

TASMANIA

---

**MONETARY PENALTIES ENFORCEMENT  
(CONSEQUENTIAL AMENDMENTS) BILL 2008**

---

**CONTENTS**

1. Short title
  2. Commencement
  3. Effect of certain consequential amendments
  4. Consequential Amendments
- Schedule 1 – Consequential Amendments



**MONETARY PENALTIES ENFORCEMENT  
(CONSEQUENTIAL AMENDMENTS) BILL 2008**

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

**A BILL FOR**

**An Act to amend certain Acts and statutory rules  
consequent on the enactment of the *Monetary Penalties  
Enforcement Act 2005***

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  
2008*.

**2. Commencement**

This Act commences on the day on which  
section one of the *Monetary Penalties  
Enforcement Act 2005* commences.

**3. Effect of certain consequential amendments**

The amendment by this Act of a provision of any  
regulations, rules or by-laws made under any Act  
does not prevent that provision or any other

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**s. 4**

---

provision of those regulations, rules or by-laws  
from being amended or rescinded by any  
subsequent regulations, rules or by-laws.

**4. Consequential Amendments**

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

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 4

***Appeal Costs Fund Act 1968***

1. Section 2 is amended by inserting after the definition of “court of summary jurisdiction” the following definition:

**“Director, MPES”** means the Director, Monetary Penalties Enforcement Service appointed under section 8 of the *Monetary Penalties Enforcement Act 2005*;

2. Section 6(1)(a) is amended by omitting “section 5” and substituting “section 5(1)”.

3. After section 6, the following section is inserted:

**6A. Fees to be sent to Registrar**

The Director, MPES is to cause all fees payable under section 5(2) to be sent to the Registrar.

***Environmental Management and Pollution Control***  
***(Environmental Infringement Notices) Regulations 2006***

1. Regulation 4 is rescinded.

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

2. Schedule 1 is rescinded.

***Environmental Management and Pollution Control Act 1994***

1. Section 3(1) is amended as follows:
  - (a) by omitting “Commonwealth;” from the definition of “waters within the limits of the State” and substituting “Commonwealth.”;
  - (b) by omitting the definition of “withdrawal notice”.
2. Section 70 is amended by omitting subsection (2).

***Irrigation Clauses Act 1973***

1. Section 2(1) is amended as follows:
  - (a) by omitting “Act;” from the definition of “water district” and substituting “Act.”;
  - (b) by omitting the definition of “withdrawal notice”.

***Local Government (Highways) Act 1982***

1. Section 97 is amended as follows:

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

- 
- (a) by inserting the following penalty after paragraph (d) in subsection (1):

Penalty: In the case of –

- (a) a first or second offence, a fine not less than 0.5 of a penalty unit and not exceeding one penalty unit; or
  - (b) a third or subsequent offence, a fine not less than one penalty unit and not exceeding 2 penalty units.
- (b) by omitting subsections (4) and (5);
- (c) by omitting from subsection (6) “to a complaint for a forfeit under” and substituting “in proceedings for an offence against”;
- (d) by omitting from subsection (6)(a) “a forfeit for” and substituting “an offence of”;
- (e) by omitting from subsection (6)(b) “a forfeit for” and substituting “an offence of”;
- (f) by omitting from subsection (9) “a forfeit” and substituting “an offence”;

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

- (g) by omitting from subsection (10) “for a forfeit”;
- (h) by omitting from subsection (10)(b) “forfeit” and substituting “penalty”;
- (i) by omitting from subsection (11) “a forfeit” and substituting “an offence”.

**2.** Section 98 is amended as follows:

- (a) by omitting from subsection (1) “who places or leaves” and substituting “must not place or leave”;
- (b) by omitting from subsection (1) “is liable on summary conviction to forfeit to the corporation not less than the sum of 0.5 penalty unit and not more than the sum of 1 penalty unit for a first or second conviction and not less than the sum of 1 penalty unit and not more than the sum of 2 penalty units for a subsequent conviction”;
- (c) by inserting the following penalty after subsection (1):

Penalty: In the case of –

- (a) a first or second offence, a fine not less than 0.5 of a penalty unit and not exceeding one penalty unit; or



*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

- (b) a third or subsequent offence, a fine not less than one penalty unit and not exceeding 2 penalty units.
- (d) by omitting subsection (2);
- (e) by omitting from subsection (3) “a forfeit” and substituting “an offence”;
- (f) by omitting from subsection (5) “a forfeit” and substituting “an offence”;
- (g) by omitting from subsection (6) “for a forfeit”;
- (h) by omitting from subsection (6)(b) “forfeit” and substituting “penalty”;
- (i) by omitting from subsection (7) “a forfeit” and substituting “an offence”.

