

Summary Offences (Graffiti Removal Powers) Amendment Bill 2008

Explanatory Notes

General Outline

Objective of the Legislation

The *Summary Offences (Graffiti Removal Powers) Amendment Bill 2008* (the Amendment Bill) aims to provide a legislative scheme to allow State government and local council officer appointment to remove public graffiti from any place. The Amendment Bill seeks to support the swift removal of publicly visible graffiti. It is well-documented that the rapid removal of graffiti increases the perception of community safety. This Bill responds to the requests from both local and State authorities, and the community who seek positive legislation changes to protect property-owners from damage caused by graffiti-related activities.

In providing this authority, the Amendment Bill imposes obligations upon such officers prior to exercising graffiti removal powers.

Means of Achieving Policy Objectives

The legislation will enable the appointment of graffiti removal officers and authorise those officers to remove graffiti.

Alternative Means of Achieving Policy Objectives

Government policy objectives may have been met through the introduction of a process of entering into arrangements with the owners or occupiers of premises, allowing the State or local authorities to remove graffiti. However, this alternative would not guarantee a consistent approach across Queensland to addressing the problems associated with graffiti. It is also extremely cumbersome and time consuming, thus defeating the objective of rapid removal.

Estimated Cost of Implementation

There are no mandatory costs associated with the implementation of the Amendment Bill as graffiti removal is voluntary on the part of the State government and local government entities.

Consistency with Fundamental Legislative Principles

The proposed entry power for graffiti removal officers breaches fundamental legislative principles by allowing entry without warrant onto private land. The entry power is restricted to allowing an officer to only enter those parts of the land which are readily accessible from a public place. This means an officer will be able to lean across the property line to remove publicly visible graffiti on the wall of a building just inside the property line.

Where it is necessary to enter further onto land, graffiti officers will need the express or implied consent of the owner or occupier. If the land surrounds premises other than a dwelling, and the officer is unable to contact the owner/occupier, the officer will be able to leave a notice in the approved form advising the owner of the officer's intention to enter and remove graffiti.

The owner will have 14 days to lodge an objection. Where an objection is lodged, the officers will not be able to enter onto the land. Otherwise, the owner will be taken to have given implied consent to the entry. Where consent is implied, the officer will only be able to enter to the extent reasonably necessary to remove the publicly visible graffiti.

An officer will only be able to enter further onto land around a dwelling to remove graffiti, where the owner has expressly consented to such entry.

At no time will an officer be permitted to enter any structure or dwelling on the land.

The Amendment Bill makes provision for the imposition of conditions to limit the powers available to a graffiti removal officer. Any condition imposed has the ability to restrict the exercise of powers by graffiti removal officers.

Consultation

There has been no general community consultation on the contents of the Amendment Bill. Consultation was undertaken with relevant government departments.

Notes On Provisions

Preliminary

Short title

Clause 1 specifies the short title of the Amendment Bill.

Commencement

Clause 2 provides that the Amendment Bill is to commence on a day to be fixed by proclamation.

Act amended

Clause 3 indicates that the Amendment Bill amends the *Summary Offences Act 2005*.

Amendment of pts 3, 3A and 4

Clause 4 indicates that the Amendment Bill causes parts 3, 3a and 4 to be renumbered.

Renumbering of ss 26-29

Clause 5 indicates that sections 26 to 29 are renumbered to sections 46 to 50.

Specific Provisions

Insertion of new pt 3

Clause 6 inserts a new Part 3 (Removal of public graffiti) into the Act.

27 Definitions for pt 3

This new provision provides definitions for this part.

“Appointing authority” means the definition adopted in section 37(1) of this Act.

“Approved form” means the definition adopted in section 44 of this Act.

“Consent” is defined to be explicit that when consent is revoked or withdrawn, consent is removed.

“Graffiti removal notice” means a notice under section 30(2) of this Act.

“Graffiti removal officer” means a person appointed under section 37(1) of this Act.

“Helper” means a person under section 29(10).

“Local graffiti removal officer” means a graffiti removal officer appointed by the chief executive of a local government.

