

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON
LEGAL AFFAIRS**

STATUTE LAW REVISION (PENALTIES) BILL 1993

REPORT NO. 4

JUNE 1994

COMMITTEE MEMBERSHIP

Mr Gary Humphries MLA	(Chairman)
Mrs Ellnor Grassby MLA	(from 9 August 1993)
Mr David Lamont MLA	(to 9 August 1993)
Ms Helen Szuty MLA	(from 25 February 1993)

Secretary: Mr R Owens (to May 1993; and from June 1993 to April 1994)
Ms J Starceovich (May-June 1993)
Mr R Power (June 1994)

TERMS OF REFERENCE

On 24 February 1994, the Legislative Assembly passed the following resolution:

That notwithstanding the provisions of standing order 174:

- (1) The Statute Law Revision (Penalties) Bill 1993 be referred to the Standing Committee on Legal Affairs for inquiry and report, by the last sitting day of June 1994.
- (2) On the Committee presenting its report to the Assembly, resumption of debate on the question "That this Bill be agreed to in principle" be set down as an order of the day for the next sitting.

STANDING COMMITTEE ON LEGAL AFFAIRS

Statute Law Revision (Penalties) Bill 1993

CHAPTER ONE: INTRODUCTION

Background

1.1 The Standing Committee on Legal Affairs was formed on 27 March 1992 to:

...inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community relating to administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, law reform and consumer affairs.

1.2 The Attorney-General presented the *Statute Law Revision (Penalties) Bill 1993* on 16 December 1993 and moved that the Bill be agreed to in principle. The purpose of the Bill is to revise various statutes to update penalties applied therein and to convert the measure of such penalties from monetary amounts to "penalty units". The Bill was introduced simultaneously with the *Interpretation (Amendment) Bill (No.3) 1993*, which introduces a system of penalty units for fines in ACT legislation.

1.3 On 16 February 1994, the Standing Committee on Legal Affairs resolved, on the motion moved by Ms Szuty, to inquire into and report on *the Statute Law Revision (Penalties) Bill 1993*.

1.4 The Chairman subsequently moved on 24 February 1994:

That notwithstanding the provisions of standing order 174:

- (1) The Statute Law Revision (Penalties) Bill 1993 be referred to the Standing Committee on Legal Affairs for inquiry and report, by the last sitting day of June 1994.
- (2) On the Committee presenting its report to the Assembly, resumption of debate on the question "That this Bill be agreed to in principle" be set down as an order of the day for the next sitting.

The motion was passed by the Assembly.

CHAPTER TWO: FEATURES OF THE BILL

2.1 The Bill deals with the penalties provided for in 106 pieces of legislation. In his presentation speech, the Attorney-General described the Bill as the first stage of a two stage process to review penalties in ACT legislation. In the first stage, penalties in Acts of “social importance” such as the Occupational Health and Safety Act 1989 and the Children’s Services Act 1986 are reviewed and revised. The second stage will involve remaining penalties in ACT legislation.

2.2 The Attorney-General expressed the hope that all remaining penalties will have been updated with the passage of the second Bill in this process.

2.3 In his speech, he described the reason for such legislative review of penalties. Many penalties were set many years ago and under different policy regimes, resulting in inconsistent application of penalties. Some penalties are even inconsistent with other penalties in the same piece of legislation.

2.4 The Minister tabled the Explanatory Memorandum to the Bill which contains two significant addenda, a set of Penalties Review Principles and a suggested Penalty Scale for regulatory offences. He indicated in his presentation speech that the Principles and Scale had been approved by the Government and would be the basis for this and ongoing reviews of legislation.

2.5 He said that the application of the principles resulted in significant increases in the maximum penalty for some offences. This was the result both of the rectification of existing anomalies and the effect of inflation. He said:

In all cases where the Bill increases penalties for offences, this is a result of the application of the principles and penalty scale to impose consistent penalties for similar offences.

