



# CORRECTIVE SERVICES AMENDMENT ACT 1991

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Queensland



# **Corrective Services Amendment Act 1991**

**Act No. 55 of 1991**

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**An Act to amend the *Corrective Services Act 1988*, and for related purposes**

*[Assented to 18 September 1991]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

**Short title**

1. This Act may be cited as the *Corrective Services Amendment Act 1991*.

**Commencement**

2. This Act commences on a day to be fixed by proclamation.

**Amended Act**

3. The *Corrective Services Act 1988* is amended as set out in this Act.

**Omission of s.3 (Arrangement)**

4. Section 3—  
*omit.*

**Amendment of heading to Part V**

5. Heading to Part V—  
*omit 'COURT'.*

**Insertion of new s.231A**

6. After section 231—  
*insert—*

**'Court to inform person of right to apply for fine option order**

**'231A.** If a person, in respect of whom an original order is made, is not before the court at the time when the court makes the order, the court is to cause written notice to be given to the person, informing the person of his

or her rights under this Division to apply for a fine option order.’.

### **Amendment of s. 232 (Application for order generally)**

7. Section 232(3)—

*omit, insert—*

‘(3) On lodgment of an application under subsection (1), the original order to which that application relates, so far as it requires the payment of a fine, is suspended by virtue of this subsection.’.

### **Insertion of new ss.232A and 232B**

8. After section 232—

*insert—*

#### **‘Application to clerk of court for order after expiration of time allowed for payment of fine**

‘232A.(1) This section applies to a person—

- (a) in respect of whom an original order has been made by a Magistrates Court (whether before or after the commencement of this section); and
- (b) who has not, in the time allowed by section 232, applied for a fine option order under that section.

‘(2) Subject to subsection (5), the person may apply to the clerk of the court at the place where the Magistrates Court that made the original order to which the application relates is situated for a fine option order and the clerk of the court may make such an order.

‘(3) The application must—

- (a) be in the prescribed form; and
- (b) set out particulars that are relevant having regard to the matters of which the clerk of the court is required to be satisfied under section 233; and
- (c) be signed by the applicant; and
- (d) be accompanied by the prescribed fee (if any).

‘(4) Subsection (2) applies despite the issue or execution of a warrant of commitment on the person because of the person’s failure to comply with the original order.

‘(5) The person may not make an application under subsection (2) if—

(a) the original order requires the payment of a part of the fine imposed to the complainant, and directs that in default of payment, the person is to be imprisoned for a period, unless—

(i) that part of the fine has been paid; or

(ii) the person has served a period of imprisonment that bears to the default period of imprisonment, as nearly as possible, the same proportion as that part of the fine bears to the total fine; or

(b) the original order requires the payment of compensation, another sum of money or costs in addition to the imposition of a fine, and directs that in default of payment, the person is to be imprisoned for a period, unless—

(i) the amount of the compensation, sum and costs has been paid; or

(ii) the person has served a period of imprisonment that bears to the default period of imprisonment, as nearly as possible, the same proportion as the amount of the compensation, sum and costs bears to the total amount required to be paid by the order; or

(c) the person has previously made an application under this Division in relation to the original order.

**‘Application to court for order after expiration of time allowed for payment of fine**

‘232B.(1) This section applies to a person—

(a) in respect of whom an original order has been made by the Supreme Court or a District Court (whether before or after the commencement of this section); and

(b) who has not previously made an application under this Division in relation to the original order.

‘(2) If the person appears or is brought before the Supreme Court or a District Court under section 19(6) of the *Criminal Code*, the court must

inform the person that he or she may immediately orally apply to the court for a fine option order in relation to the original order.

‘(3) If the application is made, the court must immediately proceed to hear the application and may make such an order.’.

### **Replacement of s.233 (Matters to be considered by court)**

9. Section 233—

*omit, insert—*

#### **‘Matters to be considered on application**

‘233. A court or clerk of the court must not make a fine option order in relation to a person unless the court or clerk of the court—

(a) has been notified by a community correctional officer that arrangements exist by which persons who reside in the area in which the person resides or intends to reside can perform community service under such an order; and

(b) is satisfied that—

(i) the person is unable to pay the fine in terms of the original order or, if the person were to pay the fine in terms of the original order, the person’s family would suffer economic hardship; and

(ii) the person is a suitable person to perform community service under a fine option order; and

(iii) if a fine option order is made, community service of a suitable nature can be provided for the person under the arrangements referred to in paragraph (a).’.

