

TASMANIA

**MONETARY PENALTIES ENFORCEMENT
AMENDMENT BILL 2020**

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**MONETARY PENALTIES ENFORCEMENT
AMENDMENT BILL 2020**

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

**An Act to amend 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Monetary Penalties
Enforcement Amendment Act 2020*.

2. Commencement

- (1) Except as provided by subsection (2), this Act commences on the day on which this Act receives the Royal Assent.
- (2) This section, section 1 and Part 3 are taken to have commenced on [28 April 2008](#).

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**PART 2 – MONETARY PENALTIES ENFORCEMENT
ACT 2005 AMENDED**

3. Principal Act

In this Part, the *Monetary Penalties Enforcement Act 2005** is referred to as the Principal Act.

4. Section 84 amended (Issue of order for redirection of money owing)

Section 84 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) The Director, as soon as practicable after issuing an order for the redirection of money owing, must serve on the enforcement debtor a copy of the order.

5. Section 86 amended (When Director may issue order for redirection of earnings)

Section 86 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) An order for the redirection of earnings under subsection (1) must include advice to the employer that the employer may apply under section 98D to the Director

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for a review of the Director’s decision to issue the order.

6. Section 90A inserted

After section 90 of the Principal Act, the following section is inserted in Division 4:

90A. Director to be notified of change in employment

An enforcement debtor and his or her employer must, within 14 days of any significant change in the employment of the enforcement debtor that is likely to affect the order for the redirection of the enforcement debtor’s earnings notify the Director of that change.

Penalty: Fine not exceeding 15 penalty units.

7. Section 98 amended (Order to redirect debt owed to enforcement debtor)

Section 98 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (4A) An order for the redirection of money owing under subsection (1) must include advice to the person or ADI that the person or ADI may apply under section 98D to the Director for a review of the Director’s decision to issue the order.

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8. Sections 98B, 98C and 98D inserted

After section 98 of the Principal Act, the following sections are inserted in Division 4:

98B. Director to have regard to enforcement debtor's financial circumstances

In deciding whether to issue a redirection of money owing order to discharge all or part of an enforcement debtor's debt, the Director must have regard to any evidence before the Director of –

- (a) the enforcement debtor's means of satisfying the debt; and
- (b) the necessary living expenses of the enforcement debtor; and
- (c) any other liabilities of the enforcement debtor.

98C. Obligations of authorised deposit-taking institution

- (1) This section applies to an ADI on which the Director has served a redirection of money owing order.
- (2) An ADI must deduct from the account held by the enforcement debtor in respect of whom the redirection of money owing order has been issued, the amount specified in the redirection of money owing order.

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Penalty: Fine not exceeding 20 penalty units.

- (3) An ADI must pay the money deducted under subsection (2) to the Director within 2 days after being served with the redirection of money order.

Penalty: Fine not exceeding 20 penalty units.

- (4) Unless required under a redirection of money order to deduct a recoverable amount from a particular account held by the enforcement debtor with the ADI –
- (a) the ADI may choose the account from which to deduct the recoverable amount; and
 - (b) the ADI may deduct the recoverable amount by deducting lesser amounts from 2 or more accounts held by the enforcement debtor.

98D. Internal review

- (1) A person may apply to the Director for a review of the Director's decision to issue a redirection order under section 84.
- (2) An application must be made within 14 days after the day on which the applicant received the redirection order.

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(3) The Director must, on receipt of an application, review the decision to issue the redirection order.

(4) The Director may confirm, vary or revoke the redirection order.

