Speech By

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

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PENALTIES AND SENTENCES (INDEXATION) AMENDMENT BILL

Second Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (8.46 pm): I move—

That the bill be now read a second time.

I thank the Legal Affairs and Community Safety Committee for its consideration of the bill. The committee tabled its report on 3 February 2014. The committee made one recommendation. The government welcomes the recommendation that the bill be passed.

The bill introduces a legislative mechanism into the Penalties and Sentences Act 1992 that allows for an annual increase in the value of the penalty unit. The penalty unit is the basic measure for most fines and penalty infringement notices, commonly called tickets, and is currently $110 for most state laws. Where legislation prescribes a monetary penalty for an offence, it is usually expressed as a certain number of penalty units. For example, the penalty for an offence may be two penalty units. When multiplied by the penalty unit value of $110, this gives a fine of $220.

The legislative mechanism contained in the bill will apply to the penalty unit value applicable to most state laws; the laws of the local governments not listed in schedule 2 of the Penalties and Sentences Regulation 2009; and penalty infringement notices, commonly called tickets, prescribed under the State Penalties Enforcement Act 1999 for offences created in most state laws and the laws of local governments not listed in schedule 2 of the Penalties and Sentences Regulation.

The indexation mechanism adopted in the bill provides a degree of certainty for the community and government around the rate by which the penalty unit is to be increased. In accordance with clause 5 of the bill, the penalty unit value may be increased by 3.5 per cent or another rate, referred to in the bill as the 'percentage change', that is determined by the Treasurer and notified in the *Government Gazette* by 31 March of the relevant year. Therefore, if the percentage change for a particular year is to be an amount other than 3.5 per cent, the Treasurer must notify the percentage change in the *Government Gazette* by 31 March of the relevant year. In this way government departments, agencies, local governments and the public will be aware of the amount by which the penalty unit is to be increased before the regulation prescribing the new penalty unit amount is made.

Under new section 5A(1) inserted into the Penalties and Sentences Act by clause 5 of the bill, the monetary value of the penalty unit will, following the application of the percentage change, then be prescribed in a regulation. Through the application of section 20C of the Acts Interpretation Act 1954, the increase in the monetary penalty for an offence will only apply to those offences committed after the increase in the penalty unit value takes effect. For example, if a regulation is made prescribing a new penalty unit value to take effect from 1 July 2014, then the increased penalty unit value will only apply to offences committed on or after 1 July 2014.

I would like to thank those who made submissions on the bill to the committee and I now address some of the key issues raised. I note that four of the five submissions provided to the committee did not support the legislative mechanism to increase the penalty unit value that is in the bill and instead suggested alternative approaches to increase the penalty unit value. As I said at the time I introduced this bill into the parliament, the approach adopted in the bill is similar to the approach adopted in Victoria, which annually indexes the penalty unit value by an amount other than the consumer price index.

In Queensland the penalty unit has been increased twice since 2000: once in 2009, when the penalty unit value increased from $75 to $100; and again in 2012, when the penalty unit value was increased from $100 to $110. Without regular increases in the penalty unit value, the intended punishment and deterrent effect of monetary penalties reduces over time. The benefit of a legislative mechanism that provides for incremental increases in the penalty unit value is that the deterrent and punishment effect of fines and penalty infringement notices will be maintained and there will be a degree of certainty in relation to the timing and amount of future increases.

In their submissions to the committee, the Queensland Law Society, the Queensland Council for Civil Liberties and the Youth Advocacy Centre raised concerns that there are no criteria in the bill that the Treasurer must consider when determining the percentage change to be applied to the penalty unit value. The Queensland government has given careful consideration to the development of a legislative mechanism by which the penalty unit may be incrementally increased. Consistent with the approach adopted in Victoria, the bill allows the Treasurer to determine the percentage change that is considered appropriate. It is the government's intention that there be consistency between the percentage change and the indexation rate for fees and charges.

I would like to specifically address a concern raised by the Queensland Council for Civil Liberties in their submission to the committee. The Council for Civil Liberties stated that the court system is being seen as a revenue-raising device or one that should pay for itself. The amendments in the bill will result in increases to the dollar value of penalty infringement notices and the maximum dollar value of fines that a court may impose.

However, it is important to note that the bill does not alter the requirement in section 48 of the Penalties and Sentences Act 1992 that a court, when determining the amount of a fine to impose on a person found guilty of an offence, must, as far as practicable, take into account the financial circumstances of the offender and the nature of the burden that payment of the fine will have on the offender.

Penalties in legislation function as both punishments and deterrents. The penalty for an offence represents the level of punishment considered appropriate for the severity of the offence. A legislative mechanism to index the penalty unit value allows the level of punishment and deterrence achieved through the use of monetary penalties to be maintained.

The committee in its report commented that two aspects of the bill which relate to local laws were not adequately dealt with in the explanatory notes provided for the bill. Given the committee's comments, I will elaborate on these issues. Firstly, the committee considered that the explanatory notes for the bill did not explain why there were differing values for a penalty unit for a local law made by a local government prescribed under a regulation. In this regard the bill maintains the current regime under the Penalties and Sentences Act and the Penalties and Sentences Regulation. Currently, schedule 2 of the Penalties and Sentences Regulation lists 12 local governments for which the penalty unit value is prescribed as $75. These local governments were consulted in relation to the penalty unit increase that occurred in 2009 and 2012 and elected on both occasions not to increase the applicable penalty unit value.

The bill maintains the status quo in relation to these local governments by referring to the local governments listed in schedule 2 of the Penalties and Sentences Regulation and not applying the new legislative mechanism to annually adjust their local laws. In future, should any local government listed in schedule 2 of the Penalties and Sentences Regulation wish to align their penalty unit value with the penalty unit value that applies to most state laws, this can be achieved by removing the reference to that local government from the list in schedule 2 of the Penalties and Sentences Regulation.

Secondly, the committee noted that the explanatory notes to the bill did not adequately explain why new section 5(1)(c) inserted into the Penalties and Sentences Act by clause 4 of the bill refers to local laws made under clause 35 of the Alcan agreement. The reference to the Alcan agreement also maintains the current regime under the Penalties and Sentences Act and the Penalties and Sentences Regulation. I am advised that the Alcan agreement is the agreement made under the

Alcan Queensland Pty. Limited Agreement Act 1965. The Alcan agreement, among other things, provides for the establishment of the local authority area of Weipa.

Under clause 35 of the agreement, the powers, duties and obligations imposed under the Local Government Act 2009 apply to the Weipa Town Authority. However, the Weipa Town Authority is not a local government under the Local Government Act 2009. Currently the penalty unit value for the local laws made by the Weipa Town Authority is $110—the same value as that which applies to most state laws. In order for the indexation mechanism in the bill to apply to the local laws made by the Weipa Town Authority under clause 35 of the Alcan agreement, specific reference to the Alcan agreement is required in the bill. The drafting practice adopted in the bill reflects the current reference to the local laws made under clause 35 of the Alcan agreement in section 2A of the Penalties and Sentences Regulation.

Once again, I would like to thank the Hon. David Crisafulli, Minister for Local Government, Community Recovery and Resilience and member for Mundingburra, for his assistance in consulting with the Local Government Association of Queensland on the proposed amendments. In this regard I note that the LGAQ's submission to the committee commended the government for the consultation process in relation to this bill. On that note, I commend the bill to the House.