

**1998**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STATUTE LAW REVISION (PENALTIES) BILL 1998**

**EXPLANATORY MEMORANDUM**

**(Circulated by the Authority of**

**Mr Gary Humphries MLA**

**Attorney-General)**

## **STATUTE LAW REVISION (PENALTIES) BILL 1998**

### **OUTLINE**

The Statute Law Revision Bill 1998 (the Bill) implements the second stage of a review of penalties in ACT legislation.

The review has been conducted of penalties in Territory laws to achieve greater consistency in the penalties which are applied to the wide variety of offences on the ACT 'statute book'. Uniform review principles and a penalty scale for different categories of offences have been applied in the conduct of the review. These principles and the scale are set out at the end of this explanatory memorandum.

As well as achieving greater consistency between penalties for offences, the review has also converted most penalties which were expressed in dollar amounts to penalties expressed as penalty units. The value of a penalty unit is provided for in section 33AA of the *Interpretation Act 1967*. The value of one penalty unit is presently \$100. A number of penalties have not been converted to penalties expressed in penalty units where penalties are imposed at a level determined in accordance with uniform model legislation.

Similarly, a small number of penalties have not been adjusted to be consistent with the review principles and penalty scale, where the penalty has been determined as part of uniform legislation and there is a desire for consistency across jurisdictions.

Amounts imposed as administrative penalties, as opposed to fines, have not been converted to penalty units under the review.

The *Statute Law Revision (Penalties) Act 1994* implemented the first stage of the penalties review by making appropriate amendments to penalties in more significant legislation or frequently used legislation.

The Bill implements the second stage of the review by amending those Territory acts not amended in the first stage.

### **FINANCIAL CONSIDERATIONS**

There are no financial implications arising from the Bill.

**CLAUSE NOTES****Clause 1: Short title**

This clause provides that the proposed Act may be cited as the *Statute Law Revision (Penalties) Act 1998*

**Clause 2: Commencement**

Clause 2 states that the proposed Act will commence upon notification in the *Gazette*.

The clause provides that section 3 [clause 3] will commence on a day fixed by the Minister by notice in the *Gazette*. If not commenced earlier, that section will commence at the end of the period of 6 months from the notification of the proposed Act in the *Gazette*.

**Clause 3: Amendments of Acts**

This clause provides for the amendment of Acts specified in the Schedule.

**Schedule**

The Schedule amends penalties in the following Acts:

*Adoption Act 1993*  
*Agents Act 1968*  
*Animal Diseases Act 1993*  
*Animal Welfare Act 1992*  
*Architects Act 1959*  
*Associations Incorporation Act 1991*  
*Auctioneers Act 1959*  
*Birth (Equality of Status) Act 1988*  
*Blood Donation (Transmittable Diseases) Act 1985*  
*Bookmakers Act 1985*  
*Boxing Control Act 1993*  
*Building and Services Act 1924*  
*Bushfire Act 1936*  
*Business Franchise (Liquor) Act 1993*  
*Business Names Act 1963*  
*Canberra Institute of Technology Act 1987*

**Casino Control Act 1988**  
**Cemeteries Act 1933**  
**Children's Services Act 1986**  
**City of Canberra Arms Act 1932**  
**Clinical Waste Act 1990**  
**Commissioner for the Environment Act 1993**  
**Community Advocate Act 1991**  
**Community and Health Services Complaints Act 1993**  
**Consumer Credit (Administration) Act 1996**  
**Contractors' Debts Act 1897 (NSW) in its application in the Territory**  
**Conveyancing and Law of Property Act 1898 (NSW) in its application in the Territory**  
**Co-operative Societies Act 1939**  
**Coroners Act 1997**  
**Cotter River Act 1914**  
**Cremation Act 1966**  
**Dangerous Goods Act 1975 (NSW) in its application in the Territory**  
**Dangerous Goods Act 1984**  
**Defamation Act 1901 (NSW) in its application in the Territory**  
**Defamation (Amendment) Act 1909 (NSW) in its application in the Territory**  
**Dentists Act 1931**  
**Discrimination Act 1991**  
**Dog Control Act 1975**  
**Education Act 1937**  
**Education Services for Overseas Students  
(Registration and Regulation of Providers) Act 1994**  
**Electoral Act 1992**  
**Electricity Act 1971**  
**Epidemiological Studies (Confidentiality) Act 1992**  
**Essential Services (Continuity of Supply) Act 1992**  
**Fair Trading Act 1992**  
**Fair Trading (Fuel Prices) Act 1993**  
**Fertilizers Act 1904 (NSW) in its application in the Territory**  
**Financial Institutions (Supervisory Authority) Act 1992**  
**Fire Brigade Act 1957**  
**Fire Brigade (Administration) Act 1974**  
**Fishing Act 1967**  
**Food Act 1992**  
**Fuels Control Act 1979**  
**Games Wagers and Betting-Houses Act 1901 (NSW) in its application in the Territory**  
**Gaming and Betting Act 1906 (NSW) in its application in the Territory**  
**Gaming Machine Act 1987**  
**Guardianship and Management of Property Act 1991**  
**Health Act 1993**  
**Health Professions Boards (Elections) Act 1980**  
**Health Professions Boards (Procedures) Act 1981**

