



# Summary Offences Act 2005

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**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

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Queensland

# Summary Offences Act 2005

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# Summary Offences Act 2005

[as amended by all amendments that commenced on or before 30 September 2008]

**An Act to define particular offences that may be dealt with in a summary way, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Summary Offences Act 2005*.

### 2 Commencement

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

### 3 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 4 Notes

A note in the text of this Act is part of this Act.

## **Part 2                      Offences**

### **Division 1                      Offences about quality of community use of public places**

#### **5                      Object of div 1**

This division has, as its object, ensuring, as far as practicable, members of the public may lawfully use and pass through public places without interference from acts of nuisance committed by others.

#### **6                      Public nuisance**

- (1) A person must not commit a public nuisance offence.  
Maximum penalty—10 penalty units or 6 months imprisonment.
- (2) A person commits a public nuisance offence if—
  - (a) the person behaves in—
    - (i) a disorderly way; or
    - (ii) an offensive way; or
    - (iii) a threatening way; or
    - (iv) a violent way; and
  - (b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.
- (3) Without limiting subsection (2)—
  - (a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and
  - (b) a person behaves in a threatening way if the person uses threatening language.
- (4) It is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.



- (5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2)(a) may be relied on to prove a single public nuisance offence.

## **7 Review**

- (1) As soon as practicable after 1 October 2005, the Crime and Misconduct Commission must review the use of the public nuisance provisions and prepare a report on the review.
- (2) The conduct of the review and the preparation of the report is a function of the Crime and Misconduct Commission for the *Crime and Misconduct Commission Act 2001*.
- (3) In the course of preparing the report, the Crime and Misconduct Commission must consult with the Minister.
- (4) The Crime and Misconduct Commission must give a copy of the report to the Speaker for tabling in the Legislative Assembly.
- (5) In this section—
- public nuisance provisions*** means the following—
- (a) section 6;
  - (b) the repealed *Vagrants, Gaming and Other Offences Act 1931*, section 7AA.

## **8 Begging in a public place**

- (1) A person must not—
- (a) beg for money or goods in a public place; or
  - (b) cause, procure or encourage a child to beg for money or goods in a public place; or
  - (c) solicit donations of money or goods in a public place.
- Maximum penalty—10 penalty units or 6 months imprisonment.
- (2) Subsection (1)(c) does not apply to a person who—
- (a) is an individual authorised by a charity registered under the *Collections Act 1966* to solicit donations for the charity; or

(b) is authorised by a local government to busk in a public place.

(3) In this section—

*procure* includes—

- (a) enable; and
- (b) facilitate.

## **9 Wilful exposure**

(1) A person in a public place must not wilfully expose his or her genitals, unless the person has a reasonable excuse.

Maximum penalty—

- (a) 2 penalty units; or
- (b) if the offence involves circumstances of aggravation—40 penalty units or 1 year's imprisonment.

(2) A person who is so near a public place that the person may be seen from the public place must not wilfully expose his or her genitals so that the person's genitals may be seen from the public place, unless the person has a reasonable excuse.

Maximum penalty—

- (a) 2 penalty units; or
- (b) if the offence involves circumstances of aggravation—40 penalty units or 1 year's imprisonment.

(3) It is a circumstance of aggravation for this section for a person to wilfully expose his or her genitals so as to offend or embarrass another person.

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

A person must not be drunk in a public place.

Maximum penalty—2 penalty units.

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

### **11            Trespass**

- (1) A person must not unlawfully enter, or remain in, a dwelling or the yard for a dwelling.

Maximum penalty—20 penalty units or 1 year's imprisonment.

- (2) A person must not unlawfully enter, or remain in, a place used as a yard for, or a place used for, a business purpose.

Maximum penalty—20 penalty units or 1 year's imprisonment.

*Note—*

See the *Police Powers and Responsibilities Act 2000*, section 634 for safeguards applying to starting proceedings for particular offences in this division.

- (3) This section does not prevent an authorised industrial officer entering a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.<sup>1</sup>

### **11A          Unlawful driving of motorbike on public land**

- (1) A person must not drive a motorbike on public land in contravention of a regulation under this Act or a local law that regulates access by motorbikes to public land, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) If a regulation under this Act or a local law requires a person to possess a stated type of authority while driving a motorbike on public land, a person who drives a motorbike on public land must be in possession of the stated authority while driving the motorbike, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

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<sup>1</sup> *Industrial Relations Act 1999*, section 364 (Authorising industrial officers)

- (3) A person found by a police officer driving a motorbike on land mentioned in subsection (1) must produce the stated authority to the police officer on request.