9. Part 9A inserted

After section 108 of the Principal Act, the following Part is inserted:

PART 9A – INTERSTATE FINE ENFORCEMENT

Division 1 – Interpretation

108A. Interpretation of Part

(1) In this Part –

another jurisdiction means a jurisdiction other than Tasmania;

discharged, in relation to an interstate fine or part of such a fine, means discharged because of payment, remission, pardon or otherwise;

interstate fine means a monetary penalty that is payable by a person under an order in force under the law of another jurisdiction for any one or more offences, or alleged offences, against the law of that jurisdiction, and includes –

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- (a) any costs (including expenses or disbursements) payable by the person under the order; and
 - (b) such other amounts (if any) as may be prescribed by the regulations;

interstate fine enforcement authority for an interstate fine means a court, Government Department or other agency (or an officer of a court, Government Department or other agency) that is responsible for the enforcement of the interstate fine in the originating jurisdiction;

interstate fine enforcement order means an order under section 108C;

offender, in relation to an interstate fine or a Tasmanian monetary penalty, means the person on whom the interstate fine or monetary penalty was imposed;

order includes –

- (a) a verdict or judgment, and
- (b) a notice requiring the payment of a fine for an

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offence or alleged
offence;

originating jurisdiction means the jurisdiction in which the order under which an interstate fine is payable was made;

participating jurisdiction means another jurisdiction –

(a) in which Tasmanian enforcement orders are enforceable under the laws of that jurisdiction;
or

(b) that is prescribed by the regulations to be a participating jurisdiction for the purposes of this Part;

Tasmanian enforcement order means an enforcement order in relation to a Tasmanian monetary penalty;

Tasmanian monetary penalty means a monetary penalty for which Tasmania is the originating jurisdiction.

- (2) If a provision of this Part confers a function on the originating jurisdiction for an interstate fine, that function may be exercised by –

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- (a) an interstate fine enforcement authority for the interstate fine, or
- (b) any other body or person that the Director is satisfied is authorised to exercise the function on behalf of the originating jurisdiction.

108B. Relevant connection of offender with a jurisdiction

For the purposes of this Part, an offender has a relevant connection with a jurisdiction if the offender has any one or more of the following connections with the jurisdiction:

- (a) the offender is resident in the jurisdiction;
- (b) the offender holds a licence or permit to drive a motor vehicle issued in the jurisdiction;
- (c) the offender has debts owing to him or her in the jurisdiction in respect of which an order for the redirection of money owing could be issued;
- (d) the offender has a motor vehicle that is registered in the jurisdiction;
- (e) the offender has property that is located in the jurisdiction;

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- (f) the offender has such other connection with the jurisdiction as may be prescribed by the regulations.

Division 2 – Enforcement of interstate fines in Tasmania

108C. Power to make interstate fine enforcement orders

- (1) The Director may make an order (an interstate fine enforcement order) for the enforcement of an interstate fine in this jurisdiction.
- (2) An interstate fine enforcement order may be made in relation to an interstate fine only if –
 - (a) the originating jurisdiction for the interstate fine is a participating jurisdiction, and
 - (b) a request for the order has been duly made under this Part by the interstate fine enforcement authority for the interstate fine, and
 - (c) Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth does not apply to the fine.

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- (3) A single order may be made for the enforcement of 2 or more interstate fines payable by a person.
- (4) An interstate fine enforcement order may be made in the absence of, and without prior notice to, the person liable to pay the interstate fine.
- (5) The Director must not make an interstate fine enforcement order unless the originating jurisdiction for the interstate fine, or a person or body acting on its behalf, is required (whether because of statutory duty, agreement or otherwise) to notify the Director if the interstate fine is partially or fully paid in the originating jurisdiction.

108D. Effect of interstate fine enforcement order

This Act, other than Part 8, applies to the enforcement of an interstate fine following the making of an interstate fine enforcement order in the same way as it applies to a fine following the making of a Tasmanian enforcement order.

108E. Request for interstate fine enforcement order

- (1) The originating jurisdiction for an interstate fine may request the Director to make an interstate fine enforcement order in relation to the fine if –

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- (a) the liability of the offender to pay the fine has not been fully discharged, and
 - (b) there is reason to believe that the offender has a relevant connection with this jurisdiction.
- (2) The request must –
 - (a) be made in writing, and
 - (b) include all information required by the Director to make an interstate fine enforcement order.
- (3) A request for the making of an interstate fine enforcement order is to be by electronic means unless otherwise agreed with the Director.
- (4) A single request may be made for more than one interstate fine, in which case this section applies to each of the fines to which that request relates.
- (5) A request may not be made under this section in relation to an interstate fine if –
 - (a) action to enforce the fine is being taken in another jurisdiction, or
 - (b) Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth applies to the fine.

