

Summary Offences and Other Acts Amendment Bill 2008

Explanatory Notes

General Outline

Objective of the Legislation

The Summary Offences and Other Acts Amendment Bill 2008 (the Bill) aims to:

- (a) provide for an Act which responds to the legislative recommendations of the Crime and Misconduct Commission's (CMC) report on the public nuisance offence, 'Policing Public Order: A review of the public nuisance offence' (the CMC Report); and
- (b) provide a minor amendment to the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008* (EPOLA No. 2) to retain the current legislative framework for special events at Suncorp Stadium in relation to authorised noise compliance levels.

This is achieved through provisions to:

- (a) create a new offence of public urination;
- (b) allow a watchhouse police officer to issue an infringement notice to a public nuisance offender on behalf of the arresting officer; and
- (c) retain existing noise standards currently provided for under the *Environmental Protection Act 1994* (EPA) for special events under the *Major Sports Facilities Act 2001*.

To support these objectives:

- (a) the Department of Justice and Attorney-General will prepare amendments to the State Penalties Enforcement Regulation 2000 to allow infringement notices to be issued for a public nuisance offence, a public urination offence and a relevant offence which is committed in conjunction with a public nuisance or public urination offence. These amendments will be progressed as Subordinate Legislation; and

- (b) the Department of Local Government, Sport and Recreation will prepare amendments to the *Major Sports Facility Regulation 2002* (MSFR) to prescribe acoustic quality compliance levels as conditions on the use of the major sports facility for a special event.

Reasons for the Bill

The CMC was required to conduct a review of the public nuisance provisions and prepare a report on the review. This report was tabled in Parliament on 23 May 2008 and contained five recommendations. The recommendations with legislative impact and hence, addressed through this Bill are:

Recommendation 2:

That a separate offence titled ‘public urination’ be created with the same penalty as section 9(1) of the *Summary Offences Act 2005*.

Recommendation 4:

That ticketing should be introduced as a further option available to police to deal with public nuisance behaviour. Ticketing should be introduced only in conjunction with a focus on ‘de-escalation’ and informal resolution of public order issues. The introduction of ticketing as an option should be evaluated to ensure it is not having an adverse effect in Queensland.

Without this Bill acoustic compliance levels for special events at Suncorp Stadium would no longer be specified in law. As a result, special events at Suncorp Stadium would no longer be considered to be authorised in relation to noise.

Means of Achieving Policy Objectives

The Bill achieves the objectives by amending the *Summary Offences Act 2005*, the *Police Powers and Responsibilities Act 2000* and the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008*.

Alternative Means of Achieving Policy Objectives

There are no alternative means of achieving the policy objectives other than by legislative reform.

Estimated Cost of Implementation

The ticketing of offences is to be conducted on a trial basis in the South Brisbane and Townsville Police Districts. The trial will utilise existing Government resources. However an evaluation of the 'ticketing trial' will be conducted, and is expected to identify any financial implications.

Consistency with Fundamental Legislative Principles

There is no conflict with fundamental legislative principles.

Consultation

Summary Offences Act 2005 and Police Powers and Responsibilities Act 2000

Extensive departmental consultation was undertaken on the contents of the Bill. Community consultation was not undertaken. However, the Bill arises from the recommendations of the CMC Report which did involve extensive community consultation.

Environmental Protection and Other Legislation Amendment Act (No. 2) 2008

As the amendment merely retains existing noise standards currently provided for under the EPA, consultation has been limited to the Environmental Protection Agency and Stadiums Queensland who support the amendment.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides for the citation of the Bill.

Clause 2 provides the commencement date for Part 3 of the Bill as 1 January 2009. All other provisions of the Bill commence on assent.

Part 2 **Amendment of the *Summary Offences Act 2005***

Act amended in pt 2

Clause 3 indicates Part 2 of the Bill amends the *Summary Offences Act 2005*.

Replacement of s7 (Review)

Clause 4 provides for the repeal of the existing section 7 ‘Review’ of the *Summary Offences Act 2005*. The requirement for the CMC to review the use of the public nuisance provisions and prepare a report on the review as soon as practicable after 1 October 2005, has been fulfilled.

