

Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2021* (the Regulation) made under the *Penalties and Sentences Act 1992* (PSA).

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The penalty unit is the basic measure for most fines and penalty infringement notices (PINs, also known as ‘tickets’) issued under the *State Penalties Enforcement Act 1999* (SPE Act).

Section 3 of the *Penalties and Sentences Regulation 2005* (PSR) prescribes the current penalty unit value of \$133.45 which is applicable to: most local laws and infringement notices for offences against local laws (section 5(1)(c)(i) of the PSA); the SPE Act and infringement notices issued under that Act (section 5(1)(a)(i) of the PSA) and most other state laws (section 5(1)(e)(i) of the PSA).

The formula for indexing the prescribed value of the penalty unit for the purposes of sections 5(1)(a)(i), (c)(i) and (e)(i) is set out in section 5A of the PSA. This section provides that the amount prescribed must not be more than the amount last prescribed under section 5A, as increased by a percentage change published by the Treasurer in the gazette on or before 31 March in the year in which the regulation is made, or otherwise increased by 3.5%.

The intention of the indexation mechanism in the PSA is to ensure that the deterrent and punishment effect of fines and PINs is maintained, while providing a level of certainty in relation to changes.

On 30 March 2021, the Honourable Cameron Dick MP, Treasurer and Minister for Investment published a notice in the Queensland Government Gazette providing that, pursuant to section 5A of the PSA, the penalty unit value for sections 5(1)(a)(i), (c)(i) and (e)(i) would increase by 3.3% commencing on 1 July 2021.

The objective of the Regulation is to increase, from 1 July 2021, the prescribed monetary value of the penalty unit in section 3 of the PSR by 3.3% from \$133.45 to \$137.85.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The following human rights are relevant to the Regulation:

- recognition and equality before the law (section 15); and
- property rights (section 24).

The right to recognition and equality before the law and property rights are considered limited by the Regulation. These limitations are discussed below.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Right to recognition and equality before the law (section 15 Human Rights Act 2019)

This right is a stand-alone right that also permeates all human rights. It encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. Discrimination includes (but is not limited to) direct and indirect discrimination as defined in the *Anti-Discrimination Act 1991*. The right provides that persons are equal before the law and are entitled to equal protection of the law without discrimination. It requires public entities, as well as courts and tribunals, to treat people equally when applying the law and to not apply the law in a way that is arbitrary or discriminatory.

This right may be limited by the Regulation as an increase in the value of a penalty unit may adversely and disproportionately impact sectors of the community such as vulnerable groups or persons of a lower socio-economic status. This is because the issuing of penalty infringement notices offences pursuant to the *State Penalties and Enforcement Act 1999* may impact disproportionately on vulnerable groups within the community with one or more of the protected attributes under the *Anti-Discrimination Act 1991*. These include persons with an impairment (for example, those with mental illness or intellectual disability and people experiencing serious substance abuse problems) or persons from different race backgrounds (including Aboriginal and Torres Strait Islander members of the community). These groups are disproportionately represented in the criminal justice system for a range of complex reasons, including the effects of socio-economic inequality, anti-social behaviours and targeted policing, meaning that these members of the community are also more likely to come to the attention of authorised officers who issue penalty infringement notices. The increase in penalty unit value prescribed in the Regulation could disproportionately impact on vulnerable and low socio-economic groups by making it more challenging to pay a fine.

Property rights (section 24 Human Rights Act 2019)

The right to property may be considered limited by increasing the monetary value of a penalty unit because it results in a deprivation of property in the form of money.

The right to property protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property (including money). In a human rights context, 'arbitrary' means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.

Because the question of proportionality arises when considering justification on limits on human rights more generally under section 13 of the HR Act, it is convenient to consider those factors below.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the Regulation is to ensure the value of a penalty unit increases relative to inflation. This ensures the generally that the deterrent and punishment effect of fines and PINs in Queensland is maintained. This promotes community safety which is important in a free and democratic society.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The Regulation will achieve its purpose by increasing the value of the penalty unit which applies to most fines and PINs in Queensland by 3.3% in accordance with indexation mechanism prescribed in section 5A of the PSA. The limitations on rights ensures that the value of fines and PINs continue to represent an appropriate punishment for the commission of relevant offences.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive options to achieve the purpose of the Regulation. The Regulation complies with the legislative mechanism prescribed on section 5A of the PSA. Without a legislative mechanism that allows for annual increases in the value of the penalty unit, periodic increases would be required to increase the penalty unit value to ensure that monetary penalties maintain the intended deterrent or punishment effect.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The increase to value of the penalty unit in the Regulation is minimal (a 3.3% increase which equates \$4.40) and therefore in the circumstances its limitation on each of the rights engaged is also considered to be minimal.

In respect of the right to recognition and equality before the law, while the increase in the prescribed value of a penalty unit has the potential to disproportionately impact vulnerable and low socio-economic groups it is considered that the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right.

With respect to property rights, any deprivation of property in the form of money as a result of the increase in the value of the penalty unit is considered to be proportionate and not arbitrary, particularly given the increase follows the prescriptive legislative formula contained in section 5A of the PSA and the dollar value of the penalty unit is set out in the Regulation.

Conclusion

I consider that the *Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because to the extent that it imposes any limitation on a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice
Minister for Women
Minister for the Prevention of Domestic and Family Violence

© The State of Queensland 2021