

SECOND READING SPEECH

Monetary Penalties Enforcement Amendment Bill 2011

Mr Speaker, when the *Monetary Penalties Enforcement Act 2005* commenced in April 2008 it introduced a completely new way of enforcing the payment of fines and infringement notice penalties in Tasmania.

The Monetary Penalties Enforcement Service is responsible for enforcing the payment of monetary penalties, including fines imposed by the courts and infringement notices issued by state and local government entities.

By ensuring that those ordered to pay monetary penalties do in fact meet their obligations, offending behaviour is corrected and recidivism rates are reduced.

Since the introduction of the *Monetary Penalties Enforcement Act*, both the number of fines imposed by the Courts and the number of infringement notices referred to the Service have dropped steadily.

While part of this reduction is certainly due to other factors, for example, specific road safety campaigns, undoubtedly some of it is because Tasmanians now know that enforcement action will be taken to ensure that payment is made.

A further example of the success of the system is the speed with which fines and infringement notices are paid.

When the Act first commenced, 56% of those who paid a fine or infringement notice did so within 28 days of its issue. Now, 70% pay within 28 days.

The new system, combined with specific enforcement campaigns have resulted in the reduction of aged-debt owed to the Crown by in excess of \$11 million from the 2008-09 financial year to date.

Because it is collecting aged-debt, the Service is currently collecting more than the total amount of monetary penalties imposed in the year.

In the 2009-10 year the Service received over \$22 million as compared to less than \$14 million received in the 2007-2008 year, while during the same period, as I have already mentioned, the number of fines imposed and infringement notices issued has fallen.

The Service conducts specifically-targeted enforcement campaigns to support the enforcement process. For example, a campaign may target a specific offence such as road safety offences or a geographical area, such as specific suburbs.

The Service also concentrates on contacting the debtor and coming to an arrangement about repayment. This person-centric approach is very successful and has attracted the attention of other jurisdictions. The South Australian fines enforcement body has already visited the Service with a view to improving their collection rates, and there has been interest from both Western Australia and Queensland in doing the same.

However, as is to be expected with a completely new and complex system, some sections of the Act require clarification and some overlooked consequential amendments have been identified.

This Bill makes the required changes to ensure that the *Monetary Penalties Enforcement Act* continues to operate efficiently and effectively.

Mr Speaker, I will speak to each amendment in the order that it appears in the Bill.

The definition of “fine” in section 3 of the Act is to be amended by the insertion of a new category – a pecuniary penalty order under the *Crime (Confiscation of Profits) Act 1993* – in the definition.

The Director of Public Prosecutions, who is currently responsible for enforcing payment of these orders, is not equipped to deal with requests for the payment of such penalties by instalments or to proceed to civil enforcement for non-payment.

Referral of these orders to the Director of Monetary Penalties will ensure that the full range of payment and enforcement options can be applied to pecuniary penalty orders.

The Bill also makes consequential amendments to the *Crime (Confiscation of Profits) Act 1993* to clarify that collection and enforcement of pecuniary penalty orders will be by the Director, Monetary Penalties Enforcement Service, and not by civil proceedings as is currently the case.

In addition, a new provision is to be inserted in that Act to clarify that a pecuniary penalty order is to be paid within 28 days unless the order specifies another period for payment.

The definition of “notice of election” in section 3 is amended to clarify that it applies to a notice under 17(1)(d) as well as 15(1)(d).

Section 9 of the Monetary Penalties Enforcement Act is being amended to reflect the reality that all court fines are automatically referred to the Director, Monetary Penalties Enforcement Service, through the FIND database so there is no realistic option, or desire, for a fee-paying public sector body such as a Council to step in to prevent referral and pursue the matter in the Civil Division of the Magistrates Court instead.

Section 10 of the Act is amended to confer functions and powers on the Director consistent with the recently amended *Commonwealth Service and Execution of Process Act 1992*, which now provides for a cooperative and simplified mechanism for enforcing court-imposed fines across State and Territory borders. Apprehension and imprisonment of the debtor will no longer be required for enforcement.

The Bill removes the requirement in section 12 that an enforcement officer be an assistant bailiff under the *Magistrates Court (Civil Division) Act 1992*.

The requirement was initially inserted so that some of the rules applying to an assistant bailiff also apply to an enforcement officer, for example, which goods may not be seized.

However, that requirement unintentionally imposed unnecessary duties on enforcement officers such as reporting to the Registrar of the Magistrates Court who has no role in the new collection process.

Any necessary restrictions on goods that may be seized or other operational rules are imposed by administrative guidelines and contract conditions.

The Bill amends section 23 of the Act to incorporate fee-paying public sector bodies in that section, and repeals section 24, as the two processes for withdrawal of an infringement notice were almost identical.

