

8 January 2014

Our ref 339/57

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By Post and Email to: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Research Director

### **Penalties and Sentences (Indexation) Amendment Bill 2013**

Thank you for providing the Society with the opportunity to comment on the *Penalties and Sentences (Indexation) Amendment Bill 2013* (the Bill).

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified. The Society was grateful for the opportunity to provide detailed comments on the proposed Bill, which has been noted in the Explanatory Notes.

We make the following comments for your consideration.

#### **1. Clause 5: Insertion of new s5A**

The proposed s5A(2) provides for the annual indexation of the penalty unit value by:

- (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 – the percentage; or*
- (b) *otherwise – 3.5%*

We consider that the existing method, which provides for increases in the value of a penalty unit on an ad hoc basis, should remain. 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. We submit that an alternative amendment to the one proposed would be

to legislate for a review by the Attorney-General to consider the appropriateness of the value of a penalty unit on an ongoing basis. For example, the *Crimes Act 1914* s4AA(1A) states:

*The 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.*

Similarly, s133 of the *Legislation Act 2011 (ACT)* states:

*The Attorney-General must review the amount of a penalty unit at least once every 4 years after the day this subsection commences.*

We submit that this would provide for regular review without an automatic annual increase.

## **2. Practical consequences of the proposed changes**

As noted in the Explanatory Notes to the Bill, while we acknowledge that there is a need for periodic review of the value of a penalty unit, the proposed method will have a substantial impact on the penalty for offences which have a high prescribed maximum penalty unit. 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.<sup>1</sup> 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.

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,”<sup>2</sup> it is important that the legislation contains some guidance as to how a percentage change may occur year on year.

There may be confusion given the different penalty rates that may be prescribed under proposed s5(1), with each rate changing potentially on an annual basis. This may result in practical difficulties with SPER’s ability to manage these changes.

We also note that there are additional areas tied to the criminal justice system which could be subject to an indexation rate or consideration of review. The scale of costs, as contained in schedule 2, part 2 of the *Justices Regulation 2004* was last reviewed on 17 July 1999.

Thank you for the opportunity to provide comments on this Bill. Please contact our Policy Solicitor, Ms Raylene D’Cruz on (07) 3842 5884 or [r.dacruz@qls.com.au](mailto:r.dacruz@qls.com.au) for further inquiries.

Yours faithfully

Michael Fitzgerald  
**Deputy President**

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<sup>1</sup> *Fisheries Act 1994*, s88B; also note for example *Biodiscovery Act 2004*, s50 and *Nature Conservation Act 1992*, s88.

<sup>2</sup> Stated on page 1 of the Explanatory notes under ‘Policy objectives and the reasons for them’