2.6 On 15 April 1994, the Attorney-General wrote to the Chairman to indicate that he proposed to change penalties in a number of Acts referred to in the Schedule to the Bill. These were the:

Dog Control Act 1975

Fishing Act 1967

Hawkers Act 1936

Stock Diseases Act 1933

Taxation (Administration) Act 1987

Weapons Act 1991

CHAPTER THREE: ISSUES IN THE BILL

3.1 The Committee examined a number of issues in relation to the Bill.

Community Understanding of the Penalties Review Principles

3.2 At the time the Bill was tabled in the Assembly, some debate took place in the community concerning the consistency of penalty-imposing provisions in ACT laws. For example, in a letter to *The Canberra Times* on 9 January 1994, Mrs Linda O'Donoghue suggested that:

The standard fine for a kid casually selling cookies door-to-door for pocket money would be \$5000 (unlicensed hawking)...One incongruity I find especially grim: the fine for having up to five marijuana plants is to remain a paltry \$100.

3.3 The Committee considers that there may be considerable misunderstanding or ignorance in the community on the question of what penalties apply to particular offences. Indeed, to its knowledge, the Penalties Review Principles published in the Explanatory Memorandum to the Bill are the first public exposition of the rationale for the application of particular penalty provisions in legislation.

3.4 The Committee considers that considerable benefit would flow from broader community understanding of the basis on which certain penalties are imposed. To further this aim, it believes that there should be wider dissemination of the Principles agreed by the Government and an invitation for public input on them. In particular, the Committee sees value in placing the Principles in a preamble to the Bill, thus ensuring that explicit recognition as the basis for this legislation.

Recommendation 1

3.5 The Committee recommends that:

- the Penalty Review Principles be incorporated in a preamble to the Bill.

Schedule to the Bill

3.6 The Committee comments as follows on the amendments to particular Acts in the Schedule to the Bill.

Administrative Appeals Tribunal Act 1989

3.7 This Act is amended to provide an increase in penalties where a person fails to attend to give evidence (s.52), refuses to give evidence (s.53), gives false or misleading evidence (s.54), or commits a contempt of the Tribunal (s.55). In these cases, the penalty is increased from a \$1000 fine or three months' imprisonment to a \$5000 fine ("50 penalty units") or six months' imprisonment, or both.

3.8 The Committee notes that this scale of penalty is consistent with the criminal jurisdiction of the Magistrates Court (see *Magistrates Court Act 1930*) but is not consistent with the civil jurisdiction of the same Court. *The Magistrates Court (Civil Jurisdiction) Act 1982* is amended by the Schedule to this Bill, but penalties for the above offences are not made consistent with the *Administrative Appeals Tribunal Act 1989*.

Air Pollution Act 1984

3.9 The Schedule amends s.49(1)(d), so that the Executive may make regulations prescribing penalties for offences against the regulations not exceeding -

- (i) if the offender is a natural person - 50 penalty units or imprisonment for 6 months, or both; or
- (ii) if the offender is a body corporate - 250 penalty units.

3.10 The Committee notes that this amendment is inconsistent with Penalty Review Principle 6, which provides:

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 terms of imprisonment should not be prescribed for an offence contained in regulations.

3.11 The Committee accepts that the rule contained in Principle 6 is important to prevent significant fines being imposed by the Executive, rather than the Legislature. It also believes that imprisonment should not be a penalty contained in regulations. Accordingly the Committee believes that, in light of the apparent inconsistency between proposed s.49(1)(d) and Principle 6, the former be amended to comply with the latter.

Recommendation 2

3.12 The Committee recommends that:

The amendment to s.49(1)(d) of the *Air Pollution Act 1984* be amended so that it is consistent with Penalty Review Principle 6.

Animal Nuisance Control Act 1975

3.13 The Schedule amends s.14(1) to insert "50 penalty units or imprisonment for 6 months, or both" in place of "\$100".

3.14 The Committee notes that here, and elsewhere in the Schedule, provisions where an offence may be committed by a natural person or a body corporate are inconsistently applied. Thus s.14(1), which deals with a person contravening or failing to comply with an order made under the Act, does not provide differential penalties where the offender is natural or artificial. This stands in contrast to s.49(1)(d) of the *Air Pollution Act 1984*, referred to above.

