

SOUTH BANK CORPORATION AMENDMENT BILL 1995

EXPLANATORY NOTES

Short Title

South Bank Corporation Amendment Act 1995.

Policy Objectives

To clarify the manner in which the South Bank Corporation (the Corporation) may exercise its powers to exclude persons causing a public nuisance from the South Bank Parklands (the site). While the Corporation has a general power under the current provisions of the *South Bank Corporation Act* (the Act) to exclude people creating a public nuisance to leave the site, it has no power to prevent offenders from immediately re-entering and continuing to create a public nuisance. The amendments to the Act will clarify the Corporation's powers to exclude people for a specified period of time, and will provide an avenue of review for people aggrieved by an exclusion direction.

How the Policy Objectives will be Achieved

The amendments will provide the power for the Corporation to direct people to leave the site for a period of up to 10 days and for the Courts to exclude people from the site for up to one year. Police officers will also be empowered to give verbal directions for people to leave the site for 24 hours.

To ensure that the new powers are enforceable, security officers and police officers will have the power to demand evidence of identity of people when issuing an exclusion direction. Powers of arrest for police officers will also be provided for people committing exclusion offences or breaching exclusion orders in situations where proceeding by way of complaint and summons would be ineffective.

Alternative Ways of Achieving the Policy Objectives

The manner in which the Corporation may exercise its powers to exclude persons causing a public nuisance could be defined in the Corporations By-laws. However, the Committee of Subordinate Legislation rejected this option as being counter to fundamental legislative principles. The Committee recommended that if the exclusion powers were to be continued on a permanent basis they should be included in the primary legislation.

Administrative Cost to Government

Implementation of the Bill will not involve any additional administrative cost to Government.

Consistency with Fundamental Legislative Principles

The provisions contained in the Bill largely replicate provisions currently found in the South Bank Corporation Amendment By-law (No. 1) 1994. These By-laws were the subject of examination, submissions, public hearings and a report of the Committee of Subordinate Legislation, published in August 1994. The Committee found the By-laws to be consistent with fundamental legislative principles, with two exceptions:

- that the powers should be included in the primary legislation; and
- there be some means of review of decisions to exclude people for up to 10 days.

Both these recommendations of the Committee have been adopted in this Bill.

In respect of the right of review, the Bill provides that review hearings are to be conducted without legal representation, and that the Magistrate may elect to have the hearings in private or in open court. Compensation is not payable by either party. This policy position has been adopted to ensure the review process is as far as possible informal. To provide for the award of compensation orders would require legal representation, and would so defeat the intent of the clause. Further, it is anticipated that in the vast majority of cases, no compensation would be assessable as the loss would be minimal.

Consultation

The following Government Departments and organisations have been consulted in the preparation of the Bill:

Department of Justice and Attorney-General
Office of the Queensland Parliamentary Counsel
Department of Family and Community Services
Queensland Police Service
South Bank Corporation
Brisbane City Council
Queensland Council for Civil Liberties
Queensland Law Society
Youth Advocacy Centre
Litigation Reform Commission and the judiciary

Notes on Provisions

Clause 1 cites the short title of the Act.

Clause 2 the Act will commence on a date to be fixed by proclamation.

Clause 3 the Act amends the *South Bank Corporation Act 1989*.

Clause 4 Definitions. It should be noted that the “site” has been defined by By-law. This is a term used elsewhere in the Act, and needs to be defined by subordinate legislation to accommodate the continual changes to the area brought about by new works and commercial dealings in land. For the purposes of exclusion directions, the site includes the whole site or any part of the site as declared in an exclusion direction. This will allow a direction to be issued to a worker on the site, for example, which will still permit the worker access to his or her place of work.

Clause 37A This section outlines the conduct which constitutes an exclusion offence.

Clause 37B This section provides security officers and the police with power to direct a person committing an exclusion offence to leave the site for 24 hours.

This section further provides security officers with the power to exclude, by written notice, a person from the site for a period of up to 10 days if they are in contravention of an earlier exclusion order or they have committed an exclusion offence and the security officer believes on reasonable grounds that their behaviour warrants an exclusion of greater than 24 hours. These longer exclusion periods are intended to be used for more serious exclusion offences and persons contravening exclusion directions.

Clause 37C This section provides the power for security officers to use reasonable force to take persons committing an exclusion offence, damaging property or contravening an exclusion direction or order immediately to a police officer.

Clause 37D This section provides the power for security officers and police officers to require persons committing an offence against the Act to state their name and address and give proof of the correctness of such. This power is necessary to ensure that the exclusion directions and orders are issued correctly and are enforceable.

Security and police officers must warn the person that it is an offence to refuse to comply with a request for name and address unless they have reasonable cause to do so.

Clause 37E This section allows the Corporation to make application to the Courts for persons to be excluded from the site for a period of up to one year. Police officers may represent the Corporation in such applications. This is to allow police to act in cases where they are prosecuting the person over the incident giving rise to the application for an exclusion order.

Exclusion orders imposed by the Courts will apply despite the *Juvenile Justice Act 1992*.

Clause 37F This section provides police with the power to arrest persons contravening exclusion orders or directions. This power is required to ensure the exclusion directions and orders are enforceable. This power is only to be used where the police officer has reason to believe that proceeding by way of complaint and summons will be ineffective.

Clause 37G This section allows persons, the subject of an exclusion direction by the security officer (that is, one to ten day exclusion orders), to apply to a court in the Central Division of the Brisbane Magistrates' Court District to review the reasonableness of the direction. As the maximum

exclusion period which can be imposed by security officers is 10 days, applications for reviews must be lodged quickly for the review procedure to be effective. For this reason, applications for a review must be lodged within 3 days of the direction being given to the person or before the expiry of the direction if it is for less than three days.

Clause 37H An application for review of an exclusion direction will not stay the operation of a direction.

Clause 37I To be effective, the review procedure must be conducted quickly and informally. For this reason, the Court is not bound by rules of evidence and no legal representation will be allowed. The Court must observe natural justice. It will be at the discretion of the Magistrate whether review hearings are held in private. In the case of juveniles, the conduct of hearings will be governed by the provisions of section 20 of the *Children's Court Act 1992*, which further specifies who may or may not attend Children's Court proceedings.

Juveniles may be represented by an associated adult at the hearings if they choose.

Clause 37J As a result of a review hearing a Court may confirm the reasonableness of the direction, set it aside, or set it aside and give another direction. It may also give directions to the applicant or the Corporation concerning the circumstances of the direction. An order made by the Court under this clause applies despite the provisions of the *Juvenile Justice Act*.

No compensation will be payable to either party if a direction is confirmed or set aside by the Courts.

Clause 37K The Corporation must include in its annual report details on the exercise of the powers under these amendments.