

1993

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STATUTE LAW REVISION (PENALTIES) BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by the Authority of

Mr Terry Connolly MLA

Attorney-General)

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OUTLINE

The Statute Law Revision (Penalties) Bill 1993 gives effect to the outcome of the first stage of a review of penalties in Territory statutes. This review is being conducted on the basis of review principles and penalty scales approved by the Government. These principles and scales are set out at the end of this explanatory memorandum.

The Bill updates the penalties (i) which are in legislation of high social importance, (ii) which apply to offences of frequent occurrence, or (iii) which have been the subject of criticism.

An important feature of this Bill is that for the first time in the Territory, monetary penalties are converted to penalty units, a measure that is in line with the penalty units system applying in legislation of other jurisdictions, such as the Commonwealth, New South Wales, Victoria and Queensland.

The value of a unit is specified in the Interpretation (Amendment) Bill 1993 which is to be introduced in the Legislative Assembly at the same time as this Bill.

FINANCIAL CONSIDERATIONS

The Bill is intended to be budget neutral.

CLAUSE NOTES**Clause 1: Short title**

This clause provides that the proposed Act may be cited as the *Statute Law Revision (Penalties) Act 1993*.

Clause 2: Commencement

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

Also, this clause provides that section 3 [clause 3] will commence on a day fixed by the Minister by notice in the *Gazette*. Otherwise, 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 amendments of Acts specified in the Schedule.

In addition to updating penalties in line with the approved principles and scale, some provisions have been redrafted to clarify their effect. The redrafting does not affect the purpose or effect of those provisions. Some important redrafted provisions are sections 46 and 47 of the *Medical Practitioners Act 1930*. Currently there is an overlap between sections 46 and 47 of this Act in relation to the offence of a person other than a registered medical practitioner advertising or holding himself or herself out, as being a registered medical practitioner. The redrafted provisions avoid this overlap. The redrafted section 46 is limited to prohibiting a person other than a registered medical practitioner providing a medical service. The penalty provided for this offence is to be 50 penalty units or imprisonment for 6 months, or both. The redrafted section 47 deals with prohibited advertising or holding out and provides a penalty of 30 penalty units.

Some other redrafting changes are:

Consumer Affairs Act 1973: the proposed Act omits section 15H (a general penalty provision) and provides penalties under subsections 15B(5) and 15C(2).

Motor Traffic (Alcohol and Drugs) Act 1977 : Sections 26 and 27, and paragraph 46(2)(b) are to be omitted. Section 26 currently provides penalties for offences under sections 19 (driving with excess blood alcohol concentration level), 22 (refusal to provide sample of breath for analysis), 23 (refusal to submit to blood test or medical examination) and 24 (driving under the influence of intoxicating liquor or drug) of this Act. Section 27 provides a penalty for subsequent offences under these provisions. Paragraph 46(2)(b) is also a subsequent offence provision. The proposed Act provides a penalty of 30 penalty units in sections 19, 22, 23 and 24 for offences.

Schedule

The schedule amends penalties in the following Acts:

Administrative Appeals Tribunal Act 1989
 Adoption Act 1993
 Air Pollution Act 1984
 Animal Nuisance Control Act 1975
 Annual Holidays Act 1973
 Apiaries Act 1928
 Audit Act 1989
 Bail Act 1992
 Building Act 1972
 Buildings (Design & Siting) Act 1964
 Bushfire Act 1936
 Business Franchise (Tobacco and Petroleum Products) Act 1984
 Business Franchise ("X" Videos) Act 1990
 Children's Services Act 1986
 Chiropractors Registration Act 1983
 Collections Act 1959
 Consumer Affairs Act 1973
 Co-operative Societies Act 1939
 Coroners Act 1956
 Cotter River Act 1914
 Criminal Injuries Compensation Act 1983
 Dental Technicians and Dental Prosthetists Registration Act 1988
 Dentists Registration Act 1931
 Dog Control Act 1975
 Domestic Violence Act 1986
 Electricity Act 1971
 Electricity and Water Act 1988
 Enclosed Lands Protection Act 1943
 Evidence Act 1971

Financial Institutions Duty Act 1987
Fire Brigade Act 1957
Fishing Act 1967
Gaming Machine Act 1987
Gas Levy Act 1991
Hawkers Act 1936
Heritage Objects Act 1991
Juries Act 1967
Lakes Act 1976
Land (Planning and Environment) Act 1991
Land (Planning and Environment) (Consequential Provisions) Act 1991
Law Reform (Manufactures Warranties) Act 1977
Law Reform (Misrepresentation) Act 1977
Lay-By Sales Agreements Act 1963
Legal Aid Act 1977
Legal Practitioners Act 1970
Listening Devices Act 1992
Long Service Leave Act 1976
Long Service Leave (Building and Construction Industry) Act 1981
Machinery Act 1949
Magistrates Court Act 1930
Magistrates Court (Civil Jurisdiction) Act 1982
Maintenance Act 1968
Meat Act 1931
Medical Practitioners Act 1930
Mining Act 1930
Motor Omnibus Services Act 1955
Motor Traffic Act 1936
Motor Traffic (Alcohol and Drugs) Act 1977
National Crime Authority (Territory Provisions) Act 1991
Nature Conservation Act 1980
Noise Control Act 1988
Notaries Public Act 1984
Nurses Act 1988
Oaths and Affirmations Act 1984
Occupational Health and Safety Act 1989
Ombudsman Act 1989
Optometrists Act 1956
Ozone Protection Act 1991
Pawnbrokers Act 1902 of the State of New South Wales
in its application in the Territory
Pesticides Act 1989
Pharmacy Act 1931
Physiotherapists Registration Act 1977
Plant Diseases Act 1934
Police Act 1927
Police Offences Act 1930
Pounds Act 1928
Proceeds of Crime Act 1991
Protection of Lands Act 1937

Public Health Act 1928
Public Parks Act 1928
Public Trustee Act 1985
Rabbit Destruction Act 1919
Rates and Land Rent (Relief) Act 1970
Rates and Land Tax Act 1926
Registration of Interests in Goods Act 1990
Roads and Public Places Act 1937
Scaffolding and Lifts Act 1912-1948 of the State of New South Wales
in its application in the Territory
Second-hand Dealers and Collectors Act 1906 of the State of New South Wales
in its application in the Territory
Sewerage Rates Act 1968
Small Claims Act 1974
Soil Conservation Act 1960
Stamp Duties and Taxes Act 1987
Stock Act 1991
Stock Diseases Act 1933
Surveyors Act 1967
Taxation (Administration) Act 1987
Trade Measurement Act 1991
Trading Stamps Act 1972
Trespass on Territory Land Act 1932
Unit Titles Act 1970
Veterinary Surgeons Registration Act 1965
Water Pollution Act 1984
Water Rates Act 1959
Weapons Act 1991
Weights and Measures (Sale of Bread) Act 1929
Workers Compensation Supplementation Fund Act 1980

The penalties in ACT legislation are being reviewed in the light of the following Government approved 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.
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

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 requirement in relation to a prescribed 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**