Parliamentary Committees

Penalties and Sentences (Indexation) Amendment Bill 2013

Report No. 48

Legal Affairs and Community Safety Committee

February 2014

Legal Affairs and Community Safety Committee

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Acknowledgements

The Committee acknowledges the assistance provided by the Department of Justice and Attorney-General and the Queensland Parliamentary Library.

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Abbreviations

Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Penalties and Sentences (Indexation) Amendment Bill 2013
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
LGAQ	Local Government Association of Queensland
PSA	*Penalties and Sentences Act 1992*
QCCL	Queensland Council for Civil Liberties
QLS	Queensland Law Society
SPER	State Penalties Enforcement Registry

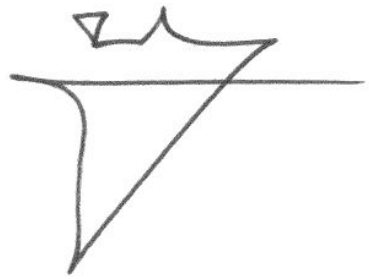
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Penalties and Sentences (Indexation) Amendment Bill 2013 (Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, the Queensland Parliamentary Library and the Department of Justice and Attorney-General.

I commend this Report to the House.



Ian Berry MP

Chair

Recommendations

The Committee recommends the Penalties and Sentences (Indexation) Amendment Bill 2013 be passed.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Penalties and Sentences (Indexation) Amendment Bill 2013 (Bill) was introduced into the House and referred to the Committee on 19 November 2013. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 3 February 2014.

1.2 Inquiry process

On 27 November 2013, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions.

The Committee received written advice from the Department and received five submissions (see **Appendix A**).

The Committee determined the contents of the Bill did not require a public hearing to be undertaken.

1.3 Policy objectives of the Penalties and Sentences (Indexation) Amendment Bill 2013

The objective of the Bill is to introduce a mechanism to provide for the indexation of the penalty unit value.[2]

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, page 1.

1.4 Consultation on the Bill

The Committee is pleased to see from the Explanatory Notes early consultation on the Bill was conducted by the Government with the following organisations:

- Local Government Association of Queensland;
- Queensland Law Society; and
- Bar Association of Queensland.

The Committee has also been advised that the Department consulted will all government departments and requested those departments to consult with their relevant portfolio statutory bodies and agencies.[3]

The Explanatory Notes state:

> *The Queensland Law Society (QLS) acknowledged the need for periodic review of the value of the penalty unit but considered that the increase in the value of a penalty unit should continue to be on an ad hoc basis. The QLS raised concerns that the proposed method will have a substantial impact on the penalty for offences which attract a high number of penalty units. The QLS suggested, as an alternative, that the legislation be amended to require the Attorney-General to consider the appropriateness of the value of a penalty unity on an ongoing basis, for example in three yearly intervals.*[4]

The Committee notes this alternate suggestion was not adopted by the Government in the draft Bill as the Government took the view the penalty unit value should be able to be indexed annually.[5]

The Committee also notes from the Local Government Association of Queensland (LGAQ) submission to this inquiry, the LGAQ considers the Government's consultation was *'undertaken over an extended period of time, was in the spirit of the Partners in Government Agreement and allowed issues to be ventilated and resolved in a timely fashion'*.[6]

Details arising out of the Committee's consultation on the Bill appears in Part 2 of this report.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether to recommend the Bill should be passed.

The Committee has considered the form and policy intent of the Bill and has no reservations in recommending the Bill be passed. The Bill is based on sound policy objectives and provides a legislative mechanism for the annual increase in the value of the penalty unit. The Bill also achieves its objective of ensuring the deterrent and punishment effect of fines and penalty infringement notices is maintained.

Recommendation 1

The Committee recommends the Penalties and Sentences (Indexation) Amendment Bill 2013 be passed.

3 Letter from the Department of Justice and Attorney-General, 6 December 2013, page 3.
4 *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, pages 2-3.
5 *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, page 3.
6 Local Government Association of Queensland, Submission No. 5, page 1.

2. Examination of the Penalties and Sentences (Indexation) Amendment Bill 2013

This section discusses issues raised during the Committee's examination of the Bill.

2.1 Overview

The Bill proposes to introduce a mechanism to provide for the indexation of the penalty unit value.

The Explanatory Notes provide:

> *The penalty unit is the basic measure for most fines and penalty infringement notices under the* State Penalties Enforcement Act 1999 *(PINS, commonly called 'tickets'). When an offence is created by legislation, the legislation also prescribes the penalty. In most cases, the monetary penalty is prescribed as a multiple of the penalty unit. The value of the penalty unit is prescribed in section 5 of the* Penalties and Sentences Act 1992 *(PSA).*
>
> *The penalty for an offence is set at a level that reflects the seriousness of the offence to provide a level of deterrence or punishment considered necessary at the time. Over time the value of the penalty unit reduces relative to measures of inflation, effectively reducing the level of punishment and deterrence. As a result, Queensland is required to periodically increase the penalty unit value to ensure that all monetary penalties across the statute book maintain the intended deterrent or punishment effect.*
>
> *Since 2000 when the* State Penalties Enforcement Act 1999 *came into effect, the value of the penalty unit applicable to most state government laws has been increased twice; in 2009 and 2012.*
>
> *A legislative mechanism that allows for an annual increase in the value of the penalty unit ensures that the deterrent and punishment effect of fines and penalty infringement notices is maintained; and provides a level of certainty in relation to potential changes.*[7]

2.2 Penalty Units

What is a penalty unit?