Sections 23, 25 and 50 of the Act are also amended to provide that any money paid in respect of a withdrawn infringement notice or a fine which has been quashed on appeal can be redirected to satisfy other monetary penalties owed by the person so long as an enforcement order is able to be issued in respect of those other monetary penalties.

Currently the Act provides that where an infringement notice is withdrawn or an appeal upheld, any monetary penalty already paid must be refunded unless the alleged offender has actually been issued with an enforcement order in respect of another monetary penalty.

The cost of issuing the additional enforcement order then gets added to the amount owed by the offender. This is unfair and simply adds to the size of the person's debt so the Bill removes the requirement for a further enforcement order to be issued.

Section 27 of the Act is amended to clarify the effect of a variation of payment conditions notice made after a sanction has been imposed.

A variation of payment condition notice (usually to pay a set amount each week until the monetary penalty is discharged) may be requested at any time. Sometimes the application is made after an enforcement order has been issued, or after an administrative or civil sanction has been imposed.

Experience shows that the administrative sanction like suspension of a driver licence is very effective in getting a debtor to make arrangements to pay off their monetary penalty.

Once a payment arrangement has been entered into the sanction will remain in force until the Director is satisfied that the person is complying, and is likely to continue to comply, with their payment arrangement. At that point the sanction will be revoked.

The sanction may be reinstated if the person later on contravenes the variation of payment notice. A consequential amendment is made to section 54 in this respect.

In the case of most civil sanctions, a sanction will remain in effect after the issue of a variation of payment conditions notice, but if the Director is satisfied that the person is complying, and is likely to continue to comply, with the notice then no action or further action to enforce the sanction will be taken.

Enforcement action on the sanction may be taken if the person later contravenes the variation of payment conditions notice.

In the case of a redirection of money owing order, where an application for a variation of payment conditions application is made it is to be treated as an application to cancel or vary the redirection order.

Section 35 of the Act is amended by the inclusion of a definition of “prescribed unit” for the purpose of the section.

The definition relates to the term “prescribed unit” as defined in regulations made under the *Sentencing Act 1997*.

The Bill inserts a new section 43A to give statutory recognition to the fact that the Director is to pay any amount received in satisfaction of a compensation order to the person entitled to the compensation under the order.

The current wording of section 43 leaves open the possibility that a compensation order could be enforced by a sanction imposed by the Director at the same time as it is pursued in court by the intended beneficiary of the award, which is not an ideal situation.

This Bill removes subsection 43(2) and this change, together with amendments to the *Sentencing Act 1997* which I will mention later, avoids the possibility of a person being subject simultaneously to both enforcement orders and sanctions and to civil penalties.

A number of amendments have been made to clarify the operation of Part 6 and to reflect more accurately what takes place in practice.

At present there is no legislative requirement for the service of a notice on an enforcement debtor by the Registrar of Motor Vehicles advising that a driver licence or vehicle registration has been suspended, even though such a notice is in fact provided.

This Bill therefore amends sections 56 and 60 by inserting a provision to the effect that when the Registrar of Motor Vehicles suspends a driver licence or vehicle registration on receipt of a written notice of the Director’s direction to do so, the Registrar must record the direction in the driver licence register kept under the *Vehicle and Traffic Act 1999* and serve on the enforcement debtor a notice of suspension which states the day on which the suspension takes effect.

These amendments mirror provisions in the Vehicle and Traffic Act in relation to suspension of driver licence and vehicle registration under that Act.

In addition sections 56 and 60 are amended to clarify that when a driver licence or vehicle registration expires while under suspension under this Part the enforcement debtor will be taken to be ineligible to be issued with a driver licence or may not renew a vehicle registration while that suspension continues in force.

The Bill also overhauls Division 2 of Part 7 to ensure that the process of issuing an enforcement warrant imposing a charge on registered land operates as intended.

The Bill amends section 68 to require the Recorder of Titles to register an enforcement warrant to ensure that a warrant falls within the definition of a “dealing” within the meaning of the *Lands Titles Act 1980*.

The Bill also amends subsection 68(10) to clarify that an enforcement warrant registered by the Recorder is taken to be a mortgage for the purpose of Division 5 of Part VI of the Land Titles Act.

The Bill amends section 70 of the Act to require the Director to lodge a discharge of an enforcement warrant with the Recorder of Titles and for the Recorder to remove the enforcement warrant from the Register on receipt of notice of the discharge.

The Bill amends section 109 of the Act to make provision for the Director to deem an amount owed by an enforcement debtor uncollectable where the enforcement debtor has become bankrupt and the amount owing is provable in bankruptcy.

A new section 121A is inserted in the Act to facilitate proof of certain facts in court proceedings.

Currently where an enforcement debtor appears in Court charged with an offence such as driving while his or her licence is under suspension and mounts a defence of being unaware of the suspension, the Director may be summoned to give evidence from his records of notices issued to, and personal contact made with, the debtor.

