

DRAFT SECOND READING SPEECH

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Sentencing Amendment (Fines Without Recording Convictions) Bill 2016

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Madam Speaker, this Bill provides for the addition of a new sentencing option of fine without conviction. It represents further progress in relation to the Government's policy to progressively phase out suspended sentences and introduce alternative sentencing options.

The *Sentencing Act 1997* (the Act) provides for the sentencing of offenders in Tasmania. Under the Act, courts can make a range of sentencing orders. One matter that influences the type of sentencing orders that can be made is whether or not a court records a conviction for an offence. Certain sentencing orders, including at present, fines, can only be ordered if the court decides to formally record a conviction for an offence.

This Bill will expand the sentencing powers of courts by allowing courts to impose a fine on an offender when the offender is found guilty of an offence, but no conviction is recorded for the offence. The Bill will also ensure that the Monetary Penalties Enforcement Service (MPES) can enforce such fines.

In August 2014, the Sentencing Advisory Council (SAC) published its Final Report on Non-Conviction Sentences (the Report). One of the recommendations contained in the Report was that section 7 of the Act be amended to allow a fine to be imposed without a conviction being recorded. The SAC noted that it is the long-held view of Tasmanian Magistrates that courts should be able to impose fines without recording a conviction and this was also a recommendation of the Wing Committee Report on Correctional Services and Sentencing in 1999 and the Tasmania Law Reform Institute Report on Sentencing in 2008. The SAC further noted that it was supported by the Chief Justice of the Supreme Court of Tasmania.

Under the present law, there are a number of circumstances in which courts would impose a fine, but decide not to because they would also have to formally record a conviction against an offender.

Sometimes a court decides not to record a conviction against an offender for an offence because the effect of recording a conviction would be a disproportionately heavy punishment on an offender. For example, recording a conviction may affect a person's current or future employment or their ability to obtain certain types of licence.

Allowing courts to impose fines without recording convictions is a common occurrence in other Australian jurisdictions. It is an option for courts in the Northern Territory, Queensland, South Australia and Victoria.

It is also available as a sentencing option in Tasmania when youths are sentenced under the *Youth Justice Act 1997*.

Madam Speaker, I will now turn to some specific provisions of the Bill.

Sentencing orders that can be made by a court and the combinations of those orders are contained in sections 7 and 8 of the *Sentencing Act 1997*. This Bill amends section 7 of the Act so that a court can fine an offender whether or not it decides to formally record a conviction for the offence.

Clause 6 of the Bill will allow courts to impose fines without recording convictions in conjunction with other sentencing orders, including probation orders and rehabilitation program orders.

Clause 7 of the Bill inserts new section 42B into the Act. A large number of Tasmanian statutes allow courts to impose fines, but in those statutes, the power to impose a fine only arises once an offender is 'convicted' of the offence.

New subsection 42B(1) will ensure that courts have a power to impose fines where an offender has been found guilty of an offence, regardless of whether the statute expresses a requirement that the offender be 'convicted' before the fine is imposed.

Many statutes contain provisions that allow courts to impose heavier fines for a second or further offence against a particular provision. Again, this power to impose a heavier fine is sometimes expressed as requiring a 'conviction' before the heavier fine can be imposed.

New subsection 42B(2) will ensure that a court can impose a heavier fine on an offender in accordance with existing penalty provisions for a second or subsequent offence, regardless of whether the court has recorded a conviction for the offences.

Clause 10 inserts new section 104AA into the Act.

New section 104AA will ensure that the amendments contained in this Bill can operate whether or not the offender committed the offence before or after the amendments commenced operation. This will mean that from the day these amendments are operational, a court will be able to apply the provisions, even if the offence was committed at a time when fines could only be imposed if a conviction was recorded.

The Bill also amends the *Monetary Penalties Enforcement Act 2005*.

The Director of MPES has the power to collect and enforce fines and other monetary penalties imposed on offenders. At present, the *Monetary Penalties Enforcement Act 2005* permits the Director of MPES to take action in relation to fines where a conviction has been recorded for the offence. The amendments contained in clauses 12 and 13 of the Bill will ensure that the Director of MPES has the power to deal with fines imposed by courts where no conviction has been recorded.

Madam Speaker, the Government conducted consultation on a draft version of this Bill, including targeted consultation with a number of key stakeholders across government and the legal profession. From comments received during the consultation process, stakeholders support amendments to allow courts to impose fines without recording convictions.

Madam Speaker, the amendments contained in this Bill will increase the sentencing options available to courts. In September, the Government tabled a Bill extending drug treatment orders to the Supreme Court and allowing for deferral of sentencing. The Government's five year plan to phase out suspended sentences of imprisonment and bring in new sentencing options, will ensure that courts have more sentencing options to deal with offenders and that the community can be confident that courts have appropriate powers to deal with offenders.

I commend the Bill to the House.