action under subsection (2):

- (a) in relation to an amount payable in respect of an offence referred to in section 87 (4) (a), unless the person or body has been otherwise notified in accordance with the regulations; or
- (b) in relation to any amount payable, if a warrant of commitment has been issued under section 87 in respect of the amount.

(4) If a person or body takes action under subsection (2), no further action may be taken under this Act in respect of the amount payable or the person by whom the amount is payable.

(5) The remedy conferred by this section on a person or body to whom or to which this section applies is not in any way limited by the provisions of any other Act.

(6) This section does not apply to an amount payable by a person who is under the age of 18 years.

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

(7) Nothing in section 82 affects the operation of this section.

(5) Section 90 (**Further time etc. may be allowed for payment**):

(a) Section 90 (2):

After "order" where firstly occurring, insert "and notice in respect of the warrant has not been given under section 89B".

(b) After section 90 (2), insert:

(2A) If an application of a kind referred to in section 89B (2) (b) is made to an authorised justice, the authorised justice may, if it appears to the authorised justice expedient to do so, where appropriate, make an order referred to in subsection (1).

(c) Section 90 (3):

Omit "subsections (1) and (2)", insert instead "subsections (1), (2) and (2A)".

(6) Section 91A (**Imprisonment under several default warrants**):

After section 91A (4), insert:

(5) Except in relation to a warrant referred to in section 87 (6), this section does not apply to a person who is under the age of 18 years.

(7) Second Schedule (**Savings, transitional and other provisions**):

After Part 3, insert:

**PART 4 - TRANSITIONAL AND OTHER  
PROVISIONS CONSEQUENT ON ENACTMENT  
OF FINE ENFORCEMENT LEGISLATION  
(AMENDMENT) ACT 1989**

**Definitions**

7. In this Part:

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

**"appointed day"**, in relation to a provision of this Part, means the day on which the provision commences;

**"existing fine defaulter"** means:

- (a) a person by whom a fine, penalty, costs or other amount was before 18 January 1988 adjudged in proceedings before a court exercising jurisdiction under the Child Welfare Act 1939 to be payable; or
- (b) a person:
  - (i) who (by virtue of an enforcement order made against the person under Division 2 of Part 4B before 18 January 1988) was required to pay a fine, penalty, costs or other amount of money; and
  - (ii) who was a child or young person, within the meaning of the Child Welfare Act 1939, at the time the alleged offence to which the order relates was committed, and by or on behalf of whom the fine, penalty, costs or other amount of money has not been paid, whether or not an existing warrant has been issued in respect of the person;

**"existing warrant"** means:

- (a) an order made under the Child Welfare Act 1939 purporting to commit a person to or order the detention of a person in an institution within the meaning of that Act; or
- (b) a warrant of commitment that has been issued in default of payment of a fine, penalty, costs or other amount adjudged, in proceedings before a court exercising jurisdiction under the Child Welfare Act 1939, to be payable, but that has not been executed.



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

**Regulations**

8. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Fine Enforcement Legislation (Amendment) Act 1989.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Orders made before commencement of legislation etc.**

9. (1) A community service order made under Part 3 of the Community Service Orders Act 1979 or under section 5A of the Children (Community Service Orders) Act 1987 and in force immediately before the appointed day is to continue in force, expire, be dealt with and be enforced on breach as though the Fine Enforcement Legislation (Amendment) Act 1989 had not been enacted.

(2) This Act and the Children (Criminal Proceedings) Act 1987 apply to an order referred to in subclause (1) as though the Fine Enforcement Legislation (Amendment) Act 1989 had not been enacted.

(3) The provisions of this Act and, where applicable, the provisions of the Community Service Orders Act 1979, the

SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

Children (Community Service Orders) Act 1987 and the Children (Criminal Proceedings) Act 1987 apply to a person subject to an order referred to in subclause (1), or who breaches such an order, as though the Fine Enforcement Legislation (Amendment) Act 1989 had not been enacted.

**Warrants issued under section 87 but not executed before commencement of section 89B etc.**

10. The provisions of this Act, the Children (Community Service Orders) Act 1987, the Community Service Orders Act 1979 and the Children (Criminal Proceedings) Act 1987, as respectively amended by the Fine Enforcement Legislation (Amendment) Act 1989, apply to a warrant issued under section 87 before the appointed day and that is not revoked or executed before that day in the same way as they apply to a warrant issued under section 87 after the commencement of this clause.

