

## CLAUSE NOTES

### Monetary Penalties Enforcement Amendment Bill 2009

#### Part 1

- Clause 1:** Short Title
- Clause 2:** Commencement date (most of the Act will commence on proclamation but Part 3 is to commence when the principal Act commenced).

#### Part 2

- Clause 3:** Defines the Principal Act for Part 2
- Clause 4:** Inserts “pecuniary penalty order made under the *Crime (Confiscation of Profits) Act 1993*” in the definition of “fine” in section 3 to enable collection through the MPEA;  
Amends definitions of “notice of election” and public sector body in section 3
- Clause 5:** Amends section 9 to remove the option for a fee-paying public sector body to enforce payment of a fine through the Civil Courts unless the Director has deemed it to be uncollectable and has removed it from any record of monies owing to the Director
- Clause 6:** Amends section 10 to confer on the Director functions and powers consistent with Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth
- Clause 7:** Amends section 12 to remove the requirement that an enforcement officer be

an assistant bailiff under the *Magistrates Court (Civil Division) Act 1992*

- Clause 8:** Amends section 23 to incorporate references to fee-paying public sector bodies as the procedure in respect of withdrawal of infringement notices is in practice almost identical for both types of public sector bodies.
- Clause 9:** Repeals section 24 as the relevant matters are now incorporated into section 23.
- Clause 10:** Amends section 25 to allow monies paid in respect of a withdrawn infringement notice to be retained if an enforcement order in respect of another monetary penalty could be issued against the relevant person.
- Clause 11:** Amends section 27 to clarify the effect of a variation of payment notice issued in response to an application made after a sanction under Part 6 or Part 7 has been imposed.
- Clause 12:** Amends section 35 to insert a definition of “prescribed unit” for the purposes of the section.
- Clause 13:** Amends the heading of Part 4 to more accurately reflect the contents of the Part.
- Clause 14:** Omits subsection (2) of section 43 to remove the possibility of a person being subject simultaneously to both enforcement orders /sanctions and civil penalties in respect to a compensation order.

- Clause 15:** Inserts a new section 43A to require the Director to pay an amount paid in respect of a compensation order to the person entitled to compensation under the order.
- Clause 16:** Amends the Heading of Part 5 to reflect the changes to the content of the Part.
- Clause 17:** Inserts a new section 46A to require the Director to serve an enforcement order that has been issued on the person in respect of whom it is issued.
- Clause 18:** Amends section 50 to allow monies paid in respect of an offence in relation to which a successful appeal has revoked the monetary penalty to be retained if an enforcement order could be issued against the relevant person in respect of another monetary penalty.
- Clause 19:** Amends section 54 to include unsatisfactory compliance with a variation of payment conditions notice or an MPCSO as grounds for the issue of an administrative sanction.
- Clause 20:** Amends section 56 to require the Registrar of Motor Vehicles to record a direction to suspend in the driver licence register kept under the *Vehicle and Traffic Act 1999*.  
Inserts a new subsection 56(2A) requiring the Registrar to give the enforcement debtor written notice of the suspension and the day the suspension takes effect.  
Amends subsections 56(4) and (5) to clarify that a driver licence suspended under this section may not be renewed, replaced nor a

duplicate issued and that the enforcement debtor is ineligible to be issued with a driver licence while the suspension is recorded in the driver licence register.

**Clause 21:** Amends section 58 to omit paragraph (1)(c) and subsection (2). The content of these provisions has been relocated into section 6 of the *Road Safety (Alcohol and Drugs) Act 1970*.

**Clause 22:** Amends section 59 by omitting subsection (2). The content of this subsection is now dealt with in section 60.

**Clause 23:** Amends section 60 to insert a new subsection (2A) to require the Registrar to give an enforcement debtor written notice of the suspension of his or her vehicle registration and the day on which the suspension takes effect.

Inserts a new subsection 60(2B) to prevent the renewal of registration, or issue of a duplicate certificate of registration, whilst a registration is suspended.

**Clause 24:** Substitutes a new section 68 to require the Director to serve an enforcement warrant imposing a charge on registered land on enforcement debtor; to require the Recorder of Titles to register an enforcement warrant lodged with the Recorder on the folio of the Register stated in the enforcement warrant and provides that an enforcement warrant issued under this section is taken to be a mortgage for the purpose of Division 5 of Part VI of the *Land Titles Act 1980*.