A 'penalty unit' is used to calculate the amount of a fine payable when a person is convicted or found guilty of an offence. It is the basic measure for most fines and penalty infringement notices under the *State Penalties Enforcement Act 1999*.

In many Australian states and territories, the value of a penalty unit is established under a legislative provision. The relevant legislative provision usually states one penalty unit has a particular monetary value and the amount of a fine is calculated by multiplying the number of penalty values by the monetary value.

For example: a fine expressed as a number of penalty units is a fine of an amount calculated in accordance with the formula **A** x **B**

where

A is the number of penalty units; and

B is the amount (in $) that is, for the time being, a penalty unit.

[7] *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, page 1.

What is the current value of a penalty unit in Queensland?

In Queensland, currently under section 5 of the *Penalties and Sentences Act 1992* (PSA), one penalty unit has the value of $110. Accordingly, a fine of 100 penalty units would be an amount of $11,000.

Historically, what has been the value of a penalty unit in Queensland?

The Department advised the Committee '[p]ast increases in the penalty unit value have occurred on an ad hoc basis'.[8]

In this regard, the Committee notes the penalty unit has increased three times since it was first introduced in 1992. The history of the relevant changes to the value of the penalty unit are summarised in the table below.

Table 1: Value of the Penalty Unit in Queensland

Changes to Penalty Unit Amount	Penalty Unit Amount	Year of introduction (Date effective)	Relevant legislation
Original Amount	$60	1992 (27 Nov 1992)	Penalties and Sentences Act 1992: section 5(1)
First increase	$75 (for the *State Penalties Enforcement Act 1999* or an infringement notice under that Act—$75)	1999 (6 Dec 1999)	State Penalties Enforcement Act 1992: Schedule 1 (25% increase after approx. 7 years)
Second increase	$100	2009 (1 Jan 2009)	Penalties and Sentences and Other Acts Amendment Act 2008: section 3 (33% increase after approx. 9 years)
Third increase	$110	2012 (21 Aug 2012)	Penalties and Sentences and Other Legislation Amendment Act 2012: section 34[9] (10% increase after approx. 3 years)

[8] Letter from the Department of Justice and Attorney-General, 6 December 2013, page 1.

[9] See discussion of this increase in the penalty unit value in the Legal Affairs and Community Safety Committee, Report No. 5, *Penalties and Sentences and Other Legislation Amendment Bill 2012*, pages 21-23.

When does an increase in the penalty unit take effect?

The Department advised, in accordance with section 20C of the *Acts Interpretation Act 1954,* the increase in the monetary penalty for an offence will only apply to those offences committed after the increase in the penalty unit value takes effect.[10]

Why is a penalty unit used instead of a dollar amount?

The reason for using the penalty unit is to avoid the need to change multiple pieces of legislation every time a fine increases for a particular offence.

2.3 Consistency with legislation of other jurisdictions

The Explanatory Notes provide:

> *The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.*[11]

As also noted in the Explanatory Notes, three other states, being Victoria, the Northern Territory and Tasmania, have legislatively provided for the indexation of the penalty unit value.[12]

In some jurisdictions, such as Tasmania and Victoria, the relevant legislation provides for a review of the value of a penalty unit each year with the relevant value of a penalty unit for the next financial year to be notified in the *Government Gazette*. In the Northern Territory, a Regulation is used to provide updates to penalty units for each year.

The table below gives the current status of penalty units for each Australian jurisdiction.

Table 2: Value of the Penalty Unit by Jurisdiction in Australia

Jurisdiction and Relevant Legislative Provision	Value of a Penalty Unit
Australian Capital Territory *Legislation Act 2001* (ACT): section 133	The current value of the penalty unit in the Australian Capital Territory is = **$140**. For a corporation = **$700** Under s 133(3) of the *Legislation Act 2001*, the ACT Attorney-General must review the amount of a penalty unit at least once every 4 years after the day this subsection commences.
Commonwealth *Crimes Act 1914* (Cth): sections 4AA, 4B(3)	The current value of the penalty unit in the Commonwealth is **$170** (section 4AA(1)) Note: section 4B(3) of the *Crimes Act 1914* (Cth) provides that for a body corporate, unless there is a contrary intention, the court may impose a penalty of not more than 5 times the amount of the max pecuniary penalty for a natural person. Under section 4AA(1A) the Commonwealth Attorney-General must cause a review of the amount of a penalty unit to be conducted as soon as possible after each third anniversary of the day an alteration of the amount of a penalty unit last came into force.

10 Letter from the Department of Justice and Attorney-General, 6 December 2013, page 1.

11 *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, page 3.

