



Queensland

Summary Offences (Graffiti Removal Powers) Amendment Act 2008

Act No. 42 of 2008



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Summary Offences (Graffiti Removal Powers) Amendment Act 2008

Act No. 42 of 2008

**An Act to amend the Summary Offences Act 2005 to provide for the removal
of graffiti from particular places**

[Assented to 8 September 2008]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Summary Offences (Graffiti Removal Powers) Amendment Act 2008*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Summary Offences Act 2005*.

4 Amendment of pts 3, 3A and 4

Parts 3, 3A and 4—
renumber as parts 4, 5 and 6.

5 Renumbering of ss 26-29

Section 26 to 29—
renumber as sections 46 to 50.

6 Insertion of new pt 3

After part 2—
insert—

‘Part 3 Removal of public graffiti

‘Division 1 Interpretation

‘27 Definitions for pt 3

‘In this part—

appointing authority see section 37(1).

approved form see section 44.

consent does not include consent that has been revoked or withdrawn.

graffiti removal notice see section 30(2).

graffiti removal officer means a person appointed as a graffiti removal officer under section 37(1).

helper see section 29(10).

local graffiti removal officer means a person appointed as a graffiti removal officer by the chief executive of a local government.

owner, in relation to place, includes each of the following—

- (a) a person who is for the time being entitled to receive the rent of the place or who, if the place were let to a tenant at a rack-rent, would be entitled to receive the rack-rent;
- (b) a person who is the holder of any lease, licence or other permission to occupy the place from the State or a person deriving title from the State;
- (c) a person who is the occupier of the place or who has the care, control or management of the place.

public graffiti means—

- (a) graffiti in a public place; or
- (b) graffiti in another place but only to the extent the graffiti can readily be seen from a public place.

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remove, in relation to public graffiti, includes the following—

- (a) conceal;
- (b) cover;
- (c) attempt to remove.

Example—

painting over graffiti

State graffiti removal officer means a person appointed as a graffiti removal officer by the Minister.

‘Division 2 Graffiti removal power

‘28 Graffiti removal power

- ‘(1) A graffiti removal officer may remove public graffiti from any place.
- ‘(2) In removing public graffiti from property owned by someone other than the State or a local government, a graffiti removal officer must take reasonable steps to leave the property in the condition it would be in if the graffiti had not been placed on the property.
- ‘(3) If it is not practicable to leave the property in the condition mentioned in subsection (2), it is sufficient for the subsection for the graffiti removal officer to leave the property in a state that is reasonably acceptable in all the circumstances.

Example for subsection (3)—

Graffiti is placed on part of a wall. Reinstating the wall requires the whole wall to be freshly painted. However, painting over the graffiti only may leave the wall in a state that is reasonably acceptable in all the circumstances.

- ‘(4) This section applies subject to the limitations imposed under this division on the powers of a graffiti removal officer to enter the place.

‘29 Powers of entry

- ‘(1) For contacting an owner of a place or for giving a graffiti removal notice, a graffiti removal officer may enter—
- (a) a public place; or
 - (b) vacant land; or
 - (c) land around premises other than a dwelling.
- ‘(2) For contacting the owner of a dwelling, a graffiti removal officer may enter land around the dwelling.
- ‘(3) For subsections (1) and (2), a graffiti removal officer may only enter enclosed land other than a public place if there is no other reasonably practical way for contacting an owner of a place or giving a graffiti removal notice.
- ‘(4) To remove public graffiti, a graffiti removal officer may enter—
- (a) a public place; or
 - (b) with the consent or implied consent of an owner of a place—a place that is vacant land or premises other than a dwelling; or
- Note—*
- For implied consent, see section 30(6).
- (c) with the consent of an owner of a dwelling—a dwelling or land around a dwelling.
- ‘(5) For subsection (4)(b) and (c), the consent of an owner is unnecessary if, when removing the public graffiti, including with necessary equipment—
- (a) the graffiti removal officer and any persons helping the officer, are in a public place; and
 - (b) entry to the owner’s place is limited to either of the following and the entry is a minimal intrusion—
 - (i) leaning or reaching over into the place;
 - (ii) working on property that creates a border along the public place; and

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- (c) the entry happens at a reasonable time having regard to all the circumstances.

Example for paragraph (b)—

removing public graffiti from a front fence of a dwelling or other place

- ‘(6) A graffiti removal officer may only exercise power under subsection (4)(b) and (c) if the public graffiti is not accessible from a public place.
- ‘(7) A graffiti removal officer may only enter a place to the extent reasonably necessary to perform the officer’s duties.
- ‘(8) If a graffiti removal officer enters a place to remove public graffiti with the consent of an owner of the place, the officer’s exercise of powers on the place is subject to any conditions on which the consent is given.
- ‘(9) The power to enter includes the power to enter on more than 1 occasion.
- ‘(10) The power to enter to remove public graffiti includes the power to enter with other persons (each of whom is a *helper*), and vehicles and equipment, if that is reasonably necessary.
- ‘(11) Subsections (9) and (10) are subject to the requirements for consent mentioned in subsection (4).
- ‘(12) A vehicle and equipment may not be taken onto a place that is not constructed to safely accommodate their movement or presence.
- ‘(13) In this section—
- enclosed land* means—
- (a) land fenced in a way that ordinarily restricts access when the land is not open to the public; or
- (b) land otherwise ordinarily enclosed to restrict access.
- premises*, for subsection (4)(b), includes land around premises.

