

# Summary Offences Bill 2004

## Explanatory Notes

### General Outline

#### Objective of the Legislation

The *Summary Offences Bill 2004* ("the Bill") provides for some simple offences to be heard and determined in a magistrates court. The Bill also repeals the *Vagrants Gaming and Other Offences Act 1931* and the *Suppression of Gambling Act 1895*.

Many of the provisions of the *Vagrants Gaming and Other Offences Act 1931* were so outdated that they were no longer suitable for enforcement in today's society. The concept of declaring a person to be a 'vagrant' did not reflect current community expectations and therefore had no legitimate place in Queensland statutes.

The Bill provides a number of offences which deal with anti-social behaviour. It also provides for offences that are 'pre-emptive' in nature to more serious offences under the Criminal Code. Thus, action can be taken at a stage prior to offences such as burglary or unlawful use of a motor vehicle occurring.

#### Means of achieving policy objectives

The legislation will enable public order offences and minor criminal offences to be heard and determined in a magistrates court.

#### Alternative means of achieving policy objectives

It is possible to amend the *Vagrants Gaming and Other Offences Act 1931* to reflect policy changes, however, the number of changes needed to update the law are so numerous, it would not be any more effective than introducing this Bill.

**Estimated cost of implementation for government**

The financial impact of the Bill will be low and absorbed within existing budgets.

**Consistency with fundamental legislative principles**

The Bill is consistent with fundamental legislative principles. There are a number of provisions presently in the *Vagrants Gaming and Other Offences Act 1931* that contain a reverse onus of proof. While some of these offence provisions have been placed into the Summary Offences Bill, the reverse onus of proof has been removed.

**Consultation conducted in development of the bill**

There was general community consultation undertaken by the Vagrants Gaming and Other Offences Review Committee.

Where there are potential implications on the roles of government departments, these departments were consulted with respect to the relevant portions of the Bill.

## **Notes on Provisions**

Chapter 5 of the Criminal Code applies to the Bill in accordance with section 36 of the Criminal Code read in conjunction with section 3 of that Code.

## **Part 1 – Preliminary**

**Short title**

Clause 1 specifies the short title of the Bill.

## **Commencement**

Clause 2 provides that the Bill is to commence on a day to be fixed by proclamation. A commencement by proclamation will allow sufficient time for police officers to be trained in the new provisions.

## **Definitions**

Clause 3 provides that the dictionary in schedule 2 defines particular words used in this Act.

## **Notes**

Clause 4 provides that a note in the text of the Bill is part of the Bill.

# **Part 2 — Offences**

## **Division 1 – Offences about quality of community use of public spaces**

### **Object of div 1**

Clause 5 states the objective of division 1 is to ensure that members of the public should be able to lawfully use and pass through public places without interference from the unlawful acts of nuisance committed by other people.

### **Public nuisance**

Clause 6 creates an offence of ‘public nuisance’ and defines what constitutes the offence. In determining what is a ‘public nuisance’ offence in terms of the section, a court, is not limited by, but should take into account the following examples –

1. A person calling another person a slut in a shopping centre or a park may constitute offensive language.
2. A person using obscene language in a mall or a street may constitute offensive language.

3. A person using obscene language in the public bar of a hotel in the course of a conversation with another person may not constitute offensive language.
4. A person who disrupts a church service by using language offensive to persons at that service or to persons who are gathering for the service or to persons who are outside a place of worship after a service may commit an offence. However, the section does not prevent a person from lawfully protesting and expressing an opinion about adverse decisions or actions of a church or its members.
5. A person encourages another to participate in a fight.
6. A person running over the roofs of parked cars.
7. A person engaging in an act of sexual intercourse in view of others in a public place.
8. A person urinating in view of another in a public place.
9. A person walking past persons dining and interfering with a person's food.
10. A person seeking money or property from another in a manner that causes a person to be intimidated, have concern about their safety, or such as to cause a person to leave a public place.
11. Behaving in a manner that might cause another person to leave a public place.

## **Review**

Clause 7 provides that after 1 October 2005, the Crime and Misconduct Commission (CMC) must review the use of the public nuisance provisions. The review and report preparation are a function of the CMC for the *Crime and Misconduct Commission Act 2001*. During the course of the preparation of the report the CMC must consult with the Minister, and upon completion, give a copy to the Speaker for tabling in the Legislative Assembly.

For the purposes of this section, "public nuisance provisions" means section 7AA of the *Vagrants, Gaming and Other Offences Act 1931* as in force before the commencement of this Bill, and section 6.