12 *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, page 3.

Jurisdiction and Relevant Legislative Provision	Value of a Penalty Unit
New South Wales *Crimes (Sentencing Procedure) Act 1999* (NSW): section 17	The current value of the penalty unit in New South Wales, for an individual, is **$110**. If the penalty for an offence committed by a body corporate is i*mprisonment* only, a court may instead impose a fine not exceeding (section 16): • 2,000 penalty units, in the case of the Supreme Court, the Court of Criminal Appeal, the Land and Environment Court, the Industrial Relations Commission or the District Court, or • 100 penalty units, in any other case. Under section 17(3) the NSW Attorney-General must review the amount of a penalty unit at least once every 4 years after the day this subsection commences.
Northern Territory *Penalty Units Act 2013* (NT): sections 3-6 Penalty Units Regulations regulation 2	In the Northern Territory, a formula is provided for the indexation of the value of the penalty unit which is based on the consumer price index for Darwin. Under the *Penalty Units Act* (NT), the relevant Minister must, before the start of each financial year, review the value of the penalty unit by calculating a new monetary value in accordance with the prescribed formula and rounding down to the nearest multiple of a dollar: s 5(1).
Queensland *Penalties and Sentences Act 1992*: sections 5; 181B	The current value of the penalty unit in Queensland is **$110** Note that section 181B of the *Penalties and Sentences Act 1992* provides that the maximum fine for a *corporation*, if not expressly provided, is 5 times that for a person. For the State Penalties Enforcement Act 1999 – $110; For a local law – for a local law, or an infringement notice under the *State Penalties Enforcement Act 1999* for an offence against a local law—not more than $110, prescribed under a regulation; For the Work Health and Safety Act 2011, the Electrical Safety Act 2002, the Safety in Recreational Water Activities Act 2011 or an infringement notice under the State Penalties Enforcement Act 1999 for an offence against those Acts— $100; In any other case, for this or another Act - $100.
South Australia *Acts Interpretation Act 1915* (SA): sections 28A, 30	*Acts Interpretation Act 1915* (SA), section 28A sets out a number of 'Divisions' of fines and fees that apply 'unless a contrary intention appears'. For example, if a provision states that the penalty is a 'Division 1 fine' that is a fine not exceeding $60,000. Otherwise, a penalty might be set out at the end of a section creating an offence (see section 30 of the *Acts Interpretation Act 1915* (SA)).

Jurisdiction and Relevant Legislative Provision	Value of a Penalty Unit
Tasmania *Penalty Units and Other Penalties Act 1987* (Tas): sections 4 and 4A. See also: Value of Indexed Amounts in Legislation on the Department of Justice website.	In Tasmania, a formula is provided for the indexation of the value of the penalty unit which is based on the consumer price index for Hobart. The current value of the penalty unit in Tasmania is: **$130** Under section 4A(5) of the *Penalty Units and Other Penalties Act 1987* (Tas), the value of the relevant penalty unit for the next financial year must be published in the Government Gazette before 1 July each year, regardless of whether the value of the penalty unit increases.
Victoria *Sentencing Act 1991* (Vic), section 110(1) (see also section 110(2)) and the *Monetary Units Act 2004* (Vic) section 5, and the relevant annual Government Gazette notice.	For the 2013-2014 financial year (Victorian Government Gazette, 18 April 2013): • the value of a penalty unit is **$144.36**; and • the value of a fee unit is $12.84. The amount of 'fee unit' and penalty unit is published by the Treasurer in the *Government Gazette* before 1 June each year to apply to the next financial year. It is indexed for each financial year. When using the penalty unit value to calculate the amount of a penalty, the amount of the penalty may be rounded to the nearest dollar. When setting the penalty unit rate, the annual increase must not exceed the amount, rounded to the nearest cent, that is the product of the value of the penalty unit in the previous financial year multiplied by the annual rate that is set by the Treasurer before 1 March of each year as the rate by which the penalty unit is to be adjusted. If the Treasurer does not set an annual rate by which the penalty unit is to be adjusted for a particular year then the previous annual rate applies.[13]
Western Australia	According to advice provided by the WA Parliamentary Library, there is no generic amount designated as a penalty unit. The interpretation provisions of the particular legislation under consideration need to be consulted in each case. For offences in legislation that appear to complement Commonwealth legislation, reference is made to the amount of the penalty unit in s 4AA of the Commonwealth *Crimes Act 1914* (Cth). For example, section 3 of the *Australian Crime Commission (Western Australia) Act 2004* (WA); and section 20 of the *Corporations (Ancillary Provisions) Act 2001* (WA). Other Acts appear to contain their own definitions of penalty unit. For example, section 5(1a) of the *Road Traffic Act 1974* WA states that a number of penalty units is a dollar amount that is the stated number multiplied by 50.

[13] Letter from the Department of Justice and Attorney-General, 6 December 2013, page 1.

Proposals or bills in other jurisdictions regarding the determination of the value of the penalty unit

Apart from the proposals for the indexation of penalty units in Queensland in the Bill, it is the Committee's understanding that no other jurisdiction appears to have legislative proposals for changing the way in which penalty units are calculated.