**Application of provisions to "private payees"**

11. (1) Section 89E applies to a fine, penalty, costs or other amount payable before the appointed day by virtue of:

- (a) a conviction or order in proceedings before a Local Court or Children's Court; or
- (b) an enforcement order under Division 2 of Part 4B, in the same way as it applies to any such amount that becomes payable after the commencement of that section.

(2) A person or body to whom section 89E applies may not take action under section 89E (2) in respect of an amount for which a children's community service order or a community service order was made before the appointed day under section 5A of the Children (Community Service Orders) Act 1987 or section 26A or 26B of the Community Service Orders Act 1979.



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

**Construction of certain references in existing warrants**

12. In an existing warrant:

- (a) a reference (however expressed) to an institution or a shelter, or an institution or a shelter of a particular kind, is to be read as a reference to a detention centre within the meaning of the Children (Detention Centres) Act 1987 or, if the person the subject of the warrant is of or above the age of 18 years or remanded to or imprisoned in a prison, as a reference to a prison; and
- (b) a reference (however expressed) to the superintendent of an institution or the keeper or other person in charge of a shelter is to be read as a reference to the superintendent of a detention centre within the meaning of the Children (Detention Centres) Act 1987 or the keeper of a prison, as the case requires.

**Procedures in relation to existing fine defaulters**

13. (1) Without limiting the generality of section 30 of the Interpretation Act 1987, a warrant may be issued under and subject to section 87 of this Act in respect of an existing fine defaulter.

(2) The provisions of this Act, the Children (Community Service Orders) Act 1987, the Community Service Orders Act 1979 and the Children (Criminal Proceedings) Act 1987, as respectively amended by the Fine Enforcement Legislation (Amendment) Act 1989, apply to existing warrants, and warrants issued after the appointed day in respect of existing fine defaulters, in the same way as they apply to warrants issued in respect of fine defaulters under section 87 after the appointed day.

**Other provisions relating to existing warrants**

14. An existing warrant which is, by virtue of clause 12, to be read as committing a person to a detention centre is



SCHEDULE 1 - AMENDMENT OF JUSTICES ACT 1902

No. 27 - *continued*

to be taken to be an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987. This has the effect of making the warrant a detention order for the purposes of the Children (Detention Centres) Act 1987.

SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE ORDERS ACT 1979 No. 192

(Sec. 3)

(1) Section 3 (Definitions):

(a) Omit the definition of "authorised Justice", insert instead:

**"authorised Justice" means:**

(a) a Magistrate; or

(b) a justice employed in the Attorney General's Department; or

(c) a justice employed in a prescribed office;

(b) Section 3 (1), definition of "community service order":

From paragraph (a), omit ", 26A or 26B", insert instead "or 26A".

(c) Section 3 (1), definition of "community service order":

From paragraph (b), omit "or 26B" where secondly occurring.

(2) Omit sections 26A and 26B, insert instead:

**Community service work in default of payment of fine etc.**

26A (1) An authorised Justice may, on application by a person in accordance with section 89B of the Justices Act 1902, make an order in the prescribed form requiring the person to perform community service work in order to work off the amount payable in satisfaction of a warrant of commitment issued under section 87 of that Act.

(2) The decision whether or not to make the order is in the authorised Justice's discretion, and no appeal lies

**SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE  
ORDERS ACT 1979 No. 192 - *continued***

against the authorised Justice's decision not to make an order in a particular case.

(3) An order may not be made in respect of a person under detention in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to a prison or serving a term of imprisonment (whether by way of periodic detention or otherwise).

(4) Notice of the order is to be given, in accordance with the regulations, to the person in respect of whom the order is made.

(5) Section 11 applies to a community service order under this Part in the same way as it applies to a community service order under Part 2 and, in the application of that section, a reference to a court is to be read as a reference to an authorised Justice.

**(3) Section 26C (Number of hours of community service work):**

Omit section 26C (1) and (2), insert instead:

(1) If an authorised Justice makes a community service order under section 26A, the number of hours to be specified in the order as the number of hours of community service work to be performed by the person in respect of whom the order is made is to be calculated at the rate of one hour for each \$12.50 of the amount payable by the person but is not to exceed 300 hours.