Maximum penalty—20 penalty units.

- (4) In this section—

*motorbike* has the meaning given by the *Transport Operations (Road Use Management) Act 1995*, and includes a 4-wheeled motorbike that is ridden in the same way as a motorbike.

*public land*, for a regulation or local law, means public land as defined under the regulation or local law, but does not include a road.

*road* has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.

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

- (1) Two or more persons must not, together—

- (a) unlawfully enter—

- (i) any part of a public building or structure or a building or structure used for a business purpose; or  
(ii) any land occupied by or used in connection with any public building or structure or a building or structure used for a business purpose; or

- (b) unlawfully remain in or on—

- (i) any part of a public building or structure or a building or structure used for a business purpose; or  
(ii) any land occupied by or used in connection with any public building or structure or a building or structure used for a business purpose.

Maximum penalty—10 penalty units or 6 months imprisonment.

- (2) Subsection (1)(b) applies whether or not the persons lawfully entered the building, structure or land.

- (3) A person must not, while unlawfully in or on a building or structure mentioned in subsection (1) that is not a public place, do an act or use language that, if done or used by a person in a public place, would be an offence.

Maximum penalty for subsection (3)—10 penalty units or 6 months imprisonment.

- (4) This section does not prevent an authorised industrial officer entering a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.

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

- (1) A person must not unlawfully enter, or remain on, land used for—

- (a) agricultural or horticultural purposes; or
- (b) grazing; or
- (c) animal husbandry.

Maximum penalty—10 penalty units or 6 months imprisonment.

- (2) A person must not unlawfully open, and leave open, any gate, fence or other barrier that encloses all or part of enclosed land used for agricultural or horticultural purposes or for grazing or animal husbandry.

Maximum penalty—10 penalty units or 6 months imprisonment.

- (3) This section does not prevent an authorised industrial officer entering a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.

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

- (1) A person must not unlawfully do any of the following—

- (a) parachute or hang-glide onto a building or structure;
- (b) BASE-jump or hang-glide from a building or structure;
- (c) climb up or down the outside of a building or a structure;

- (d) abseil from a building or structure.  
Maximum penalty—20 penalty units or 1 year's imprisonment.
- (2) It is not an offence against subsection (1) for a person—
- (a) to do an act mentioned in that subsection involving a building or structure that has been built for use, or is designated for use, for a purpose mentioned in that subsection; or
  - (b) to do an act mentioned in that subsection involving a building or structure for a stunt performed with the permission of the owner of the building or structure and as part of the person's engagement or employment for the production of a cinematographic film or for television; or
  - (c) to climb up or down a building or structure for cleaning, maintaining or repairing the building or structure.
- (3) In addition to any penalty that may be imposed on a person who is found guilty of, or has pleaded guilty to, a charge of an offence against subsection (1), a court hearing the charge of the offence may order the person to pay to a stated person the costs the court decides are the other person's costs of rescuing or attempting to rescue the person.

## **Division 3                      Possession offences**

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

- (1) A person must not possess an implement that is being, or is to be, used—
- (a) for burglary of a dwelling; or
  - (b) for unlawfully entering a place; or
  - (c) for entering a vehicle with intent to commit an indictable offence; or
  - (d) to steal or unlawfully use a vehicle; or
  - (e) to unlawfully injure a person; or

(f) to unlawfully damage property.

Maximum penalty—20 penalty units or 1 year's imprisonment.

(2) A person must not possess an implement that has been used—

(a) for burglary of a dwelling; or

(b) for unlawfully entering a place; or

(c) for entering a vehicle with intent to commit an indictable offence; or

(d) to steal or unlawfully use a vehicle; or

(e) to unlawfully injure a person; or

(f) to unlawfully damage property.

Maximum penalty—20 penalty units or 1 year's imprisonment.

(3) For subsection (2), it is a defence for the person to prove that the person's possession of the implement was not connected to any involvement by the person in the preparation of the offence or in any criminal responsibility in relation to the offence.

*Note—*

See the *Police Powers and Responsibilities Act 2000*, section 634 for safeguards applying to starting proceedings for offences against this section and sections 16 and 17.