2.4 Changes proposed under the Bill

There are two substantive clauses in the Bill. The first substantive clause is Clause 4 which amends section 5(1) of the PSA and the second is Clause 5 which inserts new section 5A in the PSA.

Clause 4 of the Bill

The proposed changes in Clause 4 of the Bill, being amendments to section 5(1) of the PSA, can be summarised as follows:

- the value of the penalty unit for the *State Penalties Enforcement Act 1999* or an infringement notice, other than an infringement notice for an offence against a law mentioned in paragraphs (b), (c) or (d) of new section 5(1), is the amount prescribed under new section 5A or if no amount is prescribed, then $110 (see new section 5(1)(a));
- the value of the penalty unit for a local law, or an infringement notice for an offence against a local law, made by a local government prescribed under a regulation is $75 (see new section 5(1)(b));
- the value of the penalty unit for a local law, or an infringement notice for an offence against a local law, made by a local government to which paragraph (b) does not apply (i.e. local governments not prescribed by regulation) or made under clause 35 of the Alcan Agreement is the amount prescribed under new section 5A or if no amount is prescribed, then $110 (new section 5(1)(c));
- the penalty unit value of the offences in the *Work, Health and Safety Act 2011*, the *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011* is $100 (new section 5(1)(d)). In regard to this section, the Explanatory Notes provide:

  > *The indexation mechanism will not apply to the penalty unit value for the Acts listed in new subsection 5(1)(d) because the penalties have been established under a national agreement.*[14]

- the penalty unit value in any other Act is the amount prescribed under section 5A or if no amount is prescribed, then $110 (new section 5(1)(e)).

Additionally, the Bill also provides for:

- the penalty unit value to be rounded down to the nearest multiple of $1.00 (new section 5(2A)); and
- the insertion of definitions for the terms *Alcan agreement* and *Infringement notice* (new section 5(5)).

[14] *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, page 3.

Clause 5 of the Bill

The second substantive clause is Clause 5 of the Bill which inserts new section 5A in the PSA. The changes proposed under section 5A can be summarised as follows:

- a regulation may prescribe the same monetary value of a penalty unit for sections 5(1)(a)(i), (c)(ii) and (e)(i) (new section 5A(1));
- the amount prescribed must not be more than the amount last prescribed:
  - (a) if, on or before 31 March in a year in which the regulation is made, the Treasurer publishes in the gazette a percentage change to the amount last prescribed - that percentage; or
  - (b) otherwise - 3.5% (new section 5A(2));
- the penalty unit value is to be rounded down to the nearest multiple of 5 cents (new section 5A(3));
- if an amount for the penalty unit value has not been prescribed, the amount of the penalty is taken to be $110 (new section 5A(4)); and
- a regulation may only prescribe one increase for an amount for a financial year (new section 5A(5)).

2.5 Issues raised in submissions

The proposal to introduce a mechanism to provide for the indexation of the penalty unit was fully supported by only one of the five submitters.

The LGAQ fully supported the policy intent of the Bill 'as a simple way to adjust penalties without needing to constantly amend all manner of legislation'. The LGAQ went on to state, '[i]t seems a logical next step that the Government implement an indexation system to further streamline the process of setting penalty units and as such LGAQ supports the policy positions articulated within the Bill'.[15]

Committee Comment

Given the LGAQ is the representative body for local councils who will reap the benefits of the streamlined processes, it is not surprising to note their strong support for the Bill.

A number of submitters raised potential issues with the Bill which are expanded further below.

General need for the Bill at all

Four of the five submitters to the Committee inquiry questioned the need for the legislative indexation of the penalty unit at all.[16]

[15] Local Government Association Queensland, Submission No. 5, page 1.

[16] Queensland Council for Civil Liberties, Submission No. 1, pages 1-2; Queensland Law Society, Submission No. 2, page 1; Law & Justice Institute (Qld) Inc., Submission No. 3, pages 1-2; and Youth Advocacy Centre, Submission No. 4, page 5.

The Queensland Council for Civil Liberties (QCCL) questioned the appropriateness of the legislation as follows:

> *The Council questions the need for the automatic indexation of penalty units (PU) at all.*
>
> *Nothing in the Explanatory notes attempts to demonstrate that the current system of periodic review and amendment of the* Penalties and Sentences Act 1992 *has led to any lack of effective deterrence.*
>
> *Not a single judicial authority is mentioned where the judicial officer has found the value of the PU* [penalty unit] *and the maximum for the offence has cause there to be insufficient 'headroom' in the sentencing options.*[17]

The Queensland Law Society (QLS) also questioned the need for the bill and considered that the existing method of increasing the penalty unit value on an ad hoc basis should remain.[18] The QLS also notes that:

The existing legislation in Queensland is comparable to the legislation that prescribes the value of penalty units for the Commonwealth, New South Wales and the ACT. [19]

