

Macrory Review - Proposed Elements For Reform Of The Penalties System

The review proposes the following elements for reform of the penalties system –

i. Criminal Proceedings

The use of criminal prosecution should be maintained where there is evidence of intentional or reckless behaviour or where the actual or potential consequences are so serious that the public interest demands a criminal prosecution.

ii. Administrative Penalties

Greater use of administrative sanctions with a right to appeal or go to court

iii. Statutory Notices

- a) Strengthened to ensure regulators follow them up
- b) Enforceable Undertaking (EU) – Legally binding agreement with elements of Restorative Justice (RJ) and can be used as an alternative to prosecuting a business.
- c) Undertaking Plus - EU plus a fine

iv. Restorative Justice

A conference and process to ensure that the needs of victims of regulatory crime are addressed.

v. Proposals to increase Effectiveness Of Criminal Courts

(1) Increase effectiveness of sanctioning regulatory non-compliance and concentrate certain prosecution in certain courts -

- (i) Corporate Rehabilitation orders – company to undertake specific action or activities within a given time period
- (ii) Community projects – offender to complete a given community project
- (iii) Publicity Orders – a publicity order to be placed in a trade publication, national newspaper or other media outlet.
- (iv) Conditional cautions for corporate offenders – must help rehabilitate the offender and make reparation
- (v) Mandatory Audits – be used where there has been a deficiency in the business management and where systematic organisational change would help better business management.

(2) Maximum level of penalties should be reviewed.

The report encourages Regulators to propose other sanctions.