‘30 Notice about removal

- ‘(1) This section applies in relation to public graffiti at a place if—

-
- (a) the place is not used for a dwelling; and
 - (b) the owner of the place is not the State or a local government.
- ‘(2) Before starting to remove the public graffiti under section 28, a graffiti removal officer must give a notice in the approved form to the owner of the place (a *graffiti removal notice*).
- ‘(3) Without limiting other ways for giving a graffiti removal notice, a graffiti removal notice may be given by leaving the notice at or near the public graffiti in a reasonably secure way and in a conspicuous position.
- ‘(4) If a graffiti removal notice is given to 1 of several owners of a place, the notice is taken to be given to all the owners of the place.
- ‘(5) If the owner objects in the way stated in the graffiti removal notice, the graffiti removal officer must not remove the public graffiti without the owner’s consent.
- ‘(6) If the owner does not object within 14 days after the graffiti removal notice is given, the owner is taken to have consented to the removal of the public graffiti and to the activities mentioned in section 29(9) to (11) relating to the removal.
- ‘(7) Despite subsection (1), a graffiti removal officer is not required to give a graffiti removal notice—
- (a) if the owner of the place consents to the removal of the public graffiti when contacted by the officer; or
 - (b) when consent of the owner is unnecessary because of section 29(5).

‘31 Protection of graffiti removal officers and helpers from civil liability

- ‘(1) A graffiti removal officer, and any helper, are not civilly liable to someone for an act done, or omission made, honestly and without negligence under this part.
- ‘(2) If subsection (1) prevents a civil liability attaching to the officer or a helper of the officer, the liability attaches instead to—

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- (a) if the officer is a State graffiti removal officer—the State; or
- (b) if the officer is a local graffiti removal officer—the local government that appointed the officer.

‘32 Protection of owners of a place for entry of graffiti removal officers and others

- ‘(1) This section applies if a person (the *owner*)—
 - (a) under the law, because he or she is the owner of a place, owes a duty of care to a graffiti removal officer, and any helper, who enters the place under this part; and
 - (b) is, apart from subsection (2), civilly liable in relation to the death of or injury to the officer or helper because of a breach of the duty.
- ‘(2) Instead of the liability attaching to the owner, the liability attaches instead to—
 - (a) if the deceased or injured person was or is a State graffiti removal officer or a helper of the officer—the State; or
 - (b) if the deceased or injured person was or is a local graffiti removal officer or a helper of the officer—the local government that appointed the officer.
- ‘(3) However, if the breach of duty amounts to gross negligence, the State or local government may recover from the owner as a debt any damages, including costs, paid by the State or local government under subsection (2).

‘33 Prohibition on charging for removal of public graffiti

- ‘(1) No fee is payable for the removal of public graffiti by the owner of a place from which the public graffiti is removed to the following (the *remover*)—
 - (a) the State;
 - (b) a local government;
 - (c) a graffiti removal officer;

-
- (d) any helper of a graffiti removal officer.
- ‘(2) Subsection (1) is subject to any agreement between the owner of the place and the remover.

‘34 Compensation

- ‘(1) A person may claim compensation from the appointing authority of a graffiti removal officer if the person incurs loss or expense because of the exercise or purported exercise of a power under this part by the officer or any helper.
- ‘(2) Payment of compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction for the recovery of compensation.
- ‘(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- ‘(4) For subsection (1), removal of public graffiti of itself does not give rise to loss or expense.

‘35 Graffiti removal officer to give notice of damage

- ‘(1) This section applies if a graffiti removal officer or any helper, in the exercise or purported exercise of a power under this part, damages anything.
- ‘(2) The officer must immediately give written notice of the particulars of the damage.
- ‘(3) The notice must be given to the person who appears to the graffiti removal officer to be the owner of the place where the damaged thing is located.
- ‘(4) If, for any reason, it is not practicable to comply with subsection (3), the graffiti removal officer must—
- (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a reasonably secure way and in a conspicuous position.

- ‘(5) For subsection (1), removal of public graffiti of itself is not damage.

‘36 Obstructing graffiti removal officer or helper

- ‘(1) A person must not obstruct a graffiti removal officer, or any helper, in the exercise of power under this part, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- ‘(2) Subsection (3) applies if—
- (a) a person obstructs a graffiti removal officer, or a helper, in the exercise of power under this part; and
 - (b) the graffiti removal officer proposes to proceed with exercise of the power.

- ‘(3) The graffiti removal officer must—
- (a) if the officer has not already done so—identify himself or herself as a graffiti removal officer and explain the officer’s power under this part; and
 - (b) warn the person that—
 - (i) it is an offence to obstruct the officer and any helper unless the person has a reasonable excuse; and
 - (ii) the officer considers the person’s conduct is obstruction; and
 - (c) give the person a reasonable opportunity to stop the obstruction.