Recommendation 3

3.15 The Committee recommends that:

- The Government review the circumstances where penalties are imposed differentially on natural persons and bodies corporate during the second stage of the review of penalties it is to conduct, with a view to ensuring consistency of approach.

Children's Services Act 1986

3.16 The Schedule amends section 103(2) which deals with the mandatory reporting of child abuse by medical practitioners, social workers, public servants and so on. The Schedule provides a fivefold increase in the penalty for failure to report injury to a child or sexual abuse of a child to the Director of Family Services/Community Advocate.

3.17 The Committee notes the wide community debate which has accompanied the issue of mandatory reporting. In particular, it notes the discussion paper on this subject issued by the Community Law Reform Committee in 1993. It also notes that there has been some division among those working with cases of child abuse as to whether mandatory reporting assists or hinders the process of uncovering abuse.

3.18 The Committee believes that the quintupling of the penalty provided in s.103(2) may send the wrong message about current attitudes towards this issue. The increase in penalty may also be conducive to promoting the reporting of suspected abuse in the most doubtful of cases. The Committee believes that the operation of this increased penalty should be reviewed after a reasonable period of operation.

Recommendation 4

3.19 The Committee recommends that:

- **the operation of the increased penalty in section 103(2) of the *Children's Services Act 1986* be reviewed after a reasonable period of operation.**

3.20 Section 118 of the Act makes it an offence to provide child care otherwise than at premises which are licensed for the purpose, or to provide child care contrary to conditions contained in a licence. The Schedule increases the penalties for both offences, so that the penalty is 50 penalty units for a natural person and 250 penalty units for a body corporate, irrespective of which offence is committed.

3.21 By contrast, section 133 of the Act contains a prohibition on employing a child in activities dangerous to his or her health or safety without the consent of the Director, or employing a child contrary to any conditions contained in the consent. The Schedule provides a similar increase in penalties for these offences, but distinguishes between dangerous employment and breach of a condition under which consent to employ is granted. The penalty for the former is, in the case of the body corporate, 1000 penalty units and 500 penalty units for the latter.

3.22 It seems anomalous that the distinction between unlawful activity and activity contrary to conditions in a license or consent should be made in one provision and not in the other.

Recommendation 5

3.23 The Committee recommends that:

- **The penalties in sections 118 and 133 of the *Children's Services Act* should be made consistent.**

Collections Act 1959

3.24 Section 7 (4) makes it an offence for a person authorised to collect to "importune any person to the annoyance of that person." The penalty of \$40 is increased to 50 penalty units (\$5000).

3.25 Although this legislation is more than 30 years old, the Committee doubts that an increase of this magnitude in the penalty provided is warranted. The subjectivity of the notion of "annoyance" may also make a heavy penalty undesirable.

Recommendation 6

3.26 The Committee recommends that:

- the penalty proposed for section 7 (4) of the *Collections Act 1959* be amended from 50 penalty units to 10 penalty units.

Lakes Act 1976

3.27 Sub-sections 21(5) and 21(6) of this Act make it an offence for a person to enter or remain in a lake area over which the Minister has prohibited entry, or to do so after having been informed by an inspector or a police officer that the area is prohibited. In both cases, the offence will carry, pursuant to the Schedule, a 50 penalty unit fine in the case of a natural person and a 250 penalty unit fine in the case of a body corporate.

3.28 The Committee finds it difficult to conceive how a body corporate might commit such an offence. If vehicles or boats are taken over into such a lake area, it would be usual for a police direction to be made against an individual responsible for piloting or driving the craft, rather than against the company which owns the craft. An analogous situation is where a motor

vehicle driver is subject to direction by a police officer; it is the driver who commits the offence, not the company which owns the vehicle.

Recommendation 7

3.29 The Committee recommends that:

- **The penalties in respect of bodies corporate contained in sub-sections 21(5) and 21(6) of the Lakes Act 1976 be repealed.**

Land (Planning and Environment) Act 1991

3.30 Section 70 of the Act creates an offence of disturbing, damaging or destroying an unregistered Aboriginal place, the penalty for which, as amended by the Schedule, is to be 50 penalty units for a natural person and 250 penalty units for a body corporate. Section 84 makes it an offence to publish restricted information about an Aboriginal place. For this offence, the penalty is to be similar, except that a term of imprisonment for six months for a natural person is provided for.

