

SUBMISSION

TO | Vicki Chapman MP
Deputy Premier and Attorney-General

TOPIC | Fines Enforcement and Debt Recovery (Miscellaneous)
Amendment Bill 2020

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Fines Enforcement and Debt Recovery (Miscellaneous) Amendment Bill 2020

Dear Hon. Vicki Chapman MP

Thank you for the opportunity to comment on the draft Fines Enforcement and Debt (Misc) Amendments Bill 2020. Uniting Communities operates the Consumer Credit Law Centre SA (CCLCSA) which provides free legal advice, representation and financial counselling to people in South Australia in the areas of credit, banking and finance.

We agree with the Hon. Vickie Chapman that many of the proposed changes to the *Fines Enforcement and Debt Recovery Act 2017* (SA) ("the Act") are technical in nature. The CCLCSA would like to provide the government with comments with respect to the following provisions:

Part 2 items 8 and 10 - extension of time periods and consolidation of penalty payments

The CCLCSA welcomes the proposed amendments extending the period of time before additional penalties apply to pecuniary sums. We support the proposed option for a person to avoid paying the first additional penalty by entering into a payment arrangement with the CRO in the 14 day period after a reminder notice is issued.

We also support the proposed amendment to section 18 of the Act which provides that only one late fee penalty is payable for pecuniary penalty orders made on the same day.

Part 2 items 24 and 25 - removal of approved treatment plans

The CCLCSA notes that there is no substantial commentary in the Hon. Vickie Chapman's covering letter with respect to the removal of approved treatment programs under section 46 the Act.

We seek further information about the reasons behind the government's decision to seek to remove the option of an approved treatment programs at a critical stage of the enforcement and debt recovery process.

Part 2 item 26 – civil debt determinations

The CCLCSA notes that there is no commentary in the Hon. Vickie Chapman's covering letter with respect to section 49 of the Act. We seek further information about:

- The purpose of giving the Chief Recovery Officer (CRO) power to vary, revoke or suspend debt determinations; and
- How the CRO will make the decision to use this power.

Part 2 items 34 and 36 and schedule 1 item 2 – order for payment of instalments and monetary penalty

The CCLCSA notes that the proposed amendments to both the *Fines Enforcement and Debt Recovery Act 2017* (SA) and the *Enforcement of Judgments Act 1991* (SA) revoke the statutory power of the court to imprison debtors for up to 40 days after failure to comply with a payment order. They instead provide that the court may order an additional monetary penalty

if the debtor has no proper excuse, and has the means to pay without the debtor or any of his or her dependents suffering hardship.

Whilst the CCLCSA welcomes the abolition of these statutory imprisonment orders, we are hopeful that the court will take into consideration, when exercising their discretion under the proposed provisions, that debtors against whom a judgement or determination is being enforced are often vulnerable and already in financial hardship.

We further note that “hardship” is not defined in either Act; we are of the view that the additional financial penalty should be both proportionate to the quantum of the original debt, and an amount that the debtor will realistically be able to pay.

The CCLCSA is aware that imprisonment of debtors under the provision as they stand is a relatively rare occurrence. We would like government and the judiciary to be alive to the possibility that the practical effect of these amendments will be the imposition of further monetary penalties where previously, no penalty would have been ordered.

A summary of the proposed changes to the *Fines Enforcement and Debt Recovery Act 2017* (“the Act”) and the *Enforcement of Judgments Act 1991* (“EOJ Act”) below.

1. The Act

- a. As the summary appended to the Bill provides, many proposed changes are technical in nature (rewording of provisions). Other changes appear to be minor, for instance the proposed substitution of “28 days” for “1 month” or “30 days” (pt 2 items 27-29 amending ss 50-52)
- b. The enforcement powers of the Chief Recovery Officer (“CRO”) have been bolstered in some respects; the CRO now has express power to eject trespassers on land subject to a determination for seizure and sale for pecuniary sums and expiation fees (pt 2 item 20 amending s 36), and can have a charge registered over property before an amount owing becomes outstanding, i.e., in the first 28 days (pt 2 item 18 amending s 33); the amendments provide that the CRO can select multiple enforcement options, whereas the existing wording is singular (pt 2 item 13 amending s 25); the CRO’s power to require information from credit reporting bodies and public sector agencies has been extended to apply to people owing expiation fees (pt 2 item 16 amending s 30), and to ‘personal’ (currently ‘contact’) details of civil debtors (pt 2 item 33 amending s 59); the property of civil debtors may be seized and sold under the amendments if it is co-owned, and powers ancillary to seizing the vehicle of a civil debtor have been added. The amendments now expressly provide that seized property which the CRO determines not to sell must be returned to the debtor (pt 2 item 35 amending s 63).
- c. The CRO has the ability under the amendments to vary payment arrangements for pecuniary sums to include other pecuniary sums on their own initiative (without the agreement of the alleged offender). The prescribed sum for entering into a payment arrangement (\$20.50) is not payable in this case. The debtor then has 14 days upon notice of the variation to apply for it to be rescinded. These changes also apply to expiation fees and civil debts (pt 2 items 9, 12, 32 amending ss 15, 20 and 57).