“Owner” includes the owner, caretaker or occupier of the place.

“Public graffiti” is meant to limit graffiti to which this section applies to graffiti on a public place or that is readily seen from a public place. Where part of the graffiti is visible from a public place and part is not visible from a public place, only the part visible is public graffiti.

“Remove” is inclusive and not limited to concealing, covering or attempting to remove. Other methods may be utilised in the removal.

“State graffiti removal officer” means a graffiti removal officer appointed by the Minister for Police.

28 Graffiti removal power

This provision gives authority for a graffiti removal officer to remove graffiti from any place authorised under this part.

The provision makes it clear a graffiti removal officer must take reasonable steps and care to restore the thing from which the graffiti was removed to its ‘pre-graffiti’ condition or if not possible, to a condition that is amenable to

its surrounds. Graffiti removal officers are limited by what is reasonable in the circumstances. For example where a graffiti removal officer paints over graffiti located on a wall, there is no obligation to paint the whole wall or use the same shade of colour, though it is necessary to use a similar colour which is readily available to the officer.

29 Powers of entry

This provision allows a graffiti removal officer to enter any public place, vacant land or land around a non-residential premises to leave a notice for the owner or seek the owners consent to remove graffiti.

A graffiti removal officer may only enter land surrounding a dwelling to seek consent to remove the graffiti. This power is consistent with the existing common law right of entry available to all members of the public.

However, consent is not required where a graffiti removal officer is removing graffiti while remaining in a public place and entry to the private place, regardless of the nature of the place, is by leaning or reaching into the property or working on property bordering the public place, such as a fence. The graffiti removal officer may utilise any necessary equipment or assistance to exercise the removal power. However, the graffiti removal officer may not take vehicles or equipment on a place that does not accommodate the movement of the vehicles or equipment.

The graffiti removal officer may only use minimal force to access the public graffiti, and is not authorised to cause any damage to the property in gaining entry. Upon entry the graffiti removal officer may leave and re-enter to complete the removal. Should the officer remove the public graffiti described in the notice and observe additional graffiti, not described in the notice, the officer is not authorised to enter to remove that graffiti until consent has been obtained or notice of removal obligations completed.

A graffiti removal power may only be exercised at a reasonable time having regard to the circumstances. For example it may be reasonable for Queensland Rail to remove graffiti at 2 am to ensure minimal disruption to the rail services, but it is not reasonable for a local government officer to remove graffiti from a fence at the same time..

Where a graffiti removal officer is removing graffiti with the consent of the owner, the owner is able to impose conditions on how and when the entry is made.

30 Notice about removal

The provision requires that before exercising powers under this part at non-government owned private places, a graffiti removal officer must leave a signed notice for the owner of the place. The provision does not apply to dwellings.

The provision makes requirements for the notice to be in the approved form. However the notice as a minimum will identify the graffiti removal officer's relevant department or organisation, contact details for the department or organisation and a description of the graffiti to be removed. It will also identify the means of lodging an objection to the proposed entry and the consequences of failing to lodge an objection.

It is not necessary to hand the notice to the owner. The officer may leave it in a location where the owner will see or find the notice. The notice need only be given to one owner of the place.

The provision allows for the different authorities to make varying requirements about the way an owner must raise an objection. Should an objection not be raised within 14 days, the owner is taken to have given consent and a graffiti removal officer may exercise powers under this part. Where objection is raised outside the 14 days and before the graffiti is removed, the graffiti must not be removed without the owner's consent.

If consent is gained from the owner, there is no necessity to also give a graffiti removal notice to the owner.

31 Protection of graffiti removal officers and helpers from civil liability

The provision indicates that unless an act or omission is done with negligence, a graffiti removal officer, or a person helping a graffiti removal officer, is not civilly liable. The liability instead attaches to the State or the local government.

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

Civil liability for death or injury of the officer is transferred from the owner of a place to the State or the authority employing the officer.

However, where there is gross negligence on the part of the owner, the State or local authority may recover any compensation, damages or costs paid by the State or local authority from the owner.