### **Replacement of s.234 (Determination of application)**

10. Section 234—

*omit, insert—*

**‘Determination of application**

**‘234.(1)** The court to which an application is made under section 232, or the clerk of the court to whom an application is made under section 232A, must cause written notice to be given to the applicant of the time and place at which the court or the clerk of the court proposes to determine the application.

**‘(2)** The applicant may appear before the court or clerk of the court at the specified time and place unless the applicant is in lawful custody at that time.

**‘(3)** If the applicant does not appear before the court or clerk of the court at the specified time and place, the court or clerk of the court may determine the application in the applicant’s absence.

**‘(4)** In determining whether to grant or refuse the application the court or clerk of the court must have regard to—

- (a) the information contained in the application; and
- (b) the information relating to the applicant, and the offence to which the application relates, that was before the court when the original order was made; and
- (c) if the court or clerk of the court has received a notice referred to in section 233(a)—the information contained in the notice; and
- (d) such other matters as the court or clerk of the court considers relevant.

**‘(5)** If a court or clerk of the court grants the application, the court or clerk of the court must—

- (a) make a fine option order in respect of the person; and
- (b) explain to the person, in language likely to be readily understood by the person—
  - (i) the purpose and effect of the order; and
  - (ii) the consequences that may follow if the person fails to comply with the order; and
  - (iii) the person’s right to pay the fine, or any part of the fine, to which the fine option order relates, and the application of any payment, under section 241.

‘(6) If a court refuses an application under section 232—

- (a) the original order to which the application relates is wholly reinstated; and
- (b) the court must cause written notice to be given to the applicant of the refusal and of the fact that the original order is wholly reinstated.

‘(7) If a clerk of the court refuses an application, the clerk of the court must—

- (a) give written notice to the applicant of the refusal and the reasons for the refusal; and
- (b) give written notice to the court that made the original order of the application having been made and of the refusal.’.

### **Replacement of s.235 (Suspension of original order in so far as it requires payment of fine)**

**11.** Section 235—

*omit, insert—*

#### **‘Effect of fine option order**

**‘235.(1)** If—

- (a) a court makes a fine option order pursuant to an application under section 231 or 232B, or on appeal under section 246—it must suspend the original order so far as it requires the payment of a fine; or
- (b) a court makes a fine option order pursuant to an application under section 232—the suspension of the original order so far as it requires the payment of a fine is continued.

‘(2) If a clerk of the court makes a fine option order under section 232A, the original order to which it relates is suspended so far as it requires the payment of a fine.

‘(3) If an original order requires the payment, in addition to a fine, of any compensation, sum of money or costs, then for the period for which that order is suspended so far as it requires the payment of the fine the default period of imprisonment specified in the order is taken to have been reduced by a period that bears to the period specified, as nearly as possible, the same proportion as the amount of the fine bears to the total amount required to be

paid by the order.

‘(4) If—

- (a) a warrant of commitment has been issued because of a person’s failure to comply with an original order; and
- (b) at the time of the making of a fine option order in respect of the original order, the warrant has not been executed;

the warrant, so far as it relates to the payment of a fine, ceases to be in force on the making of the fine option order.

‘(5) If—

- (a) a warrant of commitment has ceased to be of force because of subsection (4); and
- (b) a police officer in good faith purports to execute the warrant;

liability at law does not attach to—

- (c) the police officer or to the Crown because of the purported execution of the warrant; or
- (d) the officer in charge of a prison or to the Crown as a consequence of the purported execution of the warrant.

‘(6) In subsection (5)—

“**prison**” includes any place where a person may be lawfully detained.’.

### **Replacement of s.236 (Order to be reduced to writing)**

**12.** Section 236—

*omit, insert—*

#### **‘Order to be reduced to writing**

‘**236.(1)** A court or clerk of the court who makes a fine option order in relation to a person must—

- (a) immediately cause the order to be reduced to writing in the prescribed form; and
- (b) cause a copy of the order to be given to the person; and
- (c) cause to be given to the Commission—

- (i) a copy of the order; and
- (ii) a copy of the original order to which the order relates; and
- (iii) details of the offence in relation to which the original order was made.’.

### **Insertion of new s.236A**

**13.** After section 236—

*insert—*

#### **‘Release from custody when order is made**

**‘236A.** If a person in respect of whom a fine option order is made is in lawful custody when the order is made merely because of the person’s failure to comply with the original order, the person is to be immediately discharged.’.

### **Amendment of s.237 (Requirements of fine option order)**

**14.(1)** Section 237(3)—

*omit* ‘or such extended period as a court may order pursuant to a provision of this Division’.

**(2)** Section 237—

after subsection (3)—

*insert—*

**‘(4)** The period during which community service is to be performed under a fine option order may be extended—

- (a) by a court or clerk of the court—on the application of a community correctional officer when the order is made or at any time before the end of the period specified in the order; or
- (b) by a court—under section 242(1)(a).’.