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108F. Form of interstate fine enforcement order

An interstate fine enforcement order must specify the following matters:

- (a) the offender's name, address and date of birth (if known);
- (b) a description of the offence, or alleged offence, in respect of which each interstate fine to which the order applies was imposed;
- (c) the originating jurisdiction and the name of the interstate fine enforcement authority that requested the making of the order;
- (d) the date on which the interstate fine was imposed;
- (e) the amount required to be paid, being the amount of the interstate fine that remains to be paid, together with specified enforcement costs payable in this jurisdiction.

108G. Amendment or withdrawal of request for interstate fine enforcement order

- (1) The originating jurisdiction for an interstate fine may, at any time and by notice in writing to the Director, request

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the Director to amend or withdraw an interstate fine enforcement order for the interstate fine.

- (2) A request is to be by electronic means unless otherwise agreed with the Director.
- (3) A request must include all information required by the Director to amend or withdraw the order.
- (4) A request may be made whether or not the interstate fine has been paid.
- (5) A notice given to the Director by the originating jurisdiction for an interstate fine to the effect that an interstate fine has been partially or fully paid in the originating jurisdiction is taken –
 - (a) to be a request for amendment of any interstate fine enforcement order that applies to the interstate fine (if the interstate fine has been partially paid), or
 - (b) to be a request for the withdrawal of an interstate fine enforcement order that applies to the interstate fine or, if the order relates to more than one interstate fine, for the partial withdrawal of the order as it relates to that particular interstate fine (if the interstate fine has been fully paid).

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108H. Amendment or withdrawal of interstate fine enforcement orders

- (1) The Director may (and, if requested by the originating jurisdiction for the interstate fine, must) amend an interstate fine enforcement order –
 - (a) to reduce the amount that is payable under the order to recognise payments made in the originating jurisdiction to partially discharge the fine, or
 - (b) to otherwise correct an error.
- (2) The Director may withdraw an interstate fine enforcement order if satisfied that –
 - (a) the liability of the offender to pay an interstate fine to which the order applies has been fully discharged (otherwise than by payment to the Director), or
 - (b) the person named in the order is not the same person as the person in respect of whom a fine to which the order applies was imposed, or
 - (c) the order was otherwise made in error.
- (3) An interstate fine enforcement order may be completely withdrawn or partially

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withdrawn to the extent that it applies to a particular fine.

- (4) An interstate fine enforcement order must be withdrawn, or partially withdrawn, in accordance with any request for withdrawal made by the originating jurisdiction for the interstate fine.
- (5) The Director is to provide written confirmation to the originating jurisdiction that an interstate fine enforcement order has been withdrawn or amended in accordance with a request duly made by that jurisdiction.

108I. Effect of amendment or withdrawal of interstate fine enforcement orders

- (1) If an interstate fine enforcement order is amended –
 - (a) the order continues to have effect in its amended form, and
 - (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under the order (as amended), a Tasmanian enforcement order or another interstate fine enforcement order, and

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- (c) any amount that has already been paid under the order is taken to have been paid under the order (as amended), and
- (d) any excess amount paid is repayable to the person by whom it was paid.
- (2) If an interstate fine enforcement order is withdrawn completely –
- (a) the order then ceases to have effect, and
- (b) any enforcement action already taken is to be reversed, unless the same enforcement action is authorised under a Tasmanian enforcement order or another interstate fine enforcement order, and
- (c) enforcement costs are not payable under the order, and
- (d) any excess amount paid is repayable to the person by whom it was paid.
- (3) If an interstate fine enforcement order is partially withdrawn to the extent that it applies to a particular fine –
- (a) the order continues to have effect in respect of the remaining

