

# Penalties and Sentences Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 44

made under the

*Penalties and Sentences Act 1992*

## General Outline

### Short title

*Penalties and Sentences Amendment Regulation (No. 1) 2014*

### Authorising law

Sections 5, 5A and 196 of the *Penalties and Sentences Act 1992*

### Policy objectives and the reasons for them

The objective of the regulation is to amend the *Penalties and Sentences Regulation 2005* (PSR) to:

- prescribe a new penalty unit value of \$113.85 for sections 5(1)(a)(i), (c)(i) and (e)(i) of the *Penalties and Sentences Act 1992* (PSA) in accordance with section 5A of the PSA; and
- remove reference to the Gold Coast City Council from Schedule 2 of the PSR to align the penalty unit applicable to local laws made by the Gold Coast City Council with the penalty unit value applicable to most state and local laws.

The regulation commences on 1 July 2014. As a result of the regulation the penalty unit value applicable to: most state laws; the laws of local governments not listed in Schedule 2 of the PSR; and infringement notices issued under most state laws and the laws of local governments not listed in Schedule 2 of the PSR will increase from \$110 to \$113.85.

In accordance with section 20C of the *Acts Interpretation Act 1992*, the increase in the penalty unit value will apply to offences committed on or after the date the regulation commences.

## **Achievement of policy objectives**

The policy objective is achieved by amending the PSR to provide for the new penalty unit value and to remove the reference to the Gold Coast City Council from Schedule 2 of the PSR.

## **Consistency with policy objectives of authorising law**

The regulation is consistent with main objects of the *Penalties and Sentences Act 1992* (PSA).

Section 5 of the PSA provides that the value of a penalty unit for certain Acts may be prescribed in accordance with the PSA, section 5A. Specifically, the PSA provides that the value of a penalty unit may be prescribed for:

- the *State Penalties Enforcement Act 1999* or an infringement notice, other than an infringement notice for an offence against a local law made by a local government prescribed under a regulation (section 5(1)(a)(i));
- a local law, or an infringement notice for an offence against a local law made by: a local government not prescribed under a regulation; or made under clause 35 of the Alcan agreement (PSA, section 5(1)(c)(i)); and
- all other cases (section 5(1)(e)(i)) except the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002*, the *Safety in Recreational Water Activities Act 2011* or an infringement notice for an offence against any of those Acts (section 5(1)(d)).

Section 5A of the PSA provides that a regulation may prescribe the monetary value of a penalty unit for sections 5(1)(a)(i), 5(1)(c)(i), and 5(1)(e)(i). Section 5A further provides that the amount prescribed must not be more than the amount last prescribed (and if an amount has not been prescribed under the section, the amount last prescribed is taken to be \$110) increased by the percentage change notified by the Treasurer in the Government Gazette by 31 March of the relevant year, or if no amount is notified, by 3.5%, and rounded down to the nearest multiple of 5 cents. No percentage change was notified by the Treasurer in the Government Gazette by 31 March. Therefore, applying the formula the amount to be prescribed is \$113.85.

Section 5(1)(b) of the PSA provides that the penalty unit for a local law or an infringement notice against a local law made by a local government prescribed under a regulation is \$75.00. The local governments prescribed in Schedule 2 of the PSR are Aurukun Shire Council; Doomadgee Aboriginal Shire Council; Gold Coast City Council; Hope Vale Aboriginal Shire Council; Napranum Aboriginal Shire Council; Pormpuraaw Aboriginal Shire Council; Quilpie Shire Council; Torres Shire Council; Torres Strait Island Regional Council; Woorabinda Aboriginal Shire Council; Wujal Wujal Aboriginal Shire Council; and Yarrabah Aboriginal Shire Council. As noted above the regulation will, at the request of the Gold Coast City Council, remove the entry for the Gold Coast City Council from Schedule 2.

## **Inconsistency with policy objectives of other legislation**

The regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

Prescribing a new penalty unit value ensures that the deterrent and punishment effect of fines and penalty infringement notices is maintained.

The cost of implementing any increase in the penalty unit value will be absorbed by departments, agencies and local governments.

## **Consistency with fundamental legislative principles**

The regulation does not breach any fundamental legislative principles.

## **Consultation**

All departments were consulted during the development of the *Penalties and Sentences (Indexation) Amendment Act 2014* (the Indexation Act) and have been advised of Government's intention to increase the penalty unit value on 1 July 2014. The Local Government Association of Queensland was also consulted on the development of the Indexation Act.

Queensland Treasury and Trade was consulted in relation to the percentage change applicable to the penalty unit.

All departments will be notified on the making of the regulation increasing the penalty unit value to enable the necessary operational and systems changes required in preparation for a 1 July commencement including notifying relevant portfolio statutory bodies and agencies. The Department of Local Government, Community Recovery and Resilience has agreed to advise all local governments of the increase following the making of the regulation.

The Gold Coast City Council requested the removal of the entry for the Gold Coast City Council from schedule 2.