

1996

**THE LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL  
TERRITORY**

**REGULATIONS REVISION (PENALTIES), REGULATIONS**

**EXPLANATORY STATEMENT**

Circulated by authority of  
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Attorney-General

## **General Outline**

The Regulations Revision (Penalties) Regulations ("the Regulations") amend penalties in the following Regulations: Bushfire Regulations, Fire Brigade Regulations, Machinery Regulations, Meat Regulations, Motor Omnibus Services Regulations, Occupational Health and Safety Regulations, Plant Diseases Regulations, Public Health (Barbers' Shops) Regulations, Public Health (Boarding-houses) Regulations, Public Health (Cancer Reporting) Regulations, Public Health (Cervical Cytology) Regulations, Public Health (Dairy) Regulations, Public Health (Eating Houses) Regulations, Public Health (General Sanitation) Regulations, Public Health (Laundries, Dry Cleaning Establishments and Dye Works) Regulations, Public Health (Meat) Regulations, Public Health (Piggeries) Regulations, Public Health (Sale of Food and Drugs) Regulations, Public Parks Regulations, Rabbit Destruction Regulations and Weapons Regulations.

These amendments are effected as part of a general review of penalties in ACT legislation by reference to the Principles and a Benchmark Scale of Penalties set out in Attachment A and Attachment B respectively.

## **Financial Implications**

The Regulations are intended to be finance neutral.

## **PENALTIES REVIEW PRINCIPLES**

1. The maximum penalty for an offence should be stated at the foot of the provision creating or defining the offence. **n.b. Minimum sentences or penalties for first and subsequent offences should normally be avoided.**
2. The maximum penalty should reflect the seriousness of the offence relative to other offences of a similar nature. **n.b. It is for legislation to set the maximum and for the trial court to determine the appropriate penalty for a particular offender.**
3. The maximum penalty should be a fine (of \$100, or in the case of a body corporate \$500, or a multiple thereof) or for more serious offences, a period of (not less than 6 months) imprisonment.  
**n.b. The ratio between fines and imprisonment should be \$5000 : 6 months.**
4. A penalty of imprisonment should be set only for offences involving elements of the following (either actual or implied) :
  - # dishonesty;
  - # abuse of authority or trust;
  - # violence;
  - # endangerment of life or property;
  - # perversion;
  - # obstruction of justice or law enforcement;
  - # subversion;
  - # activities similar to these.**n.b. Imprisonment should not be available as a penalty for most minor offences. Penalties of imprisonment only (without provision for a fine) should only be set in exceptional circumstances.**
5. Terms of imprisonment fixed prior to September 1989 may need to be reduced by up to 1/3rd to reflect truth in sentencing (viz the abolition of remissions in NSW).
6. Penalties provided by regulations or other subordinate legislation should not exceed a fine of \$5000 in the case of bodies corporate and \$1000 in the case of individuals.  
**n.b. A term of imprisonment should not be prescribed for an offence contained in regulations.**
7. General penalties at the end of an Act and maximum penalties calculated by reference to a formula which requires proof of one or more elements are undesirable.
8. Any departure from these principles should be justified in the Cabinet submission proposing or reviewing the penalty concerned.
9. These principles will be subject to systematic and continuing review in accordance with the principles of social justice.

## Benchmark Penalty Scale for Regulatory Offences

Category	Imprisonment	Fine	
1	12 months	\$10000	or both
2	6 months	\$5000	or both
3		\$5000	
4		\$3000	
5		\$2000	
6		\$1000	
7		\$500	
8		\$200	
9		\$100	

### Sample Offences for each Category

#### Category

1

Dealing in dangerous weapons or articles without licence

Dealing with unregistered owners of dangerous weapons or articles

Possessing dangerous weapons or articles without licence

2

Conducting business or affairs without registration, licence or approval required in law

Holding office while being disqualified in law for the office

Providing misleading or false statement in an investigation, inspection or inquiry

Obstructing auditors or authorised officers in the course of their duties

Improper use of information or office for gain for self or others

~~Acts or omissions perverting or obstructing the course of investigation or inquiry in a substantial manner~~

~~Breach of secrecy obligation by employee~~

~~Preventing a person or causing to prevent a person, by direct or indirect methods, from giving evidence at an inquiry or otherwise required by law~~

~~Refusal without reasonable cause to comply with a requirement made by an authorised officer in the course of a search or an inspection under a search warrant~~

~~Failure, without reasonable excuse, to comply with a summons issued by an inquiry panel~~

~~Without reasonable excuse, contravening the requirement made by an inspector authorised by a search warrant, to give reasonable assistance and wilfully obstructing or resisting an inspector~~

~~Contempt of inquiry panel~~

~~Advertising an objectionable publication~~

### 3 Unapproved invitation to the public to invest

~~Noncompliance with a condition imposed by an Authority when granting approval for investment or invitation for investment~~

~~Using land otherwise than in accordance with lease or development agreement~~

~~Failure by an employer to maintain a prescribed insurance policy~~

~~A supplier or dealer in goods or services, without reasonable excuse, not complying with the legal requirements in relation to a prescribed contract~~

~~Failure by a supplier, on rescission of a contract, to return or refund to the consumer the consideration under the contract~~

~~Not complying with the requirement to sell an article by reference to a measurement or quantity~~

### 4 Driving a vehicle that does not comply with statutory requirements in relation to dimension and design, otherwise than in accordance with conditions in a permit issued for the vehicle

~~False advertising~~

### 5 Nondisclosure of conflict of interest

~~Participating in decision making on a matter or a contract while having conflict of interest in it~~

~~Failure to keep accounts, records and books, required by law; failure~~

to have accounts audited; failure to provide the audited financial statement to members

6 Failure to report a loss of a licence within specified time

~~Affixing licence or tag required by law on a machine or stock otherwise than in a prescribed manner~~

Failure to keep records of non-financial nature

Failure to lodge a return of sale of licensable articles

Variation of a lease without approval

Failure by an employer to keep prescribed insurance claim forms available

7 Nondisplay of name in Common Seal and letters etc., as required by law

Failure to revise rules within time required by law

Failure to comply with a legal requirement to report an incident or a matter

Failure to suppress nuisance within premises

~~Publishing or causing to publish restricted information, without reasonable excuse~~

Permitting a tree, plant etc. to overhang a public place so as to obstruct or inconvenience a person in that place

8 Failure to lodge documents within time specified in law or required under law by an authority

Not carrying identity card in the course of duty; not producing it when required under law

Failure to provide for or fill the vacancy in an office within specified time under law

9 Failure to give notice required in law on matters of routine nature, such as a notice of change of address by an officer of a body

Failure to return official identity card after ceasing to be an official