

Penalties and Sentences and Other Acts Amendment Bill 2008

Explanatory Notes

Objectives of the Bill

The objective of the Bill is to amend the *Penalties and Sentences Act 1992* to increase the penalty unit amount from \$75 to \$100 and to provide for consequential amendments to give effect to scale backs to certain fines.

Reasons for the Bill

The penalty unit for infringement notice penalties has not increased since 1999 (when the *State Penalties Enforcement Act 1999* was enacted) and for other offences it has not increased since 1995. The penalty unit has not kept up with the Consumer Price Index over time, effectively reducing the level of punishment and deterrence of fines for various offences. Queensland has a low penalty unit compared to other states.

The Commonwealth, NSW, Victoria and Northern Territory apply a penalty unit of \$110, Tasmania applies the highest unit of \$120, while Western Australia ranges from \$50 for road offences to \$110 for more serious offences, and the Australian Capital Territory prescribes \$100. South Australia does not have penalty units.

Achievement of the Objectives

The Bill achieves the objectives by making the amendments to the *Penalties and Sentences Act 1992* to increase the penalty unit amount from \$75 to \$100 for all offences other than offences under local laws. The Bill provides that the penalty unit amount for local laws will be prescribed under the *Penalties and Sentences Regulation 2005* to a value of not more than \$100.

The Bill also includes consequential scale backs in relation to liquor offences that apply to discrete indigenous communities so they reflect the current dollar maximum fine amount (these penalties were recently reviewed by Government as part of the Alcohol Reform in May 2008), and

some offences that are part of the national frameworks for gene technology, food safety, heavy vehicles and rail.

Alternative Ways of Achieving Objectives

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Implementation of the Bill will be met from existing resources.

Consistency with Fundamental Legislative Principles

Clause 4 amends section 5(1)(b) of the *Penalties and Sentences Act 1992* to provide that for a local law the amount of the penalty unit is to be prescribed under a regulation. As this provision authorises the amendment of an Act by subordinate legislation, it arguably breaches the fundamental legislative principle that a Bill is to have sufficient regard to the institution of Parliament.

The breach is considered justified on the basis that the provision has been included to allow each local government time to consider whether the value of the penalty unit should be increased for their local laws to \$100, and if so, whether there should be any consequential scale backs to penalties for certain offences. Upon commencement of the Bill, a regulation will be made prescribing the value of the penalty unit for local laws as \$75, pending the determination by each local government about whether to increase the penalty unit value to \$100 for their local laws. If the value of the penalty unit is to increase to \$100 for some, or all, of the local governments, a further regulation will be made increasing the value of the penalty unit for the relevant local governments.

In addition, the breach is considered justified as the new section 5(1)(b) will provide for an upper limit of \$100 for the penalty unit value for a local law. This is consistent with the standard penalty unit of \$100 for all other offences.

Consultation

Government consultation on the amendments was undertaken.

Notes on Provisions

Clause 1 states that the short title of the Act is the *Penalties and Sentences and Other Acts Amendment Act 2008*.

Clause 2 provides that section 3 and part 1 of the schedule commence on 1 January 2009, and part 2 of the schedule commences on a day to be fixed by proclamation.

Clause 3 omits section 5(1) of the *Penalties and Sentences Act 1992* and provides that the value of a penalty unit is—

(a) for the *State Penalties Enforcement Act 1999* or an infringement notice under that Act, other than an infringement notice for an offence against a local law—\$100; or

(b) for a local law, or an infringement notice under the *State Penalties Enforcement Act 1999* for an offence against a local law—the amount, not more than \$100, prescribed under a regulation; or

(c) in any other case, for this or another Act—\$100.

Clause 4 also provides that the schedule amends the Acts mentioned in it.

Schedule Amendments relating to penalty unit increase

Part 1 of the schedule amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* and the *Liquor Act 1992* to reduce the number of penalty units for certain liquor offences that apply to discrete indigenous communities so they reflect the current dollar maximum fine amount as these penalties were recently reviewed by Government as part of the Alcohol Reform in May 2008.

Part 1 of the schedule also amends the *Food Act 2006*, the *Gene Technology Act 2001*, and the *Transport Operations (Road Use Management) Act 1995* to reduce the number of penalty units for certain offences to maintain the existing dollar amount upon commencement of the increase of the penalty unit to \$100. This will ensure consistency with national schemes.

Part 1 of the schedule also amends the *Hire-purchase Act 1959* to convert the maximum penalties, which are expressed in dollar amounts, into a penalty unit amount.

Part 2 of the schedule amends the *Transport Operation (Road Use Management) Act 1995*, *Transport Infrastructure Act 1994* and the *Transport Operations (Passenger Transport) Act 1994* to reduce the number of penalty units for certain offences to maintain the existing dollar amount upon commencement of the increase of the penalty unit to \$100. This will ensure consistency with the national framework for heavy vehicles and rail.

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