- ‘(4) In this section—
obstruct includes the following—

- (a) assault;
- (b) hinder;
- (c) intimidate;
- (d) prevent;
- (e) attempt to obstruct.

‘Division 3 Graffiti removal officers

‘37 Appointment and qualifications

- ‘(1) The Minister or the chief executive of a local government (each of whom is an *appointing authority*) may appoint a person as a graffiti removal officer.

Example—

a cleaning contractor or subcontractor

- ‘(2) However, the Minister and a chief executive officer may appoint a person as a graffiti removal officer only if he or she is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

‘38 Appointment conditions and limit on powers

- ‘(1) A graffiti removal officer holds office on any conditions stated in—

- (a) the officer’s instrument of appointment; or
- (b) a signed notice given to the officer; or
- (c) a regulation.

- ‘(2) The instrument of appointment, a signed notice given to the graffiti removal officer or a regulation may limit the graffiti removal officer’s powers under this Act.

Example—

The Minister may limit a graffiti removal officer’s powers to public places only.

- ‘(3) In this section—

signed notice means a notice signed by the appointing authority who appointed the graffiti removal officer.

‘39 Issue of identity card

- ‘(1) The appointing authority of a graffiti removal officer must issue an identity card to the officer.

- ‘(2) The identity card must—
 - (a) contain a recent photo of the graffiti removal officer; and
 - (b) contain a copy of the graffiti removal officer’s signature; and
 - (c) identify the person as a graffiti removal officer under this Act; and
 - (d) state an expiry date for the card.
- ‘(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

‘40 Production or display of identity card

- ‘(1) In exercising a power under this Act in relation to a person, a graffiti removal officer must—
 - (a) produce the officer’s identity card for the person’s inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- ‘(2) However, if it is not practicable to comply with subsection (1), the graffiti removal officer must produce the identity card for the person’s inspection at the first reasonable opportunity.
- ‘(3) For subsection (1), a graffiti removal officer does not exercise a power in relation to a person only because the officer has entered a place for giving an owner a graffiti removal notice.

‘41 When graffiti removal officer ceases to hold office

- ‘(1) A graffiti removal officer ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the graffiti removal officer ceases to hold office;
 - (c) the graffiti removal officer’s resignation under section 42 takes effect.

‘(2) Subsection (1) does not limit the ways a graffiti removal officer may cease to hold office.

‘(3) In this section—

condition of office means a condition on which the graffiti removal officer holds office.

‘42 Resignation

‘A graffiti removal officer may resign by signed notice given to the appointing authority of the officer.

‘43 Return of identity card

‘A person who ceases to be a graffiti removal officer must return the person’s identity card to the appointing authority of the officer within 7 days after ceasing to be a graffiti removal officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

‘44 Approval of form

‘The Minister may approve a form for use under section 30(2) (the *approved form*).

‘45 Delegation by Minister

‘(1) The Minister may delegate the Minister’s functions under this part to the chief executive of a department or the chief executive officer (however described) of a government owned corporation.

‘(2) The chief executive of a department may subdelegate the delegated functions to an appropriately qualified officer in the department.

‘(3) The chief executive officer of a government owned corporation may subdelegate the delegated functions to an appropriately qualified employee in—

(a) the government owned corporation; or

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(b) a subsidiary of the government owned corporation.

‘(4) In this section—

appropriately qualified, for an officer or employee to whom a function may be subdelegated, includes having the qualifications, experience or standing appropriate for the function.

Example of standing for officer in a department—

the officer’s classification or level in the department

functions includes powers.’.

7 Amendment of sch 2 (Dictionary)

(1) Schedule, definition *public place*—
omit.

(2) Schedule—
insert—

‘appointing authority, for part 3, see section 27.

approved form, for part 3, see section 27.

consent, for part 3, see section 27.

graffiti removal notice, for part 3, see section 27.

graffiti removal officer, for part 3, see section 27.

helper, for part 3, see section 27.

local graffiti removal officer, for part 3, see section 27.

owner, in relation to place, for part 3, see section 27.

public graffiti, for part 3, see section 27.

public place—

(a) means a place that is open to or used by the public, whether or not on payment of a fee; and

(b) without limiting paragraph (a), in part 3 includes the following—

- (i) land declared to be busway land under the *Transport Infrastructure Act 1994*, chapter 9;
- (ii) land that is rail corridor land under the *Transport Infrastructure Act 1994*.

remove, in relation to public graffiti, for part 3, see section 27.

State graffiti removal officer, for part 3, see section 27.’.

- (3) Schedule, definition *graffiti*, ‘see’—
omit, insert—
‘, for section 17, see’.
- (4) Schedule, definition *graffiti instrument*, ‘includes’—
omit, insert—
‘, for section 17, includes’.
- (5) Schedule, definition *place*, after ‘dwelling’—
insert—
‘, other premises and vacant land’.

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