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interstate fines to which it
applies, and

- (b) any excess amount paid is repayable to the person by whom it was paid.
- (4) The withdrawal of an interstate fine enforcement order does not prevent the making of a further order in respect of the interstate fine.
- (5) In this section, an excess amount paid is any amount paid in excess of the total of the following:
 - (a) the enforcement costs (if any) payable under the interstate fine enforcement order;
 - (b) the amounts payable under any Tasmanian enforcement orders in force in relation to the offender;
 - (c) if the interstate fine enforcement order is amended or partially withdrawn, the amount payable under the order as in force after its amendment or partial withdrawal.

108J. Director may cease enforcement of interstate fine enforcement order

- (1) The Director may, at any time, by notice given to the interstate fine enforcement

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authority for an interstate fine in an originating jurisdiction, cease the enforcement of an interstate fine enforcement order.

- (2) On receipt of notice by the interstate fine enforcement authority for an interstate fine, responsibility for enforcement of the interstate fine enforcement order reverts to that authority.

108K. Enforcement costs payable under interstate fine enforcement orders

- (1) The regulations may prescribe amounts as enforcement costs for interstate fine enforcement orders.
- (2) Any amount prescribed under subsection (1) is payable in addition to any enforcement costs payable under this Act.

108L. Application of amounts recovered

- (1) Any amount recovered as a consequence of the making of an interstate fine enforcement order is to be applied as follows:
 - (a) firstly, towards enforcement costs payable under the interstate fine enforcement order;
 - (b) secondly, towards the amount payable under any Tasmanian

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enforcement orders in force in relation to the offender;

(c) thirdly, towards the amount payable under the interstate fine to which the interstate fine enforcement order applies.

(2) The Director and an interstate fine enforcement authority for an interstate fine to which an interstate fine enforcement order applies may enter into arrangements for the payment to the authority or its nominee of any amounts that are payable under this section towards the interstate fine.

Division 3 – Enforcement of Tasmanian enforcement orders in participating jurisdictions

108M. Director may request enforcement of Tasmanian enforcement order

(1) The Director is authorised –

(a) to make a request in accordance with the law of a participating jurisdiction for the enforcement in that jurisdiction of a Tasmanian enforcement order, and

(b) to request the amendment or withdrawal of enforcement action in that jurisdiction in accordance

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- with the law of the participating jurisdiction, and
- (c) to exercise the functions of a fine enforcement officer under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth.
- (2) The Director may make a request for the enforcement of a Tasmanian enforcement order in a participating jurisdiction only if –
- (a) the liability of the offender to pay the Tasmanian monetary penalty to which the Tasmanian enforcement order applies has not been fully discharged, and
- (b) the Director is satisfied that enforcement action under this Act has not been successful or is likely to be unsuccessful, and
- (c) there is reason to believe that the offender has a relevant connection with the participating jurisdiction, and
- (d) no other enforcement action is being taken in relation to the order in any other participating jurisdiction.
- (3) Subsection (2) does not affect any additional requirements that apply to a

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request for registration of a monetary penalty as a fine under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth.

- (4) The Director may enter into arrangements with a participating jurisdiction for the payment to the Director or the Director's nominee of any amounts that are recovered in that jurisdiction in the enforcement of a Tasmanian enforcement order.
- (5) Any amount recovered as a consequence of the enforcement in another jurisdiction of a Tasmanian enforcement order (other than for enforcement costs) is to be dealt with as if the amount was paid on the imposition of the Tasmanian monetary penalty.
- (6) For the purposes of this section, a request for registration of a Tasmanian monetary penalty in another jurisdiction as a fine under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth is taken to be a request for enforcement of a Tasmanian enforcement order.

108N. Notification of payments made in this jurisdiction

The Director must notify a participating jurisdiction of any payment made in this

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jurisdiction in relation to a Tasmanian monetary penalty –

- (a) after the Director requests enforcement action in relation to the monetary penalty in the participating jurisdiction, or
- (b) after the monetary penalty is registered in that jurisdiction as a fine under Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth.