**Amendment of s.238 (Maximum number of hours)**

**15.(1)** Section 238(1)—

after ‘court’—

*insert* ‘or clerk of the court, as the case may be.’

**(2)** Section 238(2)—

*omit, insert*—

**‘(2)** For the purpose of subsection (1)—

(a) a penalty unit has the value assigned to a penalty unit by the *Penalty Units Act 1985*; and

(b) if, when a fine option order is made in respect of a person, the person is serving a term of imprisonment because of the non- payment of the fine to which the order relates—the fine is taken to have been reduced by an amount that bears to the fine, as nearly as possible, the same proportion as the number of days for which the person has been imprisoned bears to the term of imprisonment.’.

**Replacement of s.239 (Community service to be performed concurrently unless court otherwise directs)**

**16.** Section 239—

*omit, insert*—

**‘Community service to be performed cumulatively**

**‘239.(1)** All community service required to be performed by a person under a fine option order is to be performed cumulatively on any uncompleted community service required to be performed by the person under any community service order and any other fine option order.

**‘(2)** Where 2 or more fine option orders requiring a person to perform community service are in force at the same time, the community service is to be performed in the chronological sequence of the making of the orders.’.

**Amendment of s.240 (Performance of community service to be credited against fine)**

17. Section 240—

at the end—

*insert—*

‘(2) For the purposes of section 11(1) of the *Penalty Units Act 1985*, an amount credited against the amount of a fine under subsection (1) is taken to be payment of a sum in part satisfaction of a court order.’.

**Amendment of s.242 (Failure to comply with a requirement of an order)**

18.(1) Section 242(1)—

*omit* ‘order was made’, *insert* ‘original order to which the fine option order relates was made,’.

(2) Section 242(2)—

*omit* ‘made by the court’.

**Amendment of s.243 (Effect of revoking order)**

19. Section 243—

*omit* subsection (2).

**Amendment of s.244 (Discharge of orders)**

20.(1) Section 244(3)—

*omit* ‘which the order was made’, *insert* ‘which the original order to which the fine option order relates was made’.

(2) Section 244(3)—

after ‘since the’—

*insert* ‘fine option’.

(3) Section 244—

after subsection (4)—

*insert—*

**‘(5)** In subsection (1)—

**“amount of the fine”** includes the reduced amount of a fine calculated under section 238(2)(b).’.

### **Amendment of s.245 (Certificate)**

**21.** Section 245(2)—

*omit* ‘to the court which actually made the order’, *insert—*

‘(a) if the order was made by a clerk of the court—to the court that actually made the original order to which the order relates; or

(b) in any other case—to the court that actually made the order.’.

### **Replacement of s.246 (Giving of notice)**

**22.** Section 246—

*omit, insert—*

#### **‘Appeals**

**‘246.(1)** A person aggrieved by a decision of a clerk of the court to refuse an application by the person for a fine option order under section 232A may appeal to the Magistrates Court exercising jurisdiction at the place where the clerk of the court holds office.

**‘(2)** An appeal is to be instituted—

(a) within 28 days of the day of the giving of the notice of refusal; and

(b) by filing a notice of appeal in the prescribed form with the clerk of the court.

**‘(3)** The appellant is to give a copy of the notice of appeal to the Commission.

**‘(4)** The hearing of the appeal is not limited to the material on which the decision appealed against was made.

**‘(5)** In determining the appeal, the Magistrates Court may—

(a) affirm the decision appealed against; or

(b) set aside the decision appealed against and make a fine option order in relation to the appellant.

‘(6) The Magistrates Court must not make a fine option order under subsection (5)(b) unless it is satisfied as to the matters mentioned in section 233.

‘(7) The power to make rules of court governing the practice of Magistrates Courts includes power to make rules for the hearing of appeals by a Magistrates Court under this section.

‘(8) Until such rules of court are made or so far as the rules made do not extend to a particular case, the Stipendiary Magistrate hearing an appeal may give such directions as to the hearing as the Stipendiary Magistrate thinks fit.’.

**Amendment of s.248 (Construction of references to court by which order made)**

23. Section 248—

after ‘fine option order’—

*insert* ‘or an original order within the meaning of Division 3’.

**Transitional**

24. Despite the amendments of the *Corrective Services Act 1988* made by this Act, that Act continues to apply to—

(a) applications for fine option orders made before the commencement of this Act; and

(b) fine option orders made before that commencement; and

(c) fine option orders made after that commencement under an application mentioned in paragraph (a);

as if this Act had not been enacted.