## **Begging**

Clause 8 is intended to deter the practice of persons in public places begging for money, goods or soliciting donations. Additionally, it applies to causing, procuring or encouraging a child to do the same. People who loiter in public places in order to beg money or goods, such as cigarettes, from passers-by often choose 'soft' targets such as women or elderly persons who are more likely to be intimidated and acquiesce. This type of conduct is unacceptable.

Conversely, it is recognised that charities rely on funds collected from the general public and they should continue to be allowed to do so, provided the requisite permit has been obtained by a charity registered under the *Collections Act 1966*. Similarly, persons who have been authorised by a local government to busk in a public place are also to be exempt.

## **Wilful exposure**

Clause 9 creates a clear differentiation between situations where a person wilfully exposes himself or herself for the purpose of urination and attempts to find a place out of public view for that purpose, as opposed to those persons who expose themselves for shock value or for sexual gratification. Consequently, where a person, without reasonable excuse, urinates in public, a maximum penalty of 2 penalty units will apply. It is intended that this simpliciter portion of the offence will apply where a person intends to urinate out of public view but through circumstances at the time is viewed by a member of the public. A circumstance of aggravation carrying a maximum penalty of 40 penalty units or 1 year imprisonment will apply where a person commits the offence so as to offend or embarrass another person. Instances of this nature would include a person who urinates in the full view of members of the public, e.g. against a building in the Queen Street Mall, or a person who exposes himself or herself to a member of the public for the purposes of shocking that member of the public or for the purposes of sexual gratification.

## **Being drunk in a public place**

Clause 10 creates the offence of being drunk in a public place. This clause replaces section 164 of the *Liquor Act 1992*.

## **Division 2 – Offences involving presence on property**

### **Trespass**

Clause 11(1) creates an offence for a person to unlawfully enter or remain in a dwelling or a yard around a dwelling. Subclause (2) creates an offence to unlawfully enter or remain in the yard of, or a place used for business or commercial purpose, or a place the person is not permitted to enter. The clause is essentially a trespass provision and is a pre-emptive measure against offences such as burglary. However, the provision does not rely on an intent to commit an offence within the property entered.

It is to be noted that the clause, by virtue of the definition of "yard" in the Dictionary to the Bill, applies to both dwelling houses and business premises. In the case of a dwelling house it is not necessary for the yard to be fenced. It is sufficient that there is some form of indication of the boundary around the yard of the dwelling. This may amount to a garden bed or simply the fencing of adjoining blocks may indicate the boundaries of an unfenced yard.

Additionally, should a building not have a yard surrounding it but rather border onto a footpath and against adjoining buildings, the provisions of clause 11 apply insofar as unlawful entry to the building is concerned. Clause 11 also applies in the case of a place, for example, a storage area not containing a building, which is fenced off to prevent unlawful entry.

### **Persons unlawfully gathering in or on a building or structure**

Clause 12 creates an offence for a person, together with another or others, to unlawfully enter or remain in any part of a public or private building or structure or any land occupied or used in connection with the building or structure. It is designed to apply to demonstrations or sit-ins. It offers protection when a business or government property is unlawfully occupied.

The clause is to apply even though the persons may have entered the building or structure or associated land, lawfully. Once the licence the persons may have had to enter, e.g., to make a genuine enquiry, is revoked, the persons commit an offence by remaining in or on the building or structure or its land. If the initial entry is unlawful, e.g., entry is made to occupy a portion of a building for the purpose of a protest, then the offence is committed from that initial entry.

The provisions of the Bill relating to public nuisance or other offences such as wilful exposure apply as though the building or structure or associated land were a public place.

### **Unlawfully entering farming land, etc.**

Clause 13(1) creates an offence for a person to unlawfully enter or remain on land used for agricultural or horticultural purposes or for grazing or animal husbandry. The provision will apply, for example, where a person, without lawful permission, enters or remains on land for the purposes of shooting or camping on that land. However, the entry must be unlawful as defined in the Dictionary. A person who enters onto grazing land with innocent intent and by mistake because the land borders a highway and is not fenced would not commit an offence.

Subsection (2) creates an offence of unlawfully opening and leaving open a gate, fence or other barrier enclosing land used for agricultural or horticultural purposes or for grazing or animal husbandry.

### **Unregulated high-risk activities**

Clause 14 creates an offence for a person to unlawfully –

- parachute or hand-glide onto or from a building or structure;
- BASE-jump or hand-glide from a building or structure;
- climb up or down the outside of a building or structure; or
- abseil from a building or structure.