Because of this the Director has been required to attend Court at least 3 times per week at different locations around the State.

This Bill amends the Act to allow for the admissibility in legal proceedings of evidentiary certificates signed by the Director to facilitate the proof of certain facts.

Similar certificates have been used for many years under the Vehicle and Traffic Act in relation to information held in the records of the Registrar of Motor Vehicles.

The Bill also makes some further minor amendments to the Act, including amending section 120(1)(c) to remove the phrase “a notice of intention” as there is no such notice contained in the Act.

Part 3 of the Bill includes two amendments that need to apply retrospectively and therefore have a different commencement date.

The definition of “public sector body” in section 3 is amended by the Bill to clarify that an individual authorised to issue or serve an infringement notice under other legislation comes within the definition.

This amendment is necessary because, while the Monetary Penalties Enforcement Act refers to infringement notices issued by a “public sector body”, the various Acts and Regulations which give authority for infringement notices to be issued invariably provide that the infringement notice is issued by an authorised officer, police officer or other individual.

This leaves open the possibility of a technical challenge to the use of the Act to enforce payment of an infringement notice on the grounds that the infringement notice was not issued by a public sector body as such but by a particular authorised individual.

This amendment will need to commence retrospectively to the commencement of the Act (28 April 2008) to ensure that no challenges are made to infringement notices issued since that date.

Section 14 is amended to clarify the meaning of “prescribed penalty or penalties that are applicable” in subparagraph (a)(ii).

The intended meaning was that an infringement notice should contain the penalty or penalties relevant to the offence for which the notice was issued.

However, section 7(a) of the Acts Interpretation Act 1931 provides that the word “prescribed” means “prescribed by, or by regulations made under, the Act in which the word appears”, whereas the penalties for infringement notices are set out in the legislation that creates the offence.

To give effect to the intention of section 14 this Bill amends the section to make it clear that “prescribed” refers to penalties prescribed under other legislation.

This amendment will commence retrospectively on the commencement date of the Act to ensure that there can be no challenge to any infringement notice issued since that time.

Parts 4 to 12 of the Bill address provisions of other Acts to bring them into line with the Monetary Penalties regime.

Amendments to the *Annulled Convictions Act 2003*; section 110 of the *Inland Fisheries Act 1995*; section 226 of the *Living Marine Resources Management Act 1995*; section 86 of the *Radiation Protection Act 2005*

and regulation 4 of the *Trade Measurement (Tasmania) Administration Regulations 2000* will replace the phrase “acceptance of an infringement notice” with “taken to have been convicted under section 20 of the *Monetary Penalties Enforcement Act 2005*” for consistency with the Act

The *Local Government (Highways) Act 1982* is amended by the Bill to provide for a person other than the registered operator to be issued with an infringement notice in relation to an offence under that Act where there is evidence that that person had charge of the motor vehicle to which the offence relates at the relevant time.

Section 94A(4) of the *Local Government (Highways) Act 1982* allows the registered operator of a motor vehicle who has received an infringement notice to submit a statutory declaration relating to who was driving the vehicle at the time of an offence to the Council. This statutory declaration is to be treated as an application for the withdrawal of the infringement notice.

However, in a situation where the Council accepts a statutory declaration and withdraws the infringement notice against the registered operator, the Council has no power to issue a subsequent infringement notice against a person named in the statutory declaration as the driver because currently section 100 of the Act provides for infringement notices to be issued only against the registered operators of vehicles.

Amendments to section 94A and 100 will overcome this shortcoming. This Act is also amended to include a new section 94A(2A) to clarify the situation where an offence relates to a thing other than a motor vehicle.

Road Safety (Alcohol and Drugs) Act 1970

This Act is amended by the insertion of a new subsection (3B) in section 6 to exclude subsections (2) and (3) from applying to a person who does not have a driver licence because of a Monetary Penalties Enforcement Act suspension.

As the licence has been suspended to enforce payment of a monetary penalty and not because of a vehicle offence the imposition of the mandatory minimum penalties required for subsections 6(2) and (3), in addition to a discretionary penalty for driving without a licence, would be unfair.

This exclusion was previously included in section 58 of the Monetary Penalties Enforcement Act 2005 but is to be relocated as it is preferable for the exemption to appear in the legislation creating the specific offence in relation to unlicensed drivers.

Sentencing Act 1997

The Bill amends Section 45 of the Sentencing Act 1997 to reflect the fact that fines imposed by the Supreme Court are now collected and enforced by the Director, Monetary Penalties Enforcement Service.

The Bill also amends section 68 and 69 of this Act to reflect the fact that compensation orders made by the Court of Petty Sessions are collected and enforced by the Director, Monetary Penalties Enforcement Service unless he or she has deemed the compensation order uncollectible, in which case it becomes a civil debt.