**3. Section 99 is amended as follows:**

- (a) by omitting from subsection (9) “who parks” and substituting “must not park”;
- (b) by omitting from subsection (9) “allows” and substituting “allow”;
- (c) by omitting from subsection (9) “is liable on summary conviction to forfeit to the corporation the sum of 0.5 penalty unit for a first or second conviction and the

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

sum of 1 penalty unit for a subsequent conviction”;

- (d) by inserting the following penalty after subsection (9):

Penalty: A fine not less than 0.5 penalty units and not exceeding one penalty unit.

- (e) by omitting subsection (10);
- (f) by omitting from subsection (11) “a forfeit” and substituting “an offence”;
- (g) by omitting from subsection (13) “for a forfeit”;
- (h) by omitting from subsection (14) “for a forfeit”;
- (i) by omitting from subsection (14)(b) “forfeit” and substituting “penalty”;
- (j) by omitting from subsection (15) “for a forfeit”.

- 4.** Sections 100 and 101 are repealed and the following section is substituted:

**100. Infringement notices**

- (1) A parking attendant may serve an infringement notice on a person if of the

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

sch. 1

---

opinion that the person has committed an offence under section 97, 98 or 99.

- (2) An infringement notice under subsection (1) may be served by affixing it to the vehicle or other thing in respect of which the offence occurred.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.
- (4) The prescribed penalty for an infringement notice issued for an offence under section 97, 98 or 99 is the sum specified in by-laws of the corporation under whose authority the notice was issued.
- (5) Different sums may be specified for the purposes of subsection (4) according to the nature of the offence and whether payment is made within a specified time.
- (6) A person issued with an infringement notice under subsection (1) who wishes to rely on a defence under section 97, 98 or 99 may either elect to have the matter heard in court within the time allowed or provide a statutory declaration to the corporation within 28 days of the issue of the infringement notice setting out the details of the defence on which the person wishes to rely.

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

- (7) A statutory declaration provided to the corporation under subsection (6) is deemed to be an application for withdrawal of an infringement notice under section 24 of the *Monetary Penalties Enforcement Act 2005*.
  - (8) A person who removes a notice affixed to a vehicle or other thing under subsection (1) so that its contents do not become known to the person in charge of the vehicle is guilty of an offence and is liable on summary conviction to a fine not exceeding one penalty unit.
- 5. Section 102(1) is amended by omitting “forfeit or composition has been made” and substituting “the monetary penalty has been paid”.
- 6. Section 103(2) is amended by omitting paragraphs (a), (b), (c) and (d) and substituting the following paragraphs:
  - (a) a fine imposed by a court for an offence under section 97, 98 or 99;
  - (b) a monetary penalty payable in respect of an infringement notice issued for an offence under section 97, 98 or 99;

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

***Monetary Penalties Enforcement Act 2005***

**1. Section 3 is amended as follows:**

- (a) by omitting “fees” from the definition of “debt” and substituting “amount”;
- (b) by omitting “Court –” from paragraph (b) of the definition of “fine” and substituting “Court; and”;
- (c) by inserting the following paragraph after paragraph (b) in the definition of “fine”:
  - (c) a compensation levy under the *Victims of Crime Compensation Act 1994* –
- (d) by omitting “fees” from the definition of “monetary penalty” and substituting “amount”.

**2. After section 14, the following section is inserted in Division 1:**

**14A. Authorised person may require name, &c.**

- (1) A person authorised by law to issue an infringement notice (the authorised person) may require a person to give his or her name, address and date of birth if the authorised person reasonably believes that the person has committed an offence

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

for which an infringement notice may be issued.

- (2) A person must not fail or refuse to comply with a requirement under subsection (1) or, in response to such a requirement, state a name, address or date of birth that is false.

Penalty: Fine not exceeding 2 penalty units.

3. Section 15(2)(b) is amended by omitting “fee” and substituting “amount”.
4. Section 18(2)(c) is amended by omitting “fee” and substituting “amount”.
5. Section 27(2)(a) is amended by omitting “and accompanied by the prescribed fee”.
6. Section 36 is amended as follows:
  - (a) by inserting in subsection (1) “, (3A)” after “(3)”;
  - (b) by inserting the following subsection after subsection (1):

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

- (1A) The penalty for an offence under section 36(1) of the *Sentencing Act 1997* in respect of an MPCSO is a fine not exceeding 10 penalty units or imprisonment for a period not exceeding 3 months.
- (c) by inserting the following subsection after subsection (2):
  - (3) If an offender is found guilty of an offence under section 36(1) of the *Sentencing Act 1997* in respect of an MPCSO, the Director MPES, after consultation with the Director, Community Corrections, may revoke the MPCSO and enforce payment by other means of the monetary penalty for which the MPCSO was issued.