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

A person must not unlawfully possess a thing that is reasonably suspected of having been stolen or unlawfully obtained.

Maximum penalty—20 penalty units or 1 year's imprisonment.

## **17 Graffiti instrument**

(1) A person must not possess a graffiti instrument that—

(a) is reasonably suspected of having been used for graffiti;  
or

- (b) is being used for graffiti; or
- (c) is reasonably suspected of being about to be used for graffiti.

Maximum penalty—20 penalty units or 1 year's imprisonment.

- (2) The court may, whether or not it imposes any other penalty for the offence, order the offender—
  - (a) to perform community service under the *Penalties and Sentences Act 1992*, part 5, division 2 including, for example, removing graffiti from property; or
  - (b) to pay compensation to any person under the *Penalties and Sentences Act 1992*, part 3, division 4.
- (3) For subsection (1)(a), it is a defence for the person to prove that the person's possession of the graffiti instrument was not connected to any involvement by the person in the preparation of the offence or in any criminal responsibility in relation to the offence.

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

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

- (1) A person must not, as part of a business transaction, perform body piercing to any part of—
  - (a) the external genitalia of a female who is a minor; or
  - (b) the penis or scrotal skin of a male who is a minor; or
  - (c) the nipples of a minor.

Maximum penalty—

- (a) 40 penalty units or 6 months imprisonment; or
- (b) if the minor is an intellectually impaired person or the minor's decision-making capacity is impaired because of alcohol or a drug—80 penalty units or 1 year's imprisonment.



(2) It is not a defence to a prosecution of a person for a charge of an offence against subsection (1) that the minor, or a parent or guardian of the minor, consented to the body piercing.

(3) In this section—

***body piercing*** means the process of penetrating a person's skin or mucous membrane with a sharp instrument for the purpose of implanting jewellery or other foreign material through or into the skin or mucous membrane.

*Examples of foreign material—*

- a ring
- a bar
- a pin
- a stud

***genitalia*** see the Criminal Code, section 1.

***intellectually impaired person*** see the Criminal Code, section 1.

## 19 Tattooing minor prohibited

(1) A person must not perform tattooing on a minor.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) In this section—

***tattooing***—

- (a) means the process of penetrating a person's skin and inserting into it colour pigments to make a permanent mark, pattern or design on the skin; and
- (b) includes any process that penetrates the skin and inserts into it colour pigments to make a semipermanent mark, pattern or design on the skin including for example—
  - (i) the process known as cosmetic tattooing; or
  - (ii) the process for applying semipermanent make-up.

## Division 5                      Other offences

### 20        Preventing public meetings

A person must not intentionally prevent or attempt to prevent the holding of a public meeting.

Maximum penalty—10 penalty units or 6 months imprisonment.

*Examples of actions that may prevent the holding of a public meeting—*

- 1    making a noise to prevent a public meeting starting or continuing
- 2    blocking a door to prevent persons lawfully entering a place where a public meeting is to be held

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

(1) A person must not publish in a newspaper or by radio, television or on the internet an advertisement or notice that states, expressly or by implication, any of the following, knowing what is stated to be false—

- (a) a child has been born who has not been born;
- (b) a person who is still living has died;
- (c) a funeral for a person who is still living is to happen or has happened;
- (d) a particular couple who have not become engaged are engaged;
- (e) a particular couple who do not intend to marry have married or are to marry;
- (f) employment that is not available is available.

Maximum penalty—10 penalty units or 6 months imprisonment.

(2) In this section—

*publish* includes cause to be published.

**22 Imposition**

- (1) A person must not impose or attempt to impose on another person to obtain money or an advantage.

Maximum penalty—20 penalty units or 1 year's imprisonment.

- (2) A person imposes or attempts to impose on another person if the person—

(a) makes an oral or written representation that is false or fraudulent with intent to obtain money or an advantage from the other person; or

(b) by dress, apparel or otherwise, fraudulently seeks to obtain money or an advantage from the other person.

- (3) In this section—

*advantage* includes benefit.

**23 Sale of potentially harmful things**

- (1) A seller must not sell a potentially harmful thing to another person if the seller knows or believes, on reasonable grounds, that the other person—

(a) intends to inhale or ingest the thing; or

(b) intends to sell the thing to another person for inhalation or ingestion whether by that person or someone else.