However, it is not an offence for a person to commit an act proscribed in subsection (1) if the building or structure has been purpose built for that particular act or the act is done as a stunt as part of a person's employment in the movie or television industry. In the latter case, the permission of the owner of the building or structure must be first obtained. Additionally, the subsection declares that a person cleaning, maintaining or repairing a building or structure does not commit an offence by climbing up or down that building or structure.

Subsection (3) enables the court, in addition to any other penalty it may impose, to order the person to pay the costs of rescuing, or attempting to rescue, the person who has been found guilty of, or who has pleaded guilty to, an offence contained in subsection (1).

## **Division 3 – Possession offences**

### **Possession of implement in relation to particular offences**

Clause 15 creates an offence for a person to possess an implement that has been, is being, or is to be used for burglary of a dwelling, the unlawful entry of a place, the unlawful entry of a motor vehicle with intent to commit an indictable offence, stealing or unlawfully using a vehicle, to unlawfully injure a person, or to unlawfully damage property.

A person possessing lock picks, an electronic car door lock scanner, or a jemmy in other than easily explainable circumstances, e.g., a locksmith, carpenter, or a person undertaking home renovations, may warrant the suspicion of police that the person may intend to use the equipment for a burglary or vehicle theft. Obviously, the suspicion held by police must be reasonable and therefore will be dependent on the circumstances under which the person is found with the items. For example, a person holding a scanner while standing near a vehicle parked in a car park will raise suspicion that the person intends to break into the vehicle.

A person who carries an iron bar beside the driver's seat of his or her vehicle with the intent that it be used to assault another driver who may annoy the person, will be guilty of an offence. Additionally, the clause will apply to a member of a gang who carries an implement for the purposes of using it to assault other persons. Clearly, the clause will also apply in potential domestic violence or neighbourhood disputes. However, the clause will not prevent a person having possession of an implement within the person's home for the purposes of self defence during a burglary on that home.

If the person has a legitimate reason for possessing these items, they may easily explain this to police thus alleviating the need for any charge to be laid. Additionally, subsection (2) provides a defence to a charge for the person to prove that the person did not know the implement had been, or was to be, used in an offence.

### **Unlawful possession of suspected stolen property**

Clause 16 creates an offence for a person to unlawfully possess a thing that is reasonably suspected of having been stolen or unlawfully obtained.

This clause is complementary to the more serious offences of stealing and receiving contained in the Criminal Code but may be used in instances where the lawful owner of property cannot be located but the



circumstances in which a person has possession of property can lead to the conclusion that it has been stolen or unlawfully obtained. By way of example, a financially destitute person may be found in possession of thousands of dollars or new leather goods and be unable or reluctant to offer police with an explanation as to how he or she came lawfully by the goods. Where an owner cannot be found due to the fact that the goods may, for example, have been stolen interstate, police may charge the person under this provision.

### **Graffiti instrument**

Clause 17 creates an offence for a person to possess a graffiti instrument that –

- is reasonably suspected of having been used for graffiti;
- is being used for graffiti; or
- is reasonably suspected of being about to be used for graffiti.

Additionally, a court is empowered by subclause (2) to order the offender pay compensation for property damaged by unlawful graffiti, or to order the offender to remove graffiti from damaged property, irrespective of whether the offender was responsible for unlawful graffiti at the location to which the order relates.

## **Division 4 – Offences relating to children or minors**

### **Particular body piercing of minor prohibited**

Clause 18 creates an offence for a person, who in conducting a business transaction, performs body piercing on any part of the external genitalia, or nipples, of a male or female child. The penalty is increased if the child is intellectually impaired or their decision-making capacity has been reduced due to the consumption of alcohol or a drug.

It is not a defence to a prosecution to claim that the child, or the parent or guardian of the child consented to the body piercing.

For the purpose of this section, “body piercing” means the process by which a person’s skin or mucous membrane is penetrated by a sharp instrument for the purpose of implanting jewellery or other foreign material. Foreign material can include a ring, bar, pin or stud.

### **Tattooing minor prohibited**

Clause 19 creates an offence for anyone to perform any form of tattooing on a minor.

For the purpose of this section, “tattooing” means any process by which a person’s skin is penetrated and coloured pigments inserted to create a permanent mark, pattern or design on the skin. Also included, is any process that creates a semipermanent mark on the skin of a minor, which includes the processes of cosmetic tattooing and applying semipermanent make-up.