33 Prohibition on charging for removal of public graffiti

The provision requires that graffiti removal under this part is undertaken without the owner incurring any fee. However, should an agreement be made between the owner and the appointing authority a fee may be charged in accordance with the agreement.

An agreement could include the use of a particular type of paint to cover the graffiti. The owner and the appointing authority may include that the owner pays the cost of the paint in the agreement.

An agreement could also involve the authority undertaking to paint an entire fence, rather than just the section needed to remove the graffiti. In such circumstances, the owner would be liable to the costs of painting the additional parts of the fence.

34 Compensation

The provision allows a person to make a claim for compensation against the appointing authority where damage or loss is caused by a graffiti removal officer in the exercise of removal power. A claim for compensation may not be made based on the removal of graffiti if an objection is not raised under section 30.

35 Graffiti removal officer to give notice of damage

The provision requires a graffiti removal officer to give the owner of the place written notification describing any damage caused. Where it is not possible to give the notification to the owner, written notification may be left at the place and must include information about the damage and the appointing authority. The removal of graffiti is not damage.

36 Obstructing graffiti removal officer or helper

The provision creates an offence to obstruct a graffiti removal officer in the exercise of powers under this part, unless the person has a reasonable excuse. A reasonable excuse includes where an owner withdraws consent for the removal of the graffiti. For example, if an owner asked a graffiti

removal officer to stop removing graffiti on the owner's property or asked the officer to leave the owner's land, the officer must do so. In such a case no offence of obstruction would have occurred.

Prior to taking action against the person, the graffiti removal officer must identify himself or herself as a graffiti removal officer and explain the officer's powers under this part; warn the person that it is an offence to obstruct the officer and give the person an opportunity to desist from obstructing the officer. The failure of an officer to fulfil obligations under this section may also be a reasonable excuse.

37 Appointment and qualifications

The provision allows the Minister for Police and the chief executive officer of a local government to appoint graffiti removal officers.

Prior to appointment, the appointing authority must ensure the officer is qualified for the appointment. Appointment of a graffiti removal officer may extend to private contractors and subcontractors.

38 Appointment conditions and limit on powers

An appointing authority may place restricting conditions on the powers a graffiti removal officer may utilise. The graffiti removal officer is not required to carry a written record of these restrictions, but an owner may make enquiry with the appointing authority to verify officer powers.

39 Issue of identity

Upon appointment, a graffiti removal officer must be issued with an identity card. If the officer has been previously issued with an identity card with the information required under this section, the issue of a new card is not required. The identity card must state that the person is a graffiti removal officer, appointed under this Act and contain information about the officer and the officer's employer or the issuing authority.

40 Production or display of identity card

The provision requires that prior to or while exercising a power under these provisions, the graffiti removal officer upon the request of a person, must produce the issued identity card or wear the issued identity card.

41 When graffiti removal officer ceases to hold office

The provision addresses situations where a graffiti removal officer ceases to hold office.

42 Resignation

The provision allows for the resignation of a graffiti removal officer.

43 Return of identity card

The provision requires a person who ceases to be a graffiti removal officer to return the identity card to the appointing authority within 7 days of cessation. An offence is committed if the person does not fulfil these obligations.

44 Approval of form

This provision allows the Minister for Police to approve a form to constitute the graffiti removal notice.

45 Delegation by Minister

The provision allows the Minister for Police to delegate any function under these provisions to the chief executive of a department. Further delegation is authorised within a department to another appropriately qualified officer within that department.

Amendment of sch 2 (Dictionary)

Clause 6 inserts the definitions for the part in the Dictionary provisions of the Act.

The definition of “public place” is expanded to include busway land and rail corridor land as defined in the *Transport Infrastructure Act 1994*.

The definition of “place” clarifies that a place includes a dwelling, other premises and vacant land. This inclusive definition is not a change but a clarification of the definition to ensure consistency with other standard legislative definitions.

The definition of “graffiti” is modified to ensure its applicability is limited to section 17 of the *Summary Offences Act*. The definition of “graffiti” for Part 3 is to adopt its usual meaning.

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