*Inebriates 1900 (NSW) in its application in the Territory  
Inquiries Act 1991  
Instruments Act 1933  
Interpretation Act 1967  
Intoxicated Persons (Care and Protection) Act 1994  
Judicial Commissions Act 1994  
Lakes Act 1976  
Land (Planning and Environment) Act 1991  
Land Titles Act 1925  
Land Titles (Unit Titles) Act 1970  
Law Reform (Manufacturers Warranties) Act 1977  
Lay-by Sales (Agreements) Act 1963  
Legal Aid Act 1977  
Legal Practitioners Act 1970  
Liquor Act 1975  
Listening Devices Act 1992  
Litter Act 1977  
Long Service Leave (Building and Construction Industry) Act 1981  
Magistrates Court Act 1930  
Magistrates Court (Civil Jurisdiction) Act 1982  
Meat Act 1931  
Mediation Act 1997  
Medical Practitioners Act 1930  
Mental Health (Treatment and Care) Act 1994  
Mental Health Act 1962  
Mercantile Law Act 1962  
Milk Authority Act 1971  
Motor Traffic Act 1936  
National Crime Authority (Territory Provisions) Act 1991  
Nature Conservation Act 1980  
Nurses Act 1988  
Occupational Health and Safety Act 1989  
Optometrists Act 1956  
Periodic Detention 1995  
Pharmacy Act 1931  
Physiotherapists Act 1977  
Plumbers, Drainers and Gasfitters Board Act 1982  
Podiatrists Act 1994  
Poisons Act 1933  
Poisons and Drugs Act 1978  
Pool Betting Act 1964  
Pounds Act 1928  
Powers of Attorney Act 1956  
Printing and Newspapers Act 1961  
Prostitution Act 1992*

*Protection of Lands Act 1937*  
*Psychologists Act 1994*  
*Public Baths and Public Bathing Act 1956*  
*Public Health (Prohibited Drugs) Act 1957*  
*Public Interest Disclosure Act 1994*  
*Public Sector Management Act 1994*  
*Racecourses Act 1935*  
*Radiation Act 1983*  
*Rates and Land Tax Act 1926*  
*Referendum (Machinery Provisions) Act 1994*  
*Royal Commissions Act 1991*  
*Sale of Motor Vehicles 1977*  
*Scaffolding and Lifts Act 1912-1948 (NSW) in its application in the Territory*  
*Scaffolding and Lifts Act 1957*  
*Sexually Transmitted Diseases Act 1956*  
*Skin Penetration Procedures Act 1994*  
*Smoke-free Areas (Enclosed Public Places) Act 1994*  
*Stamp Duties and Taxes 1987*  
*Stock Act 1991*  
*Substitute Parent Agreements Act 1994*  
*Taxation (Administration) Act 1987*  
*Tenancy Tribunal Act 1994*  
*Theatres and Public Halls Act 1928*  
*Tobacco Act 1927*  
*Tobacco Products (Health Warnings) Act 1986*  
*Trade Measurement Act 1991*  
*Traffic Act 1937*  
*Transplantation and Anatomy Act 1978*  
*Trespass on Territory Land Act 1932*  
*Truck Act 1900 (NSW) in its application in the Territory*  
*Trustee Companies Act 1947*  
*Tuberculosis Act 1950*  
*Unlawful Games Act 1984*  
*Victims of Crime Act 1994*  
*Workers' Compensation Act 1951*

The penalties in ACT legislation are being reviewed in the light of the following Penalties Review Principles and Suggested Penalty Scale for Regulatory Offences.

### 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.

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**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.**

**Suggested Penalty Scale for Regulatory Offences**

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

**Sample Offences for each Category**

<b>Category</b>	
<b>1</b>	<p><b>Dealing in dangerous weapons or articles without licence</b></p> <p><b>Dealing with unregistered owners of dangerous weapons or articles</b></p> <p><b>Possessing dangerous weapons or articles without licence</b></p>
<b>2</b>	<p><b>Conducting business or affairs without registration, licence or approval required in law</b></p> <p><b>Holding office while being disqualified in law for the office</b></p> <p><b>Providing misleading or false statement in an investigation, inspection or inquiry</b></p>

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**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**

**Not complying with the requirement to sell an article by reference to a measurement of 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 or 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 license 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 by 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