

Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2023

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* (HR Act), I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2023* (the Regulation) made under the *Penalties and Sentences Act 1992* (PS Act).

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

Overview of the Subordinate Legislation

The objective of the Regulation is to increase, from 1 July 2023, the prescribed monetary value of the penalty unit in section 3 of the *Penalties and Sentences Regulation 2015* (PS Regulation).

The penalty unit is the basic measure for most monetary penalties imposed for criminal and regulatory offences. The value prescribed in the PS Regulation applies to the *State Penalties Enforcement Act 1999* (SPE Act) and penalty infringement notices (PINs) issued under that Act (section 5(1)(a)(i) of the PS Act), most other state laws (section 5(1)(e)(i) of the PS Act), and most local laws and infringement notices for offences against local laws (section 5(1)(c)(i) of the PS Act).

Section 5A of the PS Act provides a mechanism for the indexation of the monetary value of a penalty unit in prescribed circumstances. The monetary value may be increased once in a financial year by 3.5% or a percentage change published by the Treasurer in the Queensland Government Gazette (gazette) on or before 31 March. The intention of the indexation mechanism is to ensure the deterrent and punishment effect of monetary penalties is maintained.

On 31 March 2023, an increase of 7.7% for the penalty unit value was published in the gazette by the Honourable Cameron Dick MP, Treasurer and Minister for Trade and Investment.

The Regulation gives effect to the indexation of the penalty unit by prescribing \$154.80 as the monetary value of the penalty unit effective from 1 July 2023.

Human Rights Issues

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

The Regulation limits the following human rights:

- right to recognition and equality before the law (section 15 of the HR Act); and
- property rights (section 24 of the HR Act).

Consideration of reasonable limitations on human rights (section 13 HR Act)

(a) the nature of the right

Right to recognition and equality before the law

The right to recognition and equality before the law is a stand-alone right that also permeates all human rights. It encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. Discrimination under the HR Act 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 the equal protection of the law without discrimination. It requires public entities, as well as courts and tribunals undertaking certain functions, to treat people equally when applying the law and to not apply the law in a way that is arbitrary or discriminatory.

The Regulation will limit the right to recognition and equality before the law as increasing the monetary value of the penalty unit may disproportionately impact sectors of the community. The issuing of a PIN pursuant to the SPE Act or a court imposing a fine may have a disproportionate impact on vulnerable groups in the community on the basis of attributes protected under the *Anti-Discrimination Act 1991* including race (including Aboriginal and Torres Strait Islander members of the community) or impairment (for example those with mental illness or intellectual disability and people experiencing substance abuse problems). The increase in the penalty unit value prescribed by the Regulation may disproportionately impact vulnerable persons or groups of persons in the community by making it more challenging to pay a fine due to financial reasons or if a person cannot appreciate the gravity or consequences of not paying a fine.

Property rights

Property rights protect the right of all persons to own property and provide that people have a right to not be arbitrarily deprived of their property. Property is likely to include all real and personal property interests, including money. In a human rights context, 'arbitrary' refers to conduct that is capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim. The term 'deprived' in the context of property rights is considered to include the substantial restriction on a person's use or enjoyment of their property to the extent it substantially deprives a property owner of the ability to use their property or part of their property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it).

The Regulation will limit the right to property as increasing the monetary value of a penalty unit will result in a deprivation of property in the form of money. The Regulation will also limit property rights if failure to pay a PIN results in enforcement action being taken by the registrar of the State Penalty Enforcement Registry (SPER) against the person, including seizure of the person's property.

(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 limiting the right to recognition and equality before the law and property rights is to ensure the value of the penalty unit increases relative to inflation to ensure the deterrent and punishment effects of monetary penalties are maintained. This promotes safe, fair and responsible communities as an important aspect of a free and democratic society.

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

The limitations on the right to recognition and equality before the law and property rights will achieve their purpose by ensuring monetary penalties for prescribed criminal and regulatory offences are maintained at appropriate levels to discourage and penalise unlawful behaviour.

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

There are two broad alternatives to the increasing of the prescribed penalty unit value by 7.7%: increasing the penalty unit value by a lesser percentage or retaining the current penalty unit value. Neither of these alternatives offers a less restrictive way to achieve the proper purpose of the limitations as they would not appropriately account for inflation to maintain the deterrent and punishment effects of monetary penalties.

(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

In my opinion, the Regulation strikes an appropriate balance between the importance of the purpose of the amendment and the importance of preserving the human rights that are limited. The importance of protecting the right to recognition and equality before the law and protecting property rights must be balanced against the need to ensure monetary penalties for prescribed criminal and regulatory offences are maintained at appropriate levels to deter and punish unlawful behaviour.

While the increase in the prescribed value of a penalty unit limits the right to recognition and equality before the law through the potential disproportionate impact on sectors of the community, on balance having regard to the extent of the limitation, it is considered that the importance of maintaining the punishment and deterrent effects of monetary penalties outweighs any harm to the right. The limitation on property rights associated with the increase in the prescribed value of a penalty unit is not arbitrary and any deprivation of property that results from the increase is, on balance, considered to be outweighed by the importance of maintaining the level of monetary fines at appropriate levels to discourage and penalise unlawful behaviour.

(f) any other relevant factors

Nil.

Conclusion

I consider that the *Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2023* is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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