- d. At the moment, the CRO issues a reminder notice and imposes a penalty of \$57 on pecuniary sums unpaid after 28 days (unless this fee is waived at the CRO's discretion); the proposed amendments push this additional penalty back another 14 days. Another \$57 penalty will apply 44 days after the 28 day period has lapsed (at the moment it is 30 days). The amendments also provide that if more than one pecuniary penalty order is made on the same day, they are to be aggregated so that only one late fee penalty is payable (pt 2 item 8 repealing s 14; pt 2 item 10 amending s 18).
- e. The amendments provide that a person can avoid the \$57 penalty on pecuniary sums by entering into a payment arrangement with the CRO in the 14 day period after receiving the reminder notice – effectively extending the time in which a person can enter a payment arrangement. If the arrangement is terminated these fees can be retrospectively added on to the amount owing (pt 2 item 9 amending s 15).
- f. Section 12 of the Act currently provides that compensation or restitution payments are prioritised where a person owes multiple pecuniary sums. The amendments provide where there is more than one compensation/restitution sum owing, they will still take priority over other types of pecuniary sums and will be paid in chronological order (pt 2 item 7 amending s 12).
- g. It is proposed that a suspension of a person's driver's license will take effect 14 days from the date notice of the determination was given to the person (currently 14 days from the date of determination), and a fee of \$20.50 will now only be payable when the CRO makes the initial determination to suspend the license, not on any other determination e.g. to cancel the suspension (pt 2 item 21 amending s 38). Likewise, a fee will now only be payable on a determination restricting transacting business with the Registrar of Motor Vehicles and restricting the operation of 97A of the Motor Vehicles Act 1959 ("MVA") (allows people with interstate or international drivers licenses to drive in SA), not to other determinations that may be made by the CRO under those sections (pt 2 items 22-23 amending ss 39 and 97A MVA).
- h. The option of diverting debtors/alleged offenders to approved treatment programs has been removed from the enforcement provisions of the Act (pt 2 items 24-25 amending ss 46-47). A person is still able to negotiate entry into an approved treatment program in entering into a payment plan for pecuniary sums or expiations fees if they meet eligibility requirements (ss 15, 20).
- i. People with debts to public authorities referred to the CRO will only be liable for further interest at the request of the public authority (pt 2 item 31, amending s 56) and costs incurred by the CRO in relation to recovery of civil debts will no longer be automatically added on the debt (pt 2 item 30 repealing s 55, pt 2 item 36). Currently, those debts accrue interest at the prescribed rate (10%).
- j. The CRO may now vary, revoke or suspend a civil debt determination (pt 2 item 26 amending s 49).
- k. Overpayments may be applied to other outstanding amounts if the person does not reply to notice by the CRO within 14 days (pt 2 item 37).

- I. The amendments propose that a person who has defaulted on a payment order for a civil debt can no longer be imprisoned, but can instead be subject to a further monetary penalty (pt 2 item 34 amending s 61). A debtor would be summoned to attend an examinations hearing, and if they have missed at least two payments without proper excuse, and they have the means to pay the instalments without them or their dependents suffering hardship, a monetary penalty may be imposed (pt 2 item 36). A person can still be imprisoned for non-compliance with a community service order under the Act (1 day for each 7.5 hours or 12 months, whichever is lesser) (s 47).

2. EOJ Act

- a. The proposed amendments to the EOJ Act mirror those to the Act at point 1(I) above. Currently a debtor who has failed to comply with a payment order and has missed at least two payments will have to attend an examination hearing, where a term of imprisonment of up to 40 days may be imposed if he or she does not have a proper excuse (sch 1 item 2)

Your sincerely



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