

TASMANIA

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**SENTENCING AMENDMENT (FINES WITHOUT  
RECORDING CONVICTIONS) BILL 2016**

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# **SENTENCING AMENDMENT (FINES WITHOUT RECORDING CONVICTIONS) BILL 2016**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
16 November 2016

*(Brought in by the Minister for Building and Construction, the Honourable Guy Barnett)*

## **A BILL FOR**

**An Act to amend the *Sentencing Act 1997*, and the *Monetary Penalties Enforcement Act 2005*, in relation to the imposition of fines without convictions being recorded**

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Sentencing Amendment (Fines Without Recording Convictions) Act 2016*.

### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

*Sentencing Amendment (Fines Without Recording Convictions)*  
*Act 2016*  
*Act No. of*

s. 3

Part 2 – Sentencing Act 1997 Amended

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**PART 2 – SENTENCING ACT 1997 AMENDED**

**3. Principal Act**

In this Part, the *Sentencing Act 1997*\* is referred to as the Principal Act.

**4. Section 4 amended (Interpretation)**

Section 4 of the Principal Act is amended by omitting “convicted of” from the definition of *fine* and substituting “found guilty, or convicted, of”.

**5. Section 7 amended (Sentencing orders)**

Section 7(e) of the Principal Act is amended by omitting “record a conviction and” and substituting “with or without recording a conviction,”.

**6. Section 8 amended (Combined sentencing orders)**

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “records a conviction and”;

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\*No. 59 of 1997

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- (b) by omitting from subsection (3)(b) “make” and substituting “if the court records a conviction, make”;
- (c) by omitting from subsection (4)(b) “make” and substituting “if the court records a conviction, make”.

**7. Section 42B inserted**

Before section 43 of the Principal Act, the following section is inserted in Part 6:

**42B. Conviction not required for imposition of penalty**

- (1) Despite any other enactment, if –
  - (a) a court has found a person guilty of an offence against a provision of an enactment; and
  - (b) the provision, or another provision of the enactment, (*the relevant penalty provision*) contains a statement to the effect that a fine may or must be imposed if a person is convicted of the offence –

the court may impose, in relation to the offence, a fine in accordance with the relevant penalty provision even though the court has not convicted the person of the offence.

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(2) Despite any other enactment, if –

- (a) a court has found a person guilty of an offence (a ***first offence***) against a provision of an enactment; and
- (b) a court, after a court has found the person guilty of the first offence, finds the person guilty of another offence (the ***further offence***) against the provision; and
- (c) the provision, or another provision of the enactment, (***the penalty provision***) contains a statement to the effect that a fine may or must be imposed in relation to such an offence against the provision if a person is convicted of the offence and has previously been convicted of such an offence or another offence –

the court may impose, in relation to the further offence, a fine in accordance with the penalty provision even though a court has not convicted the person of either the first offence or the further offence, or both.

(3) Nothing in this section is to be taken to authorise a court to impose, in relation to

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an offence committed by a person, a fine of an amount that is greater than the amount that could have been imposed if the person had been convicted of the offence.

**8. Section 44 amended (Period for payment of fine)**

Section 44(4)(a) of the Principal Act is amended by inserting “or on which the finding of guilt was made” after “conviction”.

**9. Section 62 amended (Breach of order for release on adjournment)**

Section 62(6) of the Principal Act is amended by inserting “or a finding of guilt in relation to an offence” after “offence”.

**10. Section 104AA inserted**

After section 104 of the Principal Act, the following section is inserted in Part 12:

**104AA. Transitional provision in relation to *Sentencing Amendment (Fines Without Recording Convictions) Act 2016***

A provision of this Act that is amended by the *Sentencing Amendment (Fines Without Recording Convictions) Act 2016* applies, as so amended, in relation to an offence whether the offence was

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committed before or after the provision  
was so amended.



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Part 3 – Monetary Penalties Enforcement Act 2005 Amended

s. 11

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**PART 3 – MONETARY PENALTIES ENFORCEMENT  
ACT 2005 AMENDED**

**11. Principal Act**

In this Part, the *Monetary Penalties Enforcement Act 2005\** is referred to as the Principal Act.

**12. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended by inserting “, or found guilty,” after “convicted” in paragraph (a) of the definition of *fine*.

**13. Section 109 amended (Amount may be deemed to be uncollectable)**

Section 109(5) of the Principal Act is amended by inserting “or finding of guilt in respect of” after “conviction for”.

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\*No. 57 of 2005

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*Act No. of*

s. 14

Part 4 – Concluding Provision

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**PART 4 – CONCLUDING PROVISION**

**14. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.