In its submission, the Law and Justice Institute (Qld) Inc. also considered that the proposal for change is unjustified and noted that it had '*serious concerns about the potential effect of this Bill*'.[20] The Law and Justice Institute (Qld) Inc. further commented that if it was determined that the changes proposed under the Bill were to proceed '*irrespective of its impact on the disadvantaged, then fundamental common sense suggests that some regard should be had to prevailing economic conditions*.'[21]

Relevantly, the Youth Advocacy Centre submitted:

> *The process proposed by the current Bill makes amendment unnecessarily complicated if the Treasurer decides the change to the level of the penalty unit is to be other than the default position of 3.5%. In that situation, the Treasurer firstly has to gazette the increase. Parliamentary Counsel then has to be instructed and has to draft legislation, albeit a Regulation rather than an amendment to the primary Act. There is therefore no saving in time or process.*[22]

The Youth Advocacy Centre Inc. also notes that the amendment in August 2012 to increase the penalty unit value from $100 to $110 was achieved through a simple amendment to the PSA and that future increases in the penalty unit value can be achieved through a similar mechanism.[23]

Committee Comment

The Committee notes that a number of other jurisdictions in Australia, in particular, Victoria, the Northern Territory and Tasmania, provide for the indexation of the penalty unit value. In spite of concerns raised by a number of the submitters, on balance, the Committee's view is that the proposal of indexation set out in the Bill is an appropriate method of gradually increasing the penalty unit value to ensure that monetary penalties continue to be considered a deterrent and have the appropriate level of punitive effect.

17 Queensland Council for Civil Liberties, Submission No. 1, pages 1-2.
18 Queensland Law Society, Submission No. 2, page 1.
19 Queensland Law Society, Submission No. 2, page 1.
20 Law & Justice Institute (Qld) Inc., Submission No. 3, pages 1-2.
21 Law & Justice Institute (Qld) Inc., Submission No. 3, page 2.
22 Youth Advocacy Centre Inc., Submission No. 4, page 5.
23 Youth Advocacy Centre Inc., Submission No. 4, pages 4-5.

The Treasurer's role under the Bill

Submitters raised a number of issues relating to the Treasurer's role in the Bill querying why the Treasurer was involved at all in setting the value of a penalty unit (as it is not a matter of fiscal policy).[24] Submitters also set out their concerns relating to the lack of criteria to be used by the Treasurer to determine the percentage change.[25]

The Youth Advocacy Centre stated:

> *It is also unclear why the level of the penalty unit is an issue for the Treasurer as it is not a matter of fiscal policy. The role of fines is not an income stream for consolidated revenue. The lack of criteria or process for use by the Treasurer in making any decision is therefore particularly problematic. In particular, there is no upper limit for any increase.*
>
> *Overall, the likelihood is that the default position of 3.5% will be the one which prevails as this avoids any action on the part of the Treasurer or Parliament. There is no explanation as to how the figure of 3.5% has been arrived at as being an appropriate default position – and is currently above CPI and inflation. It is to be hoped that this proposal is not being introduced purely as a general income raising stratagem.*[26]

The QLS submitted:

> *The Society is also concerned with the lack of criteria for determining the percentage change by which the penalty unit value will be increased, which has been acknowledged in the Explanatory Notes. If one of the goals of the legislation is to provide "a level of certainty in relation to potential changes," it is important that the legislation contains some guidance as to how a percentage change may occur year on year.*[27]

The Committee notes the advice from the Department which confirmed the role of the Treasurer under the Bill is consistent with the approach taken in Victoria. Further the provision allows the Treasurer to determine the percentage change that is considered appropriate, noting the intended policy is to maintain consistency with the indexation rate for fees and charges across the whole of government.[28]

Committee Comment

The Committee does not share the concerns raised in submissions in relation to the Treasurer's role under the Bill and considers that it is entirely appropriate for the Treasurer to be involved to maintain consistency with the indexation rate for fees and charges. The lack of criteria to be used by the Treasurer to determine the percentage changes is discussed at part 3 of this Report under Fundamental Legislative Principles.

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24 Queensland Council for Civil Liberties, Submission No. 1, page 2; Youth Advocacy Centre Inc., Submission No. 4, page 6.

25 Youth Advocacy Centre Inc., Submission No. 4, page 6; Queensland Law Society, Submission No. 2, page 2.

26 Youth Advocacy Centre Inc., Submission No. 4, page 6;

27 Queensland Law Society, Submission No. 2, page 2.

28 Letter from the Department of Justice and Attorney-General, 17 January 2014.

Default 3.5% increase

Submitters also queried the value of the default rate of 3.5% for annual increases in the penalty unit which was included in the Bill, submitting it was an arbitrary amount[29] and not linked to CPI and inflation rates.[30]

As explained by the Department in its initial briefing to the Committee 'this approach provides a degree of legislative certainty for the community and Government around the rate by which the penalty unit is to be increased.' The Department confirmed the percentage change of 3.5% per annum has been used as that rate is consistent with the current indexation amount for fees and charges.

Committee Comment

The Committee notes the Department's advice and is satisfied that it is an appropriate rate to be used as a default mechanism to create certainty. The Committee is satisfied an amount of 3.5% is required to ensure consistency is maintained with the Government's indexation amount for fees and charges.

