

TASMANIA

SENTENCING AMENDMENT (FINES WITHOUT RECORDING CONVICTIONS) BILL 2016

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SENTENCING AMENDMENT (FINES WITHOUT RECORDING CONVICTIONS) BILL 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.

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Part 2 – Sentencing Act 1997 Amended

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”;

*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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Part 2 – Sentencing Act 1997 Amended

(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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Part 2 – Sentencing Act 1997 Amended

committed before or after the provision
was so amended.

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Part 3 – Monetary Penalties Enforcement Act 2005 Amended

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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”.

*No. 57 of 2005

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Part 4 – Concluding Provision

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.