Division 4 – Relationship with Part 9

1080. Relationship with Part 9

The provisions of this Part are in addition to, and do not derogate from, the provisions of Part 9.

10. Section 109 amended (Amount may be deemed to be uncollectable)

Section 109 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (4A) In respect of an interstate fine, the Director may deem as uncollectable only the costs incurred by the Director in enforcing the interstate fine.

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11. Section 115 amended (Information from Commissioner of Tasmania Police)

Section 115(2) of the Principal Act is amended as follows:

- (a) by inserting “of Police” after “The Commissioner”;
- (b) by inserting in paragraph (c) “of Police” after “the Commissioner”.

12. Sections 116A and 116B inserted

After section 116 of the Principal Act, the following sections are inserted in Division 2:

116A. Director may request information

- (1) The Director, for the purposes of administering or enforcing this Act, may by written notice require any person to provide –
 - (a) information in that person’s knowledge about a specified matter within a specified reasonable period and in a specified reasonable way; or
 - (b) a document about a specified matter in the person’s possession or control within a specified reasonable period and in a specified reasonable way.

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- (2) A person must comply with a requirement under this section unless the person has a reasonable excuse.

Penalty: Fine not exceeding 20 penalty units.

116B. Provision of information and documents

- (1) If this Act requires service on, or provision to, a person of any information or document, the information or document may be served or provided by electronic communication if the person has consented to such service or provision.
- (2) Subsection (1) does not prevent the service or provision or any information or document under section 29AB of the *Acts Interpretation Act 1931*.
- (3) If a person, for the purposes of the service on or provision to him or her of any information or document under this Act, has provided an email address or a telephone or facsimile number to the Director or other person required under this Act to so serve or provide any information or document –
- (a) the person is taken to have consented to the service or provision of the information or document by electronic communication to that email

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address or telephone or facsimile number; and

- (b) any information or document sent by electronic communication to that address or number is effectively served on or provided to the person.

13. Section 117 amended (Deductions from awards made under *Victims of Crime Assistance Act 1976*)

Section 117 of the Principal Act is amended as follows:

- (a) by omitting “is” and substituting “may be”;
- (b) by omitting “must” first occurring and substituting “may”;
- (c) by omitting “must” second occurring and substituting “, if so deducted, must”.

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Part 3 – Monetary Penalties Enforcement Act 2005 Further Amended

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**PART 3 – MONETARY PENALTIES ENFORCEMENT
ACT 2005 FURTHER AMENDED**

14. Principal Act

In this Part, the *Monetary Penalties Enforcement Act 2005** is referred to as the Principal Act.

15. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of *administrative enforcement*:

ADI means an authorised deposit-taking institution and includes a co-operative;

- (b) by inserting the following definition after the definition of *conveyance*:

co-operative means a body registered or deemed to be registered under the *Co-operatives National Law (Tasmania) Act 2015*;

16. Section 98 amended (Order to redirect debt owed to enforcement debtor)

Section 98(1) of the Principal Act is amended as follows:

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- (a) by inserting “or an ADI” after “a person”;
- (b) by inserting “or ADI” after “if that other person”;
- (c) by inserting “or ADI” after “requiring that other person”.

17. Section 98A inserted

After section 98 of the Principal Act, the following section is inserted in Division 4:

98A. Money in account taken to be debt owed to enforcement debtor

For the purposes of this Act, any money in an account held by an enforcement debtor in an ADI is taken to be a debt owed to the enforcement debtor and may be redirected from that account despite any of the following conditions applicable to the account not being satisfied:

- (a) that a demand or notice is required before money is withdrawn;
- (b) that a personal application must be made before money is withdrawn;
- (c) that a deposit book must be produced before money is withdrawn;

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- (d) that a receipt for money deposited in the account must be produced before money is withdrawn.

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Part 4 – Repeal of Act

PART 4 – REPEAL OF ACT

18. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.

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