**Clause 25:** Amends section 69 to specify the subsections taken to have been satisfied.

**Clause 26:** Amends section 70 to insert new subsections (3), (4) and (5) to require a discharge of an enforcement warrant to be in an approved form; that the Director is to lodge the discharge of enforcement warrant with the Recorder and on lodgement the Recorder is to discharge and remove the enforcement warrant from the Register.

**Clause 27:** Amends section 109 to provide for a situation where a monetary penalty is provable in bankruptcy and the enforcement debtor has become bankrupt.

**Clause 28:** Clarifies section 120 in respect to non-reviewable decisions.

**Clause 29:** Inserts a new section 121A which provides for an evidentiary certificate signed by the Director to be evidence of the facts stated in it in any legal proceedings.

### **Part 3**

**Clause 30:** Defines the Principal Act (Monetary Penalties Enforcement Act) for the purpose of Part 3.

**Clause 31:** Amends section 3 by inserting a new paragraph (ca) in the definition of “public sector body”

**Clause 32:** Amends section 14 by inserting a definition of “prescribed penalty or penalties”

### **Part 4**

**Clause 33:** Defines the Principal Act for the purpose of Part 4.

**Clause 34:** Makes a consequential amendment to section 3 of that Act for consistency with the *Monetary Penalties Enforcement Act 2005*.

## **Part 5**

**Clause 35:** Defines the Principal Act for the purpose of Part 5

**Clause 36:** Makes a consequential amendments to section 32 of that Act for consistency with the *Monetary Penalties Enforcement Act 2005*

## **Part 6**

**Clause 37:** Defines the Principal Act for the purpose of Part 6

**Clause 38:** Amends section 21 of that Act to provide that unless otherwise specified on the order, a pecuniary penalty order is payable within 28 days; to provide that a pecuniary penalty order is taken to be a fine enforceable under the *Monetary Penalties Enforcement Act 2005* and that a pecuniary penalty order that has been deemed uncollectable under section 109 of the *Monetary Penalties Enforcement Act 2005* is taken to be a civil debt.

## **Part 7**

**Clause 39:** Defines the Principal Act for the purpose of Part 7

**Clause 40:** Makes a consequential amendment to section 110 of that Act for consistency with the *Monetary Penalties Enforcement Act 2005*

## **Part 8**

**Clause 41:** Defines the Principal Act for the purpose of Part 8

**Clause 42:** Makes a consequential amendment to section 226 of that Act for consistency with the *Monetary Penalties Enforcement Act 2005*

## **Part 9**

**Clause 43:** Defines the Principal Act for the purpose of Part 9

**Clause 44:** Amends section 94A of that Act by inserting a new subsection (2A) to provide for the situation where the offence related to a thing other than a motor vehicle, for example where a parking space is blocked by a large rubbish receptacle and makes further consequential amendments in relation to this.

Amends section 94A of that Act by inserting a new subsection (5A) to provide for the section to apply to a person named in a statutory declaration as being in charge of the vehicle or thing as if he or she were the registered operator.

**Clause 45:** Amends section 100 of that Act so that it also applies to a thing other than a vehicle and to insert a new subsection (1A) to allow an infringement notice to be served on a person referred to in new section 94A(5A).

## **Part 10**

**Clause 46:** Defines the Principal Act for the purpose of Part 10

**Clause 47:** Makes a consequential amendment to section 86 of that Act for consistency with the *Monetary Penalties Enforcement Act 2005*

**Part 11**

**Clause 48:** Defines the Principal Act for the purpose of Part 11

**Clause 49:** Amends section 6 of the of that Act by inserting a new subsection (3B) to ensure that a person who has a driver licence suspended under Part 6 of the *Monetary Penalties Enforcement Act 2005* is taken to hold a driver licence for the purpose of subsection 3(a).

**Part 12**

**Clause 50:** Defines the Principal Act for the purpose of Part 12

**Clause 51:** Amends section 45 of that Act to clarify that a Supreme Court fine is taken to have been made by the court of petty sessions for all purposes once a sealed copy of the order is delivered to the Administrator of the Magistrates Court and that the order is to be referred to the Director, Monetary Penalties Enforcement Service for collection and enforcement.

**Clause 52:** Amends section 68 of that Act to remove the ability of the Court to order instalment payments of a compensation order.

**Clause 53:** Amends section 69 of that Act to clarify that a compensation order made by a court of petty sessions is taken to be a fine enforceable under the *Monetary Penalties Enforcement Act 2005*



unless the amount owing under the order has been deemed uncollectable under section 109 of that Act when the order will be taken to be a judgement of the Magistrates Court (Civil Division).

**Part 13**

**Clause 54:** Provides for the repeal of this Act