The Committee also notes from the amounts set out in Table 1 (above) that an amount of 3.5% is relatively consistent with the rates of increase in the penalty units since the concept of a penalty unit was introduced in 1992.

Unintended impact on high penalty amounts

The QLS raised concerns that the process contained in the Bill, when implemented, will have a substantial impact on the penalty amounts for offences which have a high prescribed maximum penalty unit. The following example was used to illustrate their point:

> *For example, in the Fisheries Act 1994 the offence of "carrying out particular development without resource allocation authority" prescribes a maximum penalty of 3000 penalty units.' Under the proposed legislation, the maximum amount of this penalty, with a 3.5% increase over 10 years will raise the penalty over $100,000 from $330,000 to approximately $449,550. We suggest that though the penalty unit itself may rise incrementally, this will have substantial effect on larger penalties. This may not be in line with the expectation of the penalty to be imposed as was envisioned in the drafting of the maximum penalty unit.*[31]

The Department responded in similar tones to that which appeared in the Explanatory Notes and as set out in section 2.1 of this Report.

Committee Comment

The Committee notes the concerns of the QLS however does not accept that smaller, annual increases as proposed under the Bill would mean that penalties would become out of line with the expectation of the penalty amount as envisaged at the time of drafting.

Ministers responsible for various pieces of legislation which contain penalties, including those expressed as penalty units need to ensure that penalties provide appropriate levels of punishment in relation to the severity of the offence. In such a case as stated above, the maximum penalty available to a court would be increased to ensure that over time, appropriate punishment and deterrence is able to be maintained for such an offence.

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29 Law & Justice Institute (Qld) Inc., Submission No. 3, page 1.

30 Queensland Council for Civil Liberties, Submission No. 1, page 2; Youth Advocacy Centre Inc., Submission No. 4, page 6.

31 Queensland Law Society, Submission No. 2, page 2.

The amendments create different penalty unit values applicable to different legislation

Three of the five submitters raised concern about the amendments creating different penalty unit values applicable to different legislation.

For example, when questioning the practicalities of the proposed amendments under the Bill, the QCCL noted:

> *While these are not civil liberties issues, any criminal practitioner is likely to be concerned about some practical issues for instance:*
>
> - *having frequent changes in PU [penalty unit] where a range of offences might span several changes*
> - *amounts which make calculation cumbersome and error prone*
> - *confusion from there being different PU [penalty unit] under several Acts.*[32]

Similarly, the QLS considers that there may be confusion given the different penalty rates that may be prescribed under the proposed new section 5(1), with each rate changing potentially on an annual basis. The submission states that this may result in practical difficulties with ability of the State Penalties Enforcement Registry (SPER) to manage these changes.[33]

In its submission, the Youth Advocacy Centre Inc. raises the following related concern:

> *It is, however, puzzling, in light of the expressed objective of the amendments, as to why the level of a penalty unit for the* Work Health and Safety Act 2011*, the* Electrical Safety Act 2002 *and the* Safety in Recreational Water Activities Act 2011 *would actually be* ***reduced*** *to 2012 levels. This includes serious matters which attract substantial penalties such as where a person has an electrical safety duty and, without reasonable excuse, exposes an individual to whom that duty is owed to a risk of death or serious injury or illness. This would seem to militate against the rationale for the Bill and sends conflicting messages.*[34]

In response to these issues, the Department commented:

> *Section 2A of the Penalties and Sentences Regulation 2005 (PSR) prescribes the value of a penalty unit for section 5(1)(b) of the PSA. Under section 2A, a penalty unit value of $75 is prescribed for the local governments listed in Schedule 2 of the PSR.*
>
> *As a result, currently there are three different penalty unit values ($75 (for offences under the local laws of certain local governments); $100 (offences under the* Work Health and Safety Act 2011*, the* Electrical Safety Act 2002*, the* Safety in Recreational Water Activities Act 2011*) or $110 (other offences)) applicable to different legislation in Queensland.*
>
> *Proposed new section 5A provides the power for a regulation to prescribe the value of a penalty unit and, similar to existing section 5 of the PSA, maintains the differentiation in penalty unity value for offences for local laws of certain local governments ($75), offences under the* Work Health and Safety Act 2011*, the* Electrical Safety Act 2002*, the* Safety in Recreational Water Activities Act *($100); and all other offences (as prescribed or $110). In accordance with new section 5A(1), the regulation may prescribe the same monetary value of a penalty unit for sections 5(1)(a)(i), (c)(i) and (e)(i). It is the policy intent of the Government that the amounts prescribed for sections 5(1)(a)(i), (c)(i) and (e)(i) will be the same.*

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32 Queensland Council for Civil Liberties, Submission No. 1, page 2.

