

SECOND READING SPEECH

Penalty Units and Other Penalties Amendment Bill 2011

Mr Speaker, section 4A of the *Penalty Units and Other Penalties Act 1987*, which provides for the indexation of the value of penalty units, came into effect on 24 October 2007.

Subsection 4A(3) of the *Penalty Units and Other Penalties Act 1987* states that if the indexation, after rounding down to the nearest dollar, increases the unit by \$10 the Minister is to make an order declaring the value of a penalty unit to be that amount.

In addition, subsection 4A(4) states that an increase in the value of a penalty unit has no effect until an order is made.

Subsection 4A(5) of the Act provides that “on or before 1 July 2008 and on or before 1 July in each subsequent year, the Minister is to publish a notice in the *Gazette* specifying the value of a penalty unit for the financial year commencing on that 1 July, whether or not the value is to be increased.

In each of the years since the Act came into effect a notice under subsection 4A(5) has been published in the *Gazette*.

In the initial years the *Gazette* notice confirmed the value had not changed from the initial value of \$120 but in 2010 the amount was increased through indexation to \$130 and notice was given in the *Gazette* to this effect. Since that date all penalties have been calculated on this basis.

However, due to an oversight no formal order was made in 2010 as required by subsection 4A(3) and, because of the terms of subsection 4A(4), as there was no order the increase in the value of a penalty unit is of no legal effect.

In addition, the Office of Parliamentary Counsel has recently drawn attention to the fact that an “order” under section 4A falls within the definition of a statutory rule within the meaning of *Rules Publication Act 1953* and that the formalities of making a statutory rule in the same manner as other regulations and rules should have been followed in 2010.

The Solicitor-General has advised that he agrees with the Office of Parliamentary Counsel that section 4A requires that a statutory rule to be promulgated to increase the value of a penalty unit.

To correct the situation legislation is needed to validate the increase in the amount of a penalty unit from 1 July 2010. If this is not done a legal challenge to the value of a penalty unit could result in the Crown being liable to repay any amount over \$120 per unit collected in respect to penalties imposed since 1 July 2010.

This Bill retrospectively validates the increase in the value of a penalty unit on 1 July 2010 and the continuation of that higher value on 1 July 2011.

The Bill also makes it clear that the order referred to in section 4A is a statutory rule.

I am assured by my Department that in the future all increases in the amount of a penalty unit will be by way of a statutory rule.