## **Division 5 – Other offences**

### **Preventing public meetings**

Clause 20 creates an offence for a person to intentionally prevent or attempt to prevent the holding of a public meeting. Action of this type may be caused by means of amplified noise such that persons attempting to speak at a meeting are ‘drowned out’ or by persons attempting to force their way into the place where the public meeting is being held in order to prevent the meeting continuing. Clearly, circumstances will dictate whether action is unlawful. For example, jeering at an open air meeting in the Roma Street Forum may constitute nothing more than an expression of freedom of speech.

### **False advertisements etc., about births, deaths, marriages or employment**

Clause 21 creates an offence for any person to knowingly publish a false advertisement or notice in a newspaper, radio or television station or on the internet. The clause provides 6 things which constitute a false advertisement or notice. For example, it will remain an offence to publish a false advertisement concerning the death of a person, albeit the advertisement may be placed as a joke on the part of the offender.

### **Imposition**

Clause 22 creates an offence for a person to, by any false or fraudulent representation either orally or in writing or by means of dress, apparel or otherwise, fraudulently seeks to obtain money or other benefit or advantage. The clause will apply to persons obtaining money from others,

particularly the elderly, by false representations, such as fraudulently representing themselves to be collecting money for a bona fide organisation. The provision will deal with not only these types of misrepresentations, but will also extend to a person obtaining an advantage by an imposition, e.g., obtaining employment as a university lecturer by purporting to have a qualification the person does not.

### **Sale of potentially harmful things**

Clause 23 prohibits the sale or supply of a potentially harmful thing to another person if the seller knows or believes, on reasonable grounds that the other person intends to ingest or inhale the thing or intends to sell or supply the thing to another person for inhalation or ingestion.

For the purposes of interpreting this section, a shopkeeper whom, for instance, keeps containers of methylated spirits in refrigerated machinery without a legitimate need to do so, may be taken as knowing that the methylated spirits is intended for ingestion by a person. Therefore, to sell that methylated spirits to a person may constitute an offence under this provision.

The section does not apply to things that are intended by the manufacturer to be ingested or inhaled, e.g., medications or tobacco products.

The *Anti-Discrimination Act 1991*, section 46, does not apply to this provision.

### **Throwing things at a sporting event**

Clause 24 creates the offence of throwing any object at a sporting event that may injure a person, damage property or disrupt the event. For example, a person who throws a drink can into a crowd or onto a sporting field, thereby risking injury to another person or disruption of the event is guilty of an offence. Additionally, a person who throws a drink can or rock at the glass window of a commentator's box thereby risking breaking the glass will also commit an offence.

The clause contains two exemptions;

- it does not apply to a participant in the sporting event who throws or propels an object in the legitimate course of the event; and
- it does not apply to a spectator who throws an object subject of the particular event back into the field of play in a manner not intended to injure a person or damage property.

## **Use of vehicles**

Clause 25 provides that a person must not unlawfully use a vehicle without the consent of the person in lawful possession of the vehicle. The person in lawful possession may be the owner or a person to whom the owner has lent the vehicle. The provision would also include circumstances where a person has been given a limited licence to use the vehicle and uses it outside the terms of that licence.

The clause also applies where a person has a vehicle in the person's possession without the consent of the person in lawful possession of it where there is an intent to temporarily or permanently deprive the person in lawful possession of it, of the vehicle.

## **Part 3 — Procedural Provisions**

### **Offences are simple offences**

Clause 26 provides that all offences in the Bill are simple offences and that a proceeding for an offence is a summary proceeding under the *Justices Act 1886*.

### **Forfeiture**

Clause 27 provides that if a court finds a person guilty of an offence against clauses 15, 16, or 17, then the object or thing to which the offence relates may be forfeited to the State.

A forfeited object is to be disposed of under the provisions of chapter 11, part 3 of the *Police Powers and Responsibilities Act 2000*.

### **Evidentiary provision**

During a proceeding for a charge of an offence, clause 28 provides that a statement in a charge that a place is a place to which a provision of this Bill applies, is evidence that the place is what it is claimed to be.

Additionally, in a proceeding concerning unlawful possession of property, it is not necessary to prove that the police officer who starts the proceeding, knew that anything had recently been stolen or unlawfully obtained, or indeed that anything had been stolen or unlawfully obtained, if the circumstances in which the property had been found gives risk to a reasonable suspicion that the property had been stolen or unlawfully obtained.

## Part 4 — Repeal and Amendments

### Acts repealed

Clause 29 provides that the *Vagrants, Gaming and Other Offences Act 1931* is repealed.