33 Queensland Law Society, Submission No. 2, page 2.

34 Youth Advocacy Centre Inc., Submission No. 4, page 4.

> *Therefore, the amendments in the Bill do not increase the number of different penalty unit values applicable to offences in Queensland legislation from what is currently the case.*
>
> *The Bill makes no amendment to the penalty unit value for offences in the* Work, Health and Safety Act 2011*, the* Electrical Safety Act 2002 *or the* Safety in Recreational Water Activities Act 2011*. As noted in the Explanatory Notes for the Bill and DJAG's initial briefing to the Committee, the indexation mechanism does not apply to the penalty unit value for offences under these Acts because the penalties for offences under these Acts have been established under a national agreement. Further the Bill does not reduce the penalty unit value for these Acts because the penalty unit value for these Acts was not increased in 2012, when the penalty unit value for most state laws was increased from $100 to $110.*[35]

Based on the advice from the Department, the Committee does not share the concerns of submitters in this regard.

Other issues raised in submissions

A number of other issues were raised in the submissions and considered by the Committee. These included the following issues raised by the QCCL.

The QCCL argued that the court system is being seen as a revenue raising device or one that should pay for itself and that this may result in disproportionate penalties and create a conflict of interest if courts feel pressure to raise revenue or if penalties rise faster than is needed to properly punish and deter.

In response to this concern, the Department commented:

> *The amendments in the Bill will result in increases to the maximum dollar value of a fine imposed by a court. However, in accordance with section 48 of the PSA the court, when determining the amount of a fine to impose on a person found guilty of an offence, must, as afar as practicable, take into account the financial circumstances of the offender; and the nature of the burden that payment of the fine will be on the offender. The Bill makes no change to this requirement.*

The QCCL submission also questions the need to increase penalties annually when crime rates are decreasing. In response to this concern, the Department commented:

> *When Parliament creates an offence it also prescribes a penalty for the offence. For monetary penalties, the penalty is usually prescribed as a certain number of penalty units. Penalties function as both a punishment and a deterrent. The penalty for an offence is set at an amount to provide the level of punishment considered appropriate for the severity of the offence. A legislative mechanism to index the penalty unit value allows the level of punishment and deterrence to be maintained.*

Committee Comment

The Committee notes the above comments and other similar comments made in the submissions. It is the Committee's understanding it is not the intention of the Bill to deal with the issue of deterring or reducing crime or to ensure that criminal offenders receive appropriate punishment. Rather, the purpose of the Bill is to provide a legislative mechanism to adjust the value of the penalty unit so that it does not reduce over time relative to relevant economic measures, such as inflation.

Accordingly, the Committee is satisfied that the proposal set out in the Bill is appropriate in the circumstances.

[35] Letter from the Department of Justice and Attorney-General, 17 January 2014, page 4.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals; and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

3.1 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

The Explanatory Notes identify proposed section 5A of the Bill raises potential fundamental legislative principle issues in relation to having sufficient regard to the institution of Parliament. Section 4(4)(a) of the *Legislative Standards Act 1992* provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

The Explanatory Notes provided:

> *The Bill potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament by providing that the amount of the percentage change (if it is not 3.5%) may be gazetted by the Treasurer; and the subsequent value of the penalty unit prescribed in regulation.*
>
> *Under the Bill, new section 5A(2) of the PSA allows the Treasurer to determine the percentage change by which the penalty unit value will be increased and to gazette the percentage change by 31 March. If no percentage change is gazetted the Bill provides the percentage change is 3.5%.*
>
> *However, the Bill does not include any criteria to which the Treasurer must have regard when determining the percentage change by which the penalty unit may be increased.*
>
> *Despite the lack of criteria, the Bill does provide that if the percentage change is to be an amount other than 3.5% then the Treasurer is to publish the percentage change in the gazette. In addition, the new penalty unit value will be prescribed in a regulation which, in accordance with section 50 of the Statutory Instruments Act 1992, may be subject to a disallowance motion by the Parliament. Through these mechanisms the Bill maintains transparency and accountability and therefore has sufficient regard to the institution of Parliament.*[36]

Previously, any increase in the penalty unit value for the *State Penalties Enforcement Act 1999* or an infringement notice under that Act had to be made by way of an amendment Act (i.e. primary legislation). For example, the *Penalties and Sentences and Other Acts Amendment Act 2008* and the *Penalties and Sentences and Other Acts Amendment Act 2012* increased the penalty unit value from $75 to $100 and $100 to $110, respectively.

[36] *Explanatory Notes*, Penalties and Sentences (Indexation) Amendment Bill 2013, page 2.

Proposed section 5A provides for the value of a penalty unit for sections 5(1)(a)(i), 5(l)(c)(i) and 5(1)(e)(i) to be prescribed by regulation, instead of by amendment to primary legislation. As mentioned in Part 2 of this report, this issue was raised by a number of submitters.

The Committee sought further information from the Department about the criteria the Treasurer may consider when reaching a decision on the percentage increase for the penalty unit value. The Department did not provide any additional information about any criteria which would be considered by the Treasurer and simply provided the following information in response to the Committee's request:

> *In 2012-13, the Cabinet Budget Review Committee (CBRC) determined that the general indexation rate for Government fees and charges would be set at 3.5% per annum. Subsequently, Cabinet determined that the indexation rate for penalty unit values would be applied on a consistent basis with the indexation rate for fees and charges. CBRC will consider indexation of fees and charges, and indexation of the penalty unit, as part of the annual budget process.*[37]

Even though no further information was forthcoming, it appears to the Committee that clause 5 has sufficient regard to the institution of Parliament. In reaching this view, regard has been had to the fact that any percentage increase, while gazetted by the Treasurer, must be prescribed in regulation.

