

# COMMUNITY LEGAL CENTRES TASMANIA

23 September 2020

Department of Justice  
Office of the Secretary  
GPO Box 825  
Hobart TAS 7001  
attn: Acting Director, Strategic Legislation and Policy

via email: [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

To Bruce Paterson,  
**Re: *Monetary Penalties Enforcement Amendment Bill 2020***

---

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment to the Department of Justice on the *Monetary Penalties Enforcement Amendment Bill 2020* ('the Bill').

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located through Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We are supportive of the Tasmanian Government's intention to amend the *Monetary Penalties Enforcement Act 2005* (Tas) ('the Act') to provide the Director of the Monetary Penalties Enforcement Service with the power to obtain information to assist with decisions made under the Act and; to clarify the powers and; provide improved administrative and safeguard provisions in respect of the current power to order the redirection of money owed by an enforcement debtor.

In particular, we strongly support clause 98B of the Bill which will ensure that the Director of the Monetary Penalties Enforcement Service considers the debtor's financial circumstances:

***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.

Importantly, section 86 of the Act provides that the Director may only issue a redirection order if satisfied that the amount of earnings to be redirected will not reduce the enforcement debtor's earnings to less than \$378.53 per week.<sup>1</sup> The proposed amendment will ensure that the Director considers the enforcement debtor's living expenses and liabilities and will better protect persons against financial hardship.

However, we would also note our concern that the Bill and particularly clause 98B is merely ameliorative and does not address the underlying issue that many fines imposed in Tasmania are disproportionately harsh for the socially and financially disadvantaged.

In our opinion, the imposition of fines in Tasmanian courts often results in both inequality and unfairness. This is the outcome of laws requiring courts to impose a fine that is either a fixed-sum or mandates a minimum amount (such as for drink-driving offences) with no discretion available to reduce the amount of the fine. More than a decade ago, the then Chief Justice of Tasmania concluded that in such circumstances, the fine is 'draconian' whilst a significant number of New South Wales Supreme Court judges have similarly found that the imposition of fines could be 'disproportionately severe'.<sup>2</sup>

In other cases, where the court is granted discretion, the courts have adopted a 'going rate' fine for particular offences with courts able to make some adjustment downwards if the offender is unable to pay, but where no scope exists to increase a fine on the grounds of the affluence of the offender.<sup>3</sup> The failure to ensure that the fine has a similar punitive bite means that the sentencing principle of equal impact is not met. When two offenders pay the same fine but one has a higher income the fine cannot have the same effect. For wealthy offenders the fine may be too easily paid and hence no real punishment or even seen as a 'licence fee' in order to continue offending.

Whilst outside the scope of this Bill, we strongly recommend that the Tasmanian Government consider reviewing the way in which fines are imposed. In our opinion, the

---

<sup>1</sup> Section 86 of the *Monetary Penalties Enforcement Act 2005* (Tas) provides that the Director may only issue an order for redirection of the enforcement debtor's earnings if the earnings remaining to the enforcement debtor will not be less than the protected earnings amount. Section 3 of the Act defines the 'protected earnings amount' as an 'amount calculated by applying the protected earnings rate to that period' and the 'protected earnings rate' is the formula applied in the *Child Support (Registration and Collection) Act 1988* (Cth) namely the maximum fortnightly base rate of Jobseeker Payment x 0.75. As found at <https://www.servicesaustralia.gov.au/organisations/business/services/child-support/child-support-information-employers/deductions/protected-earnings-amount-when-deducting-child-support> (Accessed 23 September 2020).

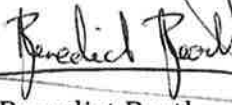
<sup>2</sup> Tasmanian Law Reform Institute, *Sentencing – Final Report No 11* (June 2008) para. 3.9.18. As found at [http://www.utas.edu.au/\\_data/assets/pdf\\_file/0004/283810/completeA4.pdf](http://www.utas.edu.au/_data/assets/pdf_file/0004/283810/completeA4.pdf) (accessed 23 September 2020). Also see Katherine McFarlane and Patrizia Poletti, *Judicial Perceptions of fines as a Sentencing Option: A Survey of NSW Magistrates* (Monograph 1, NSW Sentencing Council, August 2007) at 31 where just under half of the judges surveyed in New South Wales (48 per cent) noted that the fine for socially disadvantaged offenders was disproportionately severe.

<sup>3</sup> Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 2010) 99 at 329.

introduction of fines proportionate to the offender's income will lead to fairer outcomes and increased community support in the sentencing system.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Benedict Bartl". The signature is written in a cursive style with a large, sweeping flourish at the end.

Benedict Bartl

Policy Officer

**Community Legal Centres Tasmania**

---