### Other Acts amended

Clause 30 provides for the Acts mentioned in Schedule 1 to be amended.

Whilst the majority of these amendments concern the omission from a number of Acts of reference to the *Vagrants, Gaming and Other Offences Act 1931* and the insertion of the *Summary Offences Act 2004*, the *Suppression of Gambling Act 1895* is to be amended to transfer to it those gaming offences currently in the *Vagrants Gaming and Other Offences Act 1931*.

The *Animals Care and Protection Act 2001* is amended so that the Schedule, definition of a “public place”, paragraph (b), ‘Act.<sup>39</sup>’ will become ‘Act.<sup>9</sup>’.

The *Classification of Computer Games and Images Act 1995* will be amended so that all references to the *Vagrants, Gaming and Other Offences Act 1931* are omitted (sections 58(4), 59(5) and 66(1)).

The *Classification of Films Act 1991* is amended so that all references to the *Vagrants, Gaming and Other Offences Act 1931* are omitted (sections 58(2)(b) and 64(1)).

The *Classification of Publications Act 1991* is amended so that all references to the *Vagrants, Gaming and Other Offences Act 1931* are omitted (sections 36 and 37(3)(b)).

The *Introduction Agents Act 2001* is amended so that the Schedule 2, definition “disqualifying offence”, paragraph (b) ‘its repeal’ will be omitted and ‘1 February 1993’ inserted.

The fifth dot point of section 25(1) the *Juvenile Justice Act 1992* is amended so that the *Vagrants, Gaming and Other Offences Act 1931* will be omitted and replaced with the *Summary Offences Act 2004*. A similar amendment will be made to section 255(1)(e). Moreover, in Part 11, after division 3 an insertion of division 4 (Transitional provisions for the *Summary Offences Act 2004*) will provide that despite the repeal of the *Vagrants, Gaming and Other Offences Act 1931*, any arrestable offence

against that Act continues to be an identifying particular offence for section 25 and 255 of this Act.

The *Liquor Act 1992* is amended so that section 164(2) (drunk in a public place) is omitted.

Amendments to the *Police Powers and Responsibilities Act 2000* will include the insertion of a new section 391A (Safeguards for declared offences under Summary Offences Act 2004).

This provision outlines the steps that a police officer, who reasonably suspects a person has committed a declared offence, must take before charging a person with that declared offence. The police officer must give the person the opportunity to explain—

- if the offence involves the person's presence at a place (clause 11)—why the person was at the relevant place; or
- if the offence involves entering a place (clauses 12 or 13(1))—why the person entered the relevant place; or
- if the offence involves doing something that is an offence against clause 14 —why the person did the relevant thing; or
- if the offence involves possession of a graffiti instrument or an implement (clauses 15, 16 or 18)—why the person was in possession of the graffiti instrument or implement at the relevant time; or
- if the offence involves control or possession of a thing that is reasonably suspected of having been stolen or unlawfully obtained (clause 17)—how the person came to have control or possession of the thing.

Should the person—

- fail to give an explanation; or
- give an explanation the police officer is not satisfied is a reasonable explanation, e.g. stating that a thing was purchased at a pub from an unknown person; or
- behave in a manner that an opportunity can not be given for the person to give an explanation, e.g., the person runs when confronted by the police officer,

the police officer is entitled to start a proceeding against a person for the declared offence.

Additionally, after section 482, Part 4 – Transitional Provisions for Summary Offences Act 2004 will be inserted. Section 483 will make provision that despite the repeal of the *Vagrants, Gaming and Other Offences Act 1931*, an offence against that Act continues to be an identifying particulars offence for this Act.

The eighth dot point of Schedule 4, definition of “identifying particulars offence”, paragraph (b) will be amended by omitting the *Vagrants, Gaming and Other Offences Act 1931* and replacing it with the *Summary Offences Act 2004*. Similarly, in the Schedule 4, definition of “public place”, paragraph (d), ‘Act.<sup>148</sup>’ will be omitted and ‘Act’ inserted.

The *Racing Act 2002* is amended by omitting section 320(2)(c) and (d), and section 320(2)(e) will be renumbered as 320(2)(c).

The *Transport Operations (Road Use Management) Act 1995* will be amended so that section 138(8)(b) is repealed, paragraphs (c) and (d) are renumbered to (d) and (e) respectively and a new paragraph (c) refers to disqualifying offences under the provisions of the *Classification of Publications Act 1992*.

Schedule 2 of the Bill contains the Dictionary to the Bill.