In place a new offence of ‘Urinating in a public place’ is inserted in section 7. This provision creates an offence for a person to urinate in a public place. An act that may satisfy the elements of the urinating in public charge may, in circumstances, also satisfy the elements of an offence of ‘Wilful exposure’ or ‘Public nuisance’. A police officer may exercise discretion to prefer the most appropriate charge in all the circumstances. For example, a person urinating in a shopping mall may not be limited to an offence under this provision whereas a person urinating after attempting to find concealment may be under this offence provision.

The provision includes an evidentiary provision identifying that liquid observed discharging from a person’s pelvic area is enough evidence that the person was urinating. This alleviates the requirement for the liquid to be tested and proved to be urine.

The offence provision specifically excludes a public place such as a public toilet or public restroom.

Part 3 **Amendment of the *Police Powers and Responsibilities Act 2000***

Act amended in pt 3

Clause 5 indicates that Part 3 of the Bill amends the *Police Powers and Responsibilities Act 2000* (PPRA).

Amendment of s 377 (Additional case when arrest of adult may be discontinued)

Clause 6 inserts a provision to move the definitions of ‘infringement notice’ and ‘infringement notice offence’ to Schedule 6 ‘Dictionary’ of the PPRA.

Amendment of s 394 (Duty of police officer receiving custody of person arrested for offence)

Clause 7 inserts a provision to permit a prescribed police officer to issue an infringement notice, for a prescribed public nuisance offence and any associated offence, to an offender if the offender is at a watchhouse. Effectively, this provision extends the existing power of substitute service of a notice to appear to the issue of infringement notices, regardless of whether the watchhouse is in a prescribed area.

A watchhouse police officer is permitted to issue and serve an infringement notice on a person for an associated offence even though that offence is committed outside the prescribed area. However, the commission of the associated offence outside the prescribed area must be in conjunction with the commission of a prescribed public nuisance offence that occurred within the prescribed area. For example, a person commits an offence of public nuisance in a prescribed area. The person is transported to a watchhouse which is located outside the prescribed area. The person refuses to leave the vehicle and the arresting police officers are required to forcibly remove and escort the person to the watchhouse. Upon release from the watchhouse, a watchhouse police officer can issue the person with an infringement notice for both the public nuisance offence and the obstruct police offence.

An associated offence means an offence under section 790(1) and section 791(2) of the PPRA. An offence under section 790(1) does not include assault, even though both the offences of assault and obstruct police are contained within the same offence provision. An offence under section 791(2) is limited to a requirement for a person to state his or her correct name and address. Both offences must be committed in relation to a prescribed public nuisance offence to be an associated offence.

While the prescribed area for the issue of infringement notices is limited to the South Brisbane and Townsville police district, the prescribed area may be extended to other police districts by regulation.

A prescribed public nuisance offence means an offence against section 6 'Public nuisance' or section 7 'Urinating in a public place' of the *Summary Offences Act 2005*.

Part 4 Amendment of the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008*

Act amended in pt 4

Clause 8 indicates that part 4 of the Bill amends the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008*.

Amendment of s 66 (Insertion of new sch 1AA)

Clause 9 inserts subparagraph (i) into schedule 1AA part 1 section 3 to provide that noise from a special event, which is regulated under the *Major Sports Facilities Act 2001* (MSFA), is excluded from the operation of the environmental nuisance provisions of the EPA. The MSFA has its own tools and mechanisms for prescribing noise conditions, and the *Major Sports Facilities Regulation 2002* will prescribe acoustic quality compliance levels for special events. Therefore, the EPA should not apply to the noise in these circumstances.

Schedule 1AA part 1 sets out the matters which are excluded from the operation of the environmental nuisance provisions, that is, offences in sections 440 and 440Q in the EPA. The intent is to exclude the operation of the environmental nuisance provisions of the EPA from applying to environmental nuisance matters that are authorised under other legislation or where other legislation provides jurisdiction for managing a nuisance matter.