Maximum penalty—

(a) for a first offence—25 penalty units or 3 months imprisonment; or

(b) for a second or later offence—50 penalty units or 1 year's imprisonment.

- (2) For the purposes of the *Anti-Discrimination Act 1991*, section 46, a seller is not to be taken to discriminate against a person only because the seller refuses to sell a potentially harmful thing to the person because of subsection (1).

- (3) In this section—

*potentially harmful thing*—

- (a) means a thing a person may lawfully possess that is or contains a substance that may be harmful to a person if ingested or inhaled; and

*Examples—*

- glue
  - paint
  - a solvent
- (b) includes methylated spirits; and
- (c) does not include a thing intended by its manufacturer to be inhaled or ingested by a person using it.

**23A Seller must take prevention measures in relation to spray paint**

- (1) This section applies in relation to selling spray paint.
- (2) A seller who is an employer must take prevention measures in relation to each employee of the seller.

Maximum penalty—40 penalty units.

- (3) The seller takes prevention measures for subsection (2) in relation to an employee if the seller—
- (a) instructs the employee—
    - (i) not to sell spray paint to minors in any circumstances, even if the sale is for, or claimed to be for, an adult; and
    - (ii) to sight acceptable evidence of age for a person before selling spray paint to the person, unless satisfied the person is an adult; and
  - (b) warns the employee that if the employee disregards the instructions mentioned in paragraph (a) and sells spray paint to minors, the employee commits an offence against section 23C; and
  - (c) obtains written acknowledgment by the employee that the employee received the instructions and warning mentioned in paragraphs (a) and (b).

- (4) In this section—  
*acceptable evidence of age* see section 23B.

### **23B Sale of spray paint to minors**

- (1) A seller of spray paint must not sell spray paint to a minor.  
Maximum penalty—
- (a) for a first offence—140 penalty units; or
  - (b) for a second offence—280 penalty units; or
  - (c) for a third or later offence—420 penalty units.
- (2) An employee who sells spray paint to a minor in the course of the employment can not be prosecuted under this section.

*Note—*

See section 23C for when an employee is liable for selling spray paint to a minor.

- (3) It is a defence to a charge of an offence against subsection (1) for the seller to prove—
- (a) that the seller, or an employee of the seller, required a person to produce acceptable evidence of age; and
  - (b) the person produced acceptable evidence of age showing the person was not a minor; and
  - (c) the seller or employee had no reason to believe the evidence was false.
- (4) Also, for the purposes of the *Anti-Discrimination Act 1991*, section 46, a seller is not to be taken to discriminate against a person only because the seller refuses to sell spray paint to the person because of subsection (1).
- (5) In this section—  
*acceptable evidence of age*, for a person, means a document that—
- (a) is a driver licence, proof of age card or an Australian or foreign passport; and
  - (b) bears a photograph of the person; and

- (c) indicates by reference to the person's date of birth or otherwise that the person has attained a particular age.

### **23C When employee of seller liable**

- (1) This section applies if a seller has, in relation to an employee of the seller, taken the prevention measures mentioned in section 23A(3).
- (2) The employee of the seller must not, in the course of the employee's employment, sell spray paint to a minor.
- Maximum penalty—
- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.
- (3) For deciding whether a person has committed a second or later offence for subsection (2), it does not matter whether the prevention measures taken in relation to the employee were taken by the same or a different employer.

### **23D Seller of spray paint must display prohibition sign**

- (1) A seller of spray paint who is an employer must display, as prescribed under a regulation, a prohibition sign at each point of sale at the seller's retail outlet.

Maximum penalty—20 penalty units.

- (2) In this section—

***point of sale*** means a counter or similar fixture where spray paint may be sold.

***prohibition sign*** means a sign about the supply of spray paint to minors complying with the requirements prescribed under a regulation.

***retail outlet*** means premises where spray paint is available for sale to the public.

### **23E Provision about definition of *sell* for ss 23A–23D**

- (1) This section applies for the application of the definition *sell* in the dictionary to sections 23A to 23D.

- (2) A seller does not keep or expose for sale or offer to sell spray paint to a minor only because the seller keeps or exposes for sale or offers to sell spray paint to the public generally.

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

- (1) A person at a sporting event must not throw or propel an object that may—
- (a) injure a person; or
  - (b) damage property; or
  - (c) disrupt the event.

Maximum penalty—10 penalty units or 6 months imprisonment.

- (2) