

TASMANIA

**MONETARY PENALTIES ENFORCEMENT
(CONSEQUENTIAL AMENDMENTS) BILL (No. 2)
2008**

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**MONETARY PENALTIES ENFORCEMENT
(CONSEQUENTIAL AMENDMENTS) BILL (No. 2)
2008**

*(Brought in by the Minister for Justice, the Honourable David
Edward Llewellyn)*

A BILL FOR

An Act to amend the *Monetary Penalties Enforcement Act 2005*, the *Local Government (Highways) Act 1982* and the *Traffic Act 1925*

Be it enacted by His 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:

1. Short title

*This Act may be cited as the *Monetary Penalties Enforcement (Consequential Amendments) Act (No. 2) 2008*.*

2. Commencement

This Act is taken to have commenced on 28 April 2008.

3. Consequential Amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 3

Local Government (Highways) Act 1982

1. Section 94 is amended as follows:

- (a) by omitting the definition of “owner” from subsection (1) and substituting the following definition:

“monetary penalty” means a monetary penalty within the meaning of the *Monetary Penalties Enforcement Act 2005*;

- (b) by omitting the definition of “vehicle” from subsection (1) and substituting the following definitions:

“registered operator” means a registered operator within the meaning of the *Traffic Act 1925*;

“vehicle” means a vehicle within the meaning of the *Vehicle and Traffic Act 1999*;

- (c) by omitting from subsection (2) “owner” twice occurring and substituting “registered operator”.

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2. After section 94, the following section is inserted in Part VII:

94A. Proceedings in relation to offences under this Part

- (1) This section applies to an offence under this Part.
- (2) Subject to this section, where an offence to which this section applies occurs in relation to a vehicle, the person who, at the time the offence occurred, was the registered operator of the vehicle is, by virtue of this section, guilty of the offence as if he or she were the person driving or in charge of the vehicle at that time.
- (3) A person is not guilty of an offence under subsection (2) if he or she establishes that he or she was not driving or in charge of the vehicle at the time of the occurrence of the offence.
- (4) If a registered operator who has been served with an infringement notice under section 100 wishes to establish that he or she was not driving or in charge of the vehicle at the time of the occurrence of the offence, he or she must –
 - (a) lodge with the corporation a notice of election to have the matter heard in court; or

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- (b) provide a statutory declaration to the corporation stating that at the time of the offence –
 - (i) the vehicle was being driven by some other person without his or her knowledge or consent; or
 - (ii) the vehicle was in the charge of another person and stating the name of that person; or
 - (iii) the person had completed as transferor an application for the transfer of the registration and stating the name of the transferee.
- (5) A statutory declaration provided to the corporation under subsection (4) is taken to be an application for withdrawal of an infringement notice under section 24 of the *Monetary Penalties Enforcement Act 2005*.
- (6) A person is not entitled to rely on a defence as referred to in subsection (3) unless he or she gives, within 21 days of the service on him or her of a complaint and summons relating to the offence, to the clerk of the court specified in the summons, written notice of his or her

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intention to rely on that defence, together with a statutory declaration in accordance with subsection (4)(b).

- (7) Proceedings must not be heard in relation to an offence to which this section applies unless the defendant referred to in the complaint and summons relating to the offence was, at the time of the service of the complaint and summons on him or her, notified in writing of the provisions of this section.
- (8) A complaint and summons to which this section relates is to contain an address at which a notice under subsection (6) may be lodged.
- (9) Where there are 2 registered operators of a vehicle –
 - (a) a prosecution for an offence to which this section applies may be brought against one or both of them; and
 - (b) if the court is satisfied that such an offence has been committed and a defence is not established under subsection (3), the defendants, or any one of them who does not establish such a defence, may be found guilty of the offence.

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- (10) Where a monetary penalty is imposed on 2 registered operators of a vehicle who have been found guilty, or who have been taken to have been convicted under section 20 of the *Monetary Penalties Enforcement Act 2005*, of an offence to which this section applies, the total of any monetary penalty imposed in respect of that offence is not to exceed the maximum monetary penalty that could have been imposed if only one of them had been found guilty, or taken to have been convicted, of that offence.
- (11) Where –
- (a) a person on whom a complaint and summons, relating to an offence to which this section applies has been served, gives to the clerk of the court specified in the summons written notice of his or her intention to rely on the defence under subsection (3) together with a statutory declaration stating that the vehicle was in the charge of another person and stating the name of that person; and
 - (b) proceedings in respect of that offence are taken against the person named in the statutory declaration as being in charge of the vehicle –

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the statutory declaration is evidence that the person named in the statutory declaration as being in charge of the vehicle was in charge of the vehicle at all relevant times relating to the offence.

- (12) Nothing in this section affects the liability of the actual offender but, where a monetary penalty has been imposed on or recovered from any person in relation to an offence to which this section applies, a further monetary penalty must not be imposed on or recovered from any other person in relation to the offence.

3. Section 97 is amended as follows:

- (a) by omitting paragraph (d) from subsection (6);
- (b) by omitting from subsection (10) “an owner” and substituting “a registered operator”;
- (c) by omitting from subsection (10) “owner’s” and substituting “registered operator’s”;
- (d) by omitting from subsection (10) “owner” second occurring and substituting “registered operator”;

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- (e) by omitting from subsection (10)(b) “owner” and substituting “registered operator”;
 - (f) by omitting from subsection (11)(c) “owner” twice occurring and substituting “registered operator”.
- 4. Section 98(3) is amended by omitting paragraph (a).
 - 5. Section 99(11) is amended by omitting paragraph (a).
 - 6. Section 100 is amended by omitting subsection (1) and substituting the following subsection:
 - (1) A parking attendant may serve an infringement notice on the registered operator of a vehicle if of the opinion that the vehicle has been used in the commission of an offence under section 97, 98 or 99.
 - 7. Section 103(1) is amended by omitting “owner” and substituting “registered operator”.
 - 8. Section 106(1) is amended as follows:

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- (a) by omitting from paragraph (a) “owner” and substituting “registered operator”;
- (b) by omitting from paragraph (d) “owner” and substituting “registered operator”.

Monetary Penalties Enforcement Act 2005

1. Section 3 is amended by omitting “electing to have” from paragraph (c) of the definition of “infringement notice” and substituting “having”.

Traffic Act 1925

1. Section 43GC is repealed and the following section is substituted:

43GC. Suspension of registration on non-compliance with notice of demand

- (1) In this section –

“non-complying registered operator” means a body corporate that has –

- (a) been taken to have been convicted in accordance with section 20 of the *Monetary Penalties Enforcement Act 2005* of an offence under section 43G(3) in respect

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of non-compliance with a
notice of demand; or

(b) been convicted of that
offence by a court.

(2) If a non-complying registered operator is convicted, or taken to have been convicted, of an offence, then, by that conviction, the registration of the vehicle specified in the notice of demand is suspended for a period of 14 days starting on the date specified in a notice of suspension served on the registered operator of the vehicle by the Registrar of Motor Vehicles.

(3) If –

(a) in the normal course of events, the period of registration of the vehicle referred to in subsection (2) would end, and therefore would need to be renewed, within the 14-day period specified in the notice of suspension –

(i) the registration of that vehicle is suspended for that part of that 14-day period during which the registration continues; and

(ii) the registration of that vehicle may not be

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renewed until that 14-day
period has ended; or

- (b) the vehicle is not registered, that vehicle may not be registered, or the registration of that vehicle may not be renewed, until that 14-day period has ended.
- (4) The penalties imposed by subsection (2) in respect of an offence under section 43G(3) are in addition to any other penalty imposed under this Act in respect of that offence.