

PENALTIES AND SENTENCES (INDEXATION) AMENDMENT BILL 2013

Explanatory Notes

Short title

The short title of the Bill is the Penalties and Sentences (Indexation) Amendment Bill 2013.

Policy objectives and the reasons for them

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

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.

Achievement of policy objectives

The Bill achieves the objectives by amending the *Penalties and Sentences Act 1992* to provide a mechanism for indexing the penalty unit value.

Alternative ways of achieving policy objectives

Legislative amendment is the only way to achieve the outcome.

Estimated cost for government implementation

The costs of implementing an annual increase in the penalty unit value have not been accurately assessed but will be absorbed by departments, agencies and local governments.

Consistency with fundamental legislative principles

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.

Consultation

The Local Government Association of Queensland was consulted on the application of indexation to the penalty unit value for local laws and a draft of the Bill.

The Queensland Law Society and the Bar Association of Queensland were also consulted on the proposed Bill.

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 unit on an ongoing basis, for example in

three yearly intervals. This alternate suggestion was not adopted because it is intended that the penalty unit value be able to be indexed annually.

Consistency with legislation of other jurisdictions

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

It is noted that Victoria, the Northern Territory and Tasmania have legislatively provided for the indexation of the penalty unit value.

Notes on provisions

Clause 1 states that, when enacted the Bill may be cited as the *Penalties and Sentences (Indexation) Amendment Act 2013*.

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

Clause 3 states that the Act amends the *Penalties and Sentences Act 1992*.

Clause 4 amends section 5 (Meaning of penalty unit) to replace existing subsection 5(1) with new subsection 5(1) (a) to (e) and insert new subsections 5(2A) and 5(5).

New subsection 5(1)(a) provides that 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) is the amount prescribed under new section 5A or if no amount prescribed, \$110.

New subsection 5(1)(b) provides that 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.

New subsection 5(1)(c) provides that 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, \$110.

New subsection 5(1)(d) replaces the previous section 5(1)(c) and provides the penalty unit value for 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. 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.

New subsection 5(1)(e) provides that the penalty unit value in any other Act is the amount prescribed under section 5A or if no amount is prescribed, \$110.

New subsection 5(2A) provides that for the purposes of a penalty enforced through the issuing of a penalty infringement notice, if the monetary value of the penalty obtained using the formula in section 5(2) is not a multiple of a dollar then the amount is rounded down to the nearest dollar. Current section 5(2) provides the formula for determining the monetary value of a penalty expressed in the legislation as a number of penalty units.

New subsection 5(5) inserts definitions for the terms *Alcan agreement* and *Infringement notice*.

Clause 5 inserts new section 5A (Prescribed value of particular penalty unit)

New subsection 5A (1) provides the legislative authority for a regulation to prescribe the penalty unit value.

New subsection 5A(2) provides the method for increasing the penalty unit value. Under this subsection the penalty unit value prescribed in the regulation must not be more than the previous penalty unit value increased by the percentage change published by the Treasurer before 31 March of the relevant year as being the percentage change applicable to the penalty unit or if no amount is so published by the Treasurer, 3.5%.

New subsection 5A(3) provides that if the penalty unit value obtained by applying the percentage change is not a multiple of 5 cents then the amount must be rounded down to the nearest 5 cents.

New Section 5A(4) provides that for new subsection 5A(2), if an amount for the penalty unit value has not been prescribed, the amount of the penalty unit is taken to be \$110.

New Subsection 5A(5) provides that a regulation may only prescribe one increase to the penalty unit value per financial year.