**(4) Section 26D (Place etc. and time for presentation for work and conditions of order):**

Omit "a prescribed officer", insert instead "an authorised Justice".

SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE  
ORDERS ACT 1979 No. 192 - *continued*

- (5) Omit section 26E, insert instead:

**Notification to Director-General of making of order**

26E. (1) An authorised Justice who makes a community service order must cause a copy of the order to be sent to the Director-General.

(2) The failure of the authorised Justice to cause a copy of a community service order to be sent to the Director-General does not invalidate the order.

- (6) Section 26H (**Duration of community service order**):

- (a) Omit section 26H (b), insert instead:

(b) the expiration of a period of 12 months commencing on the date on which the order was made or, if that period is extended pursuant to subsection (2), the expiration of that period as so extended;

- (b) At the end of section 26H, insert:

(2) If, on the application of a person in respect of whom a community service order is in force or the assigned officer, it appears to the Director-General that it would, having regard to circumstances that have arisen since the order was made, be in the interests of justice to do so, the Director-General may extend the period during which the order remains in force.

(3) The Director-General must, on application being made under this section, extend the period during which a community service order remains in force if any part of the amount in respect of which the order was made has not been worked off.

- (7) Section 26I (**Satisfaction of certain orders by payment**):

Section 26I (b):

Omit "unpaid amount referred to in section 26A or an amount payable as referred to in section 26B", insert instead "amount referred to in section 26A".



SCHEDULE 2 - AMENDMENT OF COMMUNITY SERVICE  
ORDERS ACT 1979 No. 192 - *continued*

**[Explanatory note: This amendment is made as a consequence of a change in the language used in section 26A.]**

(8) Section 26J (Subsequent convictions - fine defaulters):

Before "sentenced", insert "detained in or remanded to a detention centre (within the meaning of the Children (Detention Centres) Act 1987) or remanded to a prison or".

(9) Section 26K (Breach of community service order for fine default):

(a) Section 26K (1):

Omit "a prescribed officer", insert instead "an authorised Justice".

(b) Section 26K (2):

Omit "prescribed officer", insert instead "authorised Justice".

(c) Omit section 26K (3) and (4).

**[Explanatory note: These provisions are omitted as a consequence of orders being made by authorised Justices rather than prescribed officers.]**

(d) Section 26K (5):

Omit "prescribed officer", insert instead "assigned officer".

(e) After section 26K (6), insert:

(7) Sections 89B and 89C of the Justices Act 1902 do not apply to a warrant referred to in subsection (6).

**[Explanatory note: The effect of section 26K (6) will be to enable the warrant to be executed without notice first having to be given under section 89B of the Justices Act 1902.]**

**SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56**

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Insert in alphabetical order in section 3 (1):

**"authorised justice" means:**

- (a) a Magistrate or Children's Magistrate; or
- (b) a justice employed in the Attorney General's Department; or
- (c) a justice employed in a prescribed office;

(b) Section 3 (1), definition of "children's community service order":

Omit "a prescribed officer", insert instead "an authorised justice".

(2) Omit section 5A, insert instead:

**Community service work in default of payment of fine**

5A. (1) An authorised justice may, on application by a person to whom this Act applies in accordance with section 89B of the Justices Act 1902, make an order in the prescribed form requiring the person to perform community service work in order to work off the amount payable in satisfaction of a warrant of commitment issued under section 87 of that Act.

(2) The decision whether or not to make the order is in the authorised justice's discretion, and no appeal lies against the authorised justice's decision not to make an order in a particular case.

(3) An order may not be made in respect of a person already under detention in or remanded to a detention centre within the meaning of the Children (Detention Centres) Act 1987 or remanded to or imprisoned in a prison.

(3) Section 10 (**Children's community service orders may run concurrently**):

Omit "prescribed officers", insert instead "authorised justices".

**SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued***

**(4) Section 11 (Conditions that may be attached to children's community service orders):**

Omit "prescribed officer", insert instead "authorised justice".

**(5) Section 12 (Preparation and service of copies of children's community service orders):**

**(a) Section 12 (3):**

Omit "A prescribed officer", insert instead "An authorised justice".