**7. Section 40 is amended as follows:**

- (a) by omitting from subsection (1) “penalty rescinded or reduced” and substituting “total penalty varied”;
- (b) by omitting subsection (6) and substituting the following subsections:
  - (6) The court may allow an application to vary a penalty if satisfied that the offender has

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

provided valid and relevant reasons why –

- (a) he or she did not elect to have the matter heard by a court within the time allowed by the infringement notice; and
- (b) the penalty should be different from the penalty imposed under the infringement notice.

(7) If the Court decides to grant an application it must set aside the total original penalty imposed by the infringement notice and substitute a new penalty.

(8) A new penalty substituted under subsection (7) is to be in accordance with section 7 of the *Sentencing Act 1997*.

**8.** Section 45(2) is amended by omitting “fees” and substituting “amount”.

**9.** After section 112, the following section is inserted in Division 2:



*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

**112A. Penalty may be increased if enforcement action is required**

If the Director issues an enforcement order or imposes any administrative sanction or civil sanction against an enforcement debtor, the monetary penalty owed by the enforcement debtor is increased by the prescribed amount.

**10. Section 122 is amended as follows:**

- (a) by inserting in subsection (1B) “and before the day on which section 1 commences” after “after 1 December 2007”;
- (b) by inserting the following subsection after subsection (1E):
  - (1F) If a person who is subject to an order imposing a fine made before the day on which section 1 commences applies to the Director for a variation of payment conditions in relation to that order, the order is to be dealt with under this Act as though it were an order made after that day.

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

***Police Offences (Liquor) Regulations 2005***

1. Regulation 4 is amended by omitting “section 62(2) of”.

***Sentencing Act 1997***

1. Section 4 is amended by omitting the definition of “pecuniary sum”.
2. Section 44 is amended by inserting after subsection (3) the following subsection:
  - (4) An order under subsection (1) or (2) may be made so as to apply from –
    - (a) the date of conviction; or
    - (b) if the offender is sentenced to a term of imprisonment that is not wholly suspended, the date on which the offender is released in respect of that term.
3. Section 52 is amended by omitting “warrant of apprehension or commitment issued against an offender under section 47 or 49” and substituting “warrant of commitment under section 46”.

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

4. Section 53(2) is amended by inserting “or the *Monetary Penalties Enforcement Act 2005*” after “section 47”.

***Sentencing Regulations 1998***

1. Regulation 4 is amended as follows:
  - (a) by omitting subregulation (1);
  - (b) by omitting from subregulation (2) “section 49” and substituting “section 46”.
2. Regulation 5 is amended by omitting “sections 48(2), (5), 50 and 51(1)” and substituting “section 48(1)”.

***Traffic Act 1925***

1. Section 3(1) is amended as follows:
  - (a) by omitting “only;” from the definition of “vehicle” and substituting “only.”;
  - (b) by omitting the definition of “withdrawal notice”.
2. Section 43L is amended by omitting subsection (2).

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

***Victims of Crime Compensation Act 1994***

1. Section 3 is amended by inserting after the definition of “compensation levy” the following definition:

**“Director, MPES”** means the Director, Monetary Penalties Enforcement Service appointed under section 8 of the *Monetary Penalties Enforcement Act 2005*;

2. Section 7 is amended as follows:

- (a) by omitting from subsection (1)(b) “a period specified by the court;” and substituting “28 days.”;
- (b) by omitting paragraph (c) from subsection (1);
- (c) by omitting from subsection (3) “14” and substituting “28”.

3. Section 8 is amended as follows:

- (a) by omitting from subsection (1) “a clerk of petty sessions” and substituting “the Director, MPES”;
- (b) by inserting in subsection (2) “or in a court of summary jurisdiction” after “Court”;

*Monetary Penalties Enforcement (Consequential Amendments)*  
*Act 2008*  
*Act No. of*

**sch. 1**

---

- (c) by omitting from subsection (2) “a clerk of petty sessions” and substituting “the Director, MPES”;
  - (d) by omitting subsection (3);
  - (e) by omitting from subsection (4)(d) “any clerk of petty sessions” and substituting “the Director, MPES”.
- 4.** Section 9(1) is amended by omitting “provided by sections 47 and 53 of the *Sentencing Act 1997* for the enforcement of fines” and substituting “a fine under the *Monetary Penalties Enforcement Act 2005*”.