This means that the decision to prescribe a percentage increase of penalties and fees ultimately rests with Parliament and will be subject to the Parliament's procedures for disallowance. As pointed out by the Youth Advocacy Centre, there may be a delay in time before a disallowance motion is debated, however the Committee does not consider this to be an issue that would require an amendment to the Bill.

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. lt requires an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The Explanatory Notes were adequately detailed and contain the majority of the information required by Part 4 of the *Legislative Standards Act 1992*. The Explanatory Notes contained a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

However, the Committee notes the following aspects of the Bill were not adequately detailed in the Explanatory Notes:

- why the Bill provides for different value for a penalty unit for a local law, or an infringement notice for an offence against a local law, depending on whether the local government who made the local law is prescribed under a regulation (see clause 4 of the Bill); and
- why clause 4 amends section 5 of the PSA to make provision for the penalty unit value for a local law made under the Alcan Agreement. This will be a new provision in the PSA.

The Committee sought further information from the Department on the Alcan Agreement and received the following information:

> *The Bill provides that the penalty unit value for a local law, or an infringement notice for an offence against a local law made under clause 35 of the Alcan Agreement is the amount prescribed under section 5A or, if no amount is prescribed, -$100.*

[37] Letter from the Department of Justice and Attorney-General, 7 January 2014.

The Department of Local Government, Community Recovery and Resilience has provided the following information: The Alcan Agreement is the agreement made under the Alcan Queensland Pty Limited Agreement Act 1965*. The Alcan Agreement, among other things, provides for the establishment of the local authority area of Weipa. Under Clause 35 of the agreement, the powers, duties and obligations imposed under the* Local Government Act 2009 *apply to the Weipa Town Authority. However, the Weipa Town Authority is not a local Government under the* Local Government Act 2009*.*

Therefore specific reference to the Alcan Agreement is required in the Penalties and Sentences (Indexation) Amendment Bill for the indexation mechanism in the Bill to apply to the local laws made by the Weipa Town Authority under clause 35 of the Alcan Agreement. The drafting practice adopted in the Bill reflects the current reference to the local laws made under clause 35 of the Alcan agreement in section 2A of the Penalties and Sentences Regulation 2009.

Committee Comment

The Committee is satisfied with the Department's response regarding the background to the Alcan Agreement and why it has been included in the Bill. It would have been helpful for this information to be included in the Explanatory Notes when the Bill was introduced.

In relation to the lack of clarity in the Explanatory Notes with respect to which local governments were prescribed by regulation and in which regulations those local governments are prescribed - the Committee notes the Attorney-General clarified this position in his Introductory Speech by referring to '*local governments not listed in schedule 2 to the Penalties and Sentences Regulations*'.[38]

Again, it would have been helpful if an explanation of how the amendments in the Bill related to the specific existing Regulations had been included in the Explanatory Notes.

[38] *Record of Proceedings (Hansard)*, 19 November 2013, page 3904.

Appendix A – List of Submissions

Sub #	Submitter
001	Queensland Council for Civil Liberties
002	Queensland Law Society
003	Law and Justice Institute (Qld) Inc.
004	Youth Advocacy Centre Inc.
005	Local Government Association of Queensland

Statement of Reservation

BILL BYRNE MP
SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS
MEMBER FOR ROCKHAMPTON
PO Box 15057, City East QLD 4002
reception@opposition.qld.gov.au (07) 3838 6767

30 January 2014

Mr Ian Berry MP
Member for Ipswich
Chairperson
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Statement of Reservation – *Penalties and Sentences (Indexation) Amendment Bill 2013*

I wish to notify the committee that the opposition has reservations about aspects of the Report No. 48 of the Legal Affairs and Community Safety Committee into the *Penalties and Sentences (Indexation) Amendment Bill 2013.*

The Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

Bill Byrne
Member for Rockhampton

Dissenting Report

Peter Wellington MP

Member for Nicklin

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30 January 2014

Mr Brook Hastie,
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Brook

Dissenting Report by Peter Wellington Member for Nicklin for the Penalties and Sentences (Indexation) Amendment Bill 2013 Report Number 48.

I recommend the Penalties and Sentences (Indexation) Amendment Bill 2013 be rejected.

I do not believe the case has been made by the Government to change the current system of periodic review and amendment of the Penalties and Sentencing Act 1992. And, I refer Members to the substance of the report prepared by the Secretariat.

I find insufficient evidence has been presented by the government to support its case that the current system has led to a lack of deterrents in penalties and sentences.

The Treasurer's involvement indicates to me that the proposal in this Bill for a new fee scale is more about an income stream for the Government rather than the penalty as a deterrent.

Yours sincerely

Peter Wellington

Peter Wellington MP
Member for Nicklin