

## CLAUSE NOTES

### *Sentencing Amendment (Fines Without Recording Convictions) Bill 2016*

**Clause 1: Short title**

Clause 1 cites the Bill as the *Sentencing Amendment (Fines Without Recording Convictions) Act 2016*.

**Clause 2: Commencement**

Clause 2 provides for the Act to commence on the day on which it receives Royal Assent.

**Clause 3: Principal Act**

Clause 3 provides that the Principal Act to which the amendments in Part 2 apply is the *Sentencing Act 1997*.

**Clause 4: Section 4 amended**

Clause 4 amends the definition of 'fine' in section 4 of the *Sentencing Act 1997*.

Section 4 of the *Sentencing Act 1997* is the interpretation section of the Act and contains definitions of terms used in the Act.

At present, section 4 of the *Sentencing Act 1997* defines 'fine' to mean a sum of money payable by an offender on conviction of an offence.

Clause 4 will expand the definition of fine so that the definition incorporates circumstances where an offender is fined by a court following a finding of guilt, even where no conviction is recorded.

**Clause 5: Section 7 amended**

Clause 5 amends subsection 7(e) of the *Sentencing Act 1997*.

Section 7 of the *Sentencing Act 1997* contains sentencing orders that a court can make once an offender has been found guilty of an offence. One of the sentencing orders that a court can make is a fine, but subsection 7(e) only allows a fine if the court also records a conviction for the offence.

The amendment to subsection 7(e) contained in the Bill changes the wording of the subsection to allow courts to impose a fine whether or not it also records a conviction for an offence.

**Clause 6: Section 8 amended**

Clause 6 amends subsection 8(3) and paragraphs 8(3)(b) and 8(4)(b) of the *Sentencing Act 1997*.

Section 8 of the *Sentencing Act 1997* allows courts to combine sentencing orders in certain combinations.

Clause 6 allows courts to combine sentencing orders of a fine where no conviction is recorded with a probation order and a rehabilitation order.

**Clause 7: Section 42B inserted**

Clause 7 inserts new section 42B into the *Sentencing Act 1997*.

Many pieces of legislation set specific fines for particular offences, but allow courts to impose fines only where the offender is convicted of the offence. This prevents courts from imposing fines where an offender is guilty of an offence but no conviction has been recorded.

To ensure that courts will be able to impose a fine in a broad range of circumstances, the new subsection 42B(1) allows a court to impose a fine even where no conviction has been recorded, regardless of whether the legislation setting the fine for the particular offence says that there is a requirement for a conviction.

Some legislation permits or requires courts to impose a higher penalty for a person who is convicted of a second or subsequent offence against a provision.

The new subsection 42B(2) allows courts to impose a higher penalty for a second or subsequent offence, even if the offender has been found guilty of, but no conviction has been recorded for, either of the offences.

**Clause 8: Section 44 amended**

Clause 8 amends paragraph 44(4)(a) of the *Sentencing Act 1997*.

Section 44 of the *Sentencing Act 1997* provides for the periods for payment of a fine and at present the period can commence from the date of conviction.

Clause 8 will amend paragraph 44(4)(a) so that the period for the payment of a fine can commence from either the date of conviction or the date of the finding of guilt.

**Clause 9: Section 62 amended**

Clause 9 amends subsection 62(6) of the *Sentencing Act 1997*.

Courts have a power under subsection 7(f) of the *Sentencing Act 1997* to adjourn proceedings and, on the offender giving an undertaking with conditions attached, order the release of the offender.

Section 62 of the *Sentencing Act 1997* deals with breaches of conditions of an undertaking made under section 7(f). Under section 62, a court can impose a fine if satisfied that an offender failed to comply with a condition of an undertaking.

The amendment to subsection 62(6) will ensure that the fine will be taken for all purposes to be a fine payable on conviction of an offence or on a finding of guilt in relation to an offence.

#### **Clause 10: Section 104AA inserted**

Clause 10 inserts new section 104AA into the *Sentencing Act 1997*.

New section 104AA ensures that any amendments made to the *Sentencing Act 1997* as a result of the *Sentencing Amendment (Fines Without Recording Convictions) Act 2016* will apply to an offence whether the offence was committed before or after the changes brought in by the *Sentencing Amendment (Fines Without Recording Convictions) Act 2016*.

#### **Clause 11: Principal Act**

Clause 11 provides that the Principal Act to which the amendments in Part 3 apply is the *Monetary Penalties Enforcement Act 2005*.

The *Monetary Penalties Enforcement Act 2005* gives the Director of the Monetary Penalties Enforcement Service (MPES) certain powers, including the power to collect and enforce fines and monetary penalties.

#### **Clause 12: Section 3 amended**

Clause 12 amends the definition of 'fine' in section 3 of the *Monetary Penalties Enforcement Act 2005*.

Section 3 of the *Monetary Penalties Enforcement Act 2005* is the interpretation section of the Act and contains definitions of terms used in the Act.

Clause 12 will expand the definition of 'fine' so that it incorporates circumstances where an offender is fined by a court following a finding of guilt, even where no conviction is recorded. This amendment ensures that the Monetary Penalties Enforcement Service has a power to enforce fines made by courts where no conviction has been recorded.

#### **Clause 13: Section 109 amended**

Clause 13 amends subsection 109(5) of the *Monetary Penalties Enforcement Act 2005*.

Subsection 109(5) deals with the effects of the Director of MPES deeming a monetary penalty to be uncollectable.

Clause 13 amends subsection 109(5) so that where the Director of MPES deems a monetary penalty to be uncollectable under section 109, that determination will not annul any finding of guilt for the offence.

**Clause 14:                    Repeal of Act**

Clause 14 inserts a standard repeal provision to remove the empty shell of the Bill after all its provisions have been transferred and have come into effect in the Principal Acts.