**(b) Section 12 (4):**

Omit "a prescribed officer", insert instead "an authorised justice".

**(6) Section 13 (Number of hours of community service work):**

**(a) Section 13 (1):**

Omit "or prescribed officer", insert instead "or authorised justice".

**(b) Omit section 13 (2A) and (2B), insert instead:**

(2A) The number of hours of community service work to be performed by a person in respect of whom a children's community service order is made by an authorised justice is to be calculated at the rate of one hour for each \$12.50 of the amount payable by the person but is not to exceed 100 hours.

**(c) Section 13 (4):**

Omit "a prescribed officer", insert instead "an authorised justice".

**(d) Section 13 (4):**

Omit "or prescribed officer", insert instead "or an authorised justice".



SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued*

- (7) Section 14 (**Place etc. and time for presentation for work**):
- (a) Section 14:  
Omit "or prescribed officer", insert instead "authorised justice".
  - (b) Section 14 (a):  
After "commenced;", insert "and".
  - (c) Section 14 (b):  
Omit "herself; and", insert instead "herself".
  - (d) Omit section 14 (c).
- (8) Section 17 (**Obligations of persons subject to children's community service orders**):
- Section 17 (a):  
After "such times", insert "and such places".

- (9) Omit the heading to Part 4, insert instead:

**PART 4 - EXTENSION AND REVOCATION OF CHILDREN'S COMMUNITY SERVICE ORDERS**

- (10) Section 20 (**Extension of children's community service orders**):
- (a) Section 20 (1):  
Omit "Children's Court" wherever occurring, insert instead "Director-General".
  - (b) Omit section 20 (2) and (3).

[Explanatory note: The amendments in items (7)-(10) remove, and are consequential on the removal of, the requirement that a children's community service order specify the area within which community service work is to be performed. Instead, this is to be determined by the assigned officer.]

**SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued***

**(11) Section 21 (Revocation etc. of children's community service orders on application):**

Section 21 (3) (a):

Omit "a prescribed officer", insert instead "an authorised justice".

**(12) Section 22 (Revocation of children's community service orders on being dealt with for other offences):**

Section 22 (3):

Omit "a prescribed officer", insert instead "an authorised justice".

**(13) Section 22A (Satisfaction of certain orders by payment):**

(a) Omit "a prescribed officer", insert instead "an authorised justice".

(b) Section 22A (b), (c), (d):

Omit "unpaid" wherever occurring.

**[Explanatory note: This amendment is made as a consequence of a change in the language used in section 5A.]**

**(14) Section 22B (Satisfaction of certain orders by detention):**

(a) Section 22B (1):

Omit "a prescribed officer", insert instead "an authorised justice".

(b) Section 22B (1):

After "1987", insert "or is remanded to a detention centre or remanded to or imprisoned in a prison".

**[Explanatory note: This amendment is made to enable orders to be satisfied where people are detained on remand and in places other than detention centres.]**

SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued*

- (15) Section 25 (**Issue of summons or warrant - failure to comply with children's community service orders made by court**):

Omit section 25 (3).

[Explanatory note: This provision is omitted as a consequence of the insertion of a definition of "authorised justice" in section 3.]

- (16) Section 26A (**Breach of fine default community service orders**):

- (a) Section 26A (1):

Omit "a prescribed officer" wherever occurring, insert instead "an authorised justice".

- (b) Section 26A (2):

Omit "prescribed officer", insert instead "authorised justice".

- (c) Omit section 26A (3) and (4).

[Explanatory note: These provisions are omitted as a consequence of orders being made by authorised justices rather than prescribed officers.]

- (d) Section 26A (5):

Omit "prescribed officer", insert instead "assigned officer".