Recommendation 8

3.31 The Committee recommends that:

- **The penalty provided for in sub-section 84(1) be amended to delete the option of a term of imprisonment.**

3.32 Section 149 of the Act makes it an offence for a person served with a summons to attend a hearing of an Inquiry not to do so. The Schedule provides for a penalty of 50 penalty units or imprisonment for six months for a natural person or 250 penalty units for a body corporate. By comparison, section 150 makes it an offence for a person to

- (a) use violence to or inflict injury upon;
- (b) cause or procure violence, damage, loss, or disadvantage to; or
- (c) cause or procure the punishment of;

a person on account of the person's giving, or proposing to give, evidence to an Inquiry.

A penalty identical to section 149 is provided for in the case of such an offence.

3.33 The Committee considers that section 150 proscribes a much more serious offence than section 149. The disparity should be reflected in the penalties provided for.

Recommendation 9

3.34 The Committee recommends that:

- the penalties contained in section 150 of the Land (Planning and Environment) Act 1991 for use of violence or intimidation against a witness to an inquiry should be increased.

Motor Omnibus Services Act 1955

3.35 Section 4C(2) of this Act makes it an offence for a person, in order to avoid paying a fare, to tender a ticket from a book of tickets which the person has not purchased. The Committee considers that this offence may be unnecessarily harsh (it fails to provide, for example, for purchase of a ticket on someone else's behalf or even the use of a ticket which has been lost or discarded in error) and so considers that the Schedule's proposed increase in penalty from \$50 to \$500 is unwarranted. Indeed, it is difficult to see why such an act should be an offence at all.

Recommendation 10

3.36 The Committee recommends that:

- the amendment to section 4C of the Motor Omnibus Services Act 1955 be amended to delete the offence of tendering a ticket which has not been purchased by the user.

Trading Stamps Act 1972

3.37 This Act prohibits schemes where retailers supply coupons which are redeemable for goods or services. Accordingly, sections 4, 5, 6, 7 and 8 contain penalties for promoting such schemes, supplying coupons or supplying goods or services pursuant to issuing of those coupons, and so on. The present penalties of \$1000 for each of these offences (\$500 in respect of section 8) are increased by the Schedule to, in the case of a body corporate, 1000 penalty units for each of the five categories of offence.

3.38 The Committee sees no justification for a \$100,000 fine to be payable in respect of schemes which are apparently no longer a feature of the marketplace and which are, however, legal schemes in other parts of the world. The offences which the Act seeks to punish are not inherently dangerous or fraudulent and do not necessarily even involve the deception of consumers.

Recommendation 11

3.39 The Committee recommends that:

- the amendments to the penalties in the Trading Stamps Act 1972 be reduced to 10 penalty units for a natural person and 50 penalty units for a body corporate.

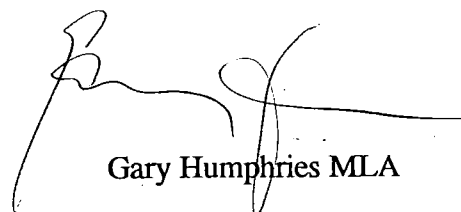
Fishing Act 1967

3.40 The Committee received advice from the Attorney-General that the Government would seek to amend the Statute Law Revision (Penalties) Bill 1993 on the floor of the Assembly in respect of the penalties imposed in the Fishing Act 1967. The Committee notes that the Government proposes a penalty in section 12 for fishing trout or bass less than prescribed size of 20 penalty units. This contrasts with proposed penalties in various sections (sections 13(2), 17, 24(3) and 30(2)) where similar offences (eg, fishing in open fishing waters, taking unclean fish, taking fish from prohibited waters) are to attract a fine of only ten penalty units.

Recommendation 12

3.41 The Committee recommends that:

- the penalty for an offence against section 12 of the Fishing Act 1967 be ten penalty units.



Gary Humphries MLA
Chairman