- (e) Omit section 26A (6), insert instead:

(6) On revoking the order, the authorised justice may (having regard to the extent to which the unpaid amount of the fine, penalty, costs or other amount of money in respect of which the order was made exceeds the amount worked off by the performance of community service work in accordance with the order) issue a warrant under section 87 of the Justices Act 1902 committing the person:

- (a) if the person is a child, to the control of the Minister administering the Children (Detention Centres) Act 1987; or



**SCHEDULE 3 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56 - *continued***

- (b) if the person is not a child, to prison, for a period calculated in accordance with that section in respect of the unsatisfied balance.
  - (f) Section 26A (7):  
Omit "referred to in subsection (6)", insert instead "issued in respect of a person referred to in subsection (6) (a)".
  - (g) After section 26A (7), insert:  
(8) Sections 89B and 89C of the Justices Act 1902 do not apply to a warrant referred to in subsection (6).  
[ Explanatory note: The effect of section 26A (8) will be to enable the warrant to be executed without notice first having to be given under section 89B of the Justices Act 1902.]
- (17) Section 27 (Notification of extension or revocation of children's community service orders):
- (a) Section 27 (a):  
Omit "force;", insert instead "force; or".
  - (b) Omit section 27 (b).
  - (c) Omit ", amendment".

**SCHEDULE 4 - AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) AMENDMENT ACT 1988 No. 9**  
(Sec. 3)

**Section 4 (Existing fine defaulters):**

- (a) Omit section 4 (4)-(9).
- (b) Section 4 (10):  
Omit "or the making of an order in respect of a fine defaulter pursuant to an application under this section".

**SCHEDULE 5 - AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 No. 55**

(Sec. 3)

(1) Section 37 (**Term of control order**):

(a) Omit section 37 (1) (b), insert instead:

(b) in the case of an order arising from a warrant issued under section 87 of the Justices Act 1902 in respect of a person detained in or remanded to a detention centre - when the warrant is issued; or

(b) Section 37 (1) (c):

After "Children (Community Service Orders) Act 1987", insert "or, not being a warrant referred to in paragraph (b), issued under section 87 of the Justices Act 1902".

(2) After section 41, insert:

**Enforcement of fines etc.**

41A. Without affecting the generality of section 27, Subdivision 8 of Division 2 of Part 4 of the Justices Act 1902 applies to a conviction or order in proceedings before the Children's Court in which it is adjudged that a fine, penalty, costs or other amount of money be paid and so applies with any necessary modifications.

**SCHEDULE 6 - AMENDMENT OF PERIODIC DETENTION OF PRISONERS ACT 1981 No. 18**

(Sec. 3)

Section 34 (**Regulations**):

(a) Section 34 (1) (l):

Omit "Act; and", insert instead "Act".

(b) Omit section 34 (1) (m).

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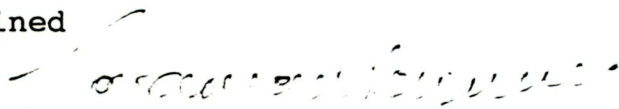
FINE ENFORCEMENT LEGISLATION (AMENDMENT) BILL

Schedule of the amendments referred to in Message of  
7 December 1989.

  
Clerk of the Parliaments

- No. 1. Page 3, Schedule 1, proposed section 87 (5). Omit "is, at the time it is issued, under the age of 18 years or subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987", insert instead "was at the time of the conviction or order to which the warrant relates under the age of 18 years and who is not at the time it is issued of or above the age of 21 years, or who is at the time the warrant is issued subject to an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987,".
- No. 2. Page 3, Schedule 1, proposed section 87 (6). Omit "under the age of 18 years and who is".
- No. 3. Page 3, Schedule 1, proposed section 87 (8). Omit "18", insert instead "21".
- No. 4. Page 4, Schedule 1, proposed section 89B (5). Omit "is, at the time of being given notice under this section, of or above the age of 18 years", insert instead "was, at the time of the conviction or order to which the application relates, of or above the age of 18 years".
- No. 5. Pages 5 and 6, Schedule 1. Omit proposed section 89D.
- No. 6. Page 10, Schedule 1, proposed clause 11 of Second Schedule. Omit "89E" wherever occurring, insert instead "89D".
- No. 7. Page 11, Schedule 1, proposed clause 12 (a) of Second Schedule. Omit "18", insert instead "21".
- No. 8. Page 20, Schedule 3, proposed section 26A (6) (a). Omit "a child", insert instead "under the age of 21 years".
- No. 9. Page 21, Schedule 3, proposed section 26A (6) (b). Omit "not a child", insert instead "of or above the age of 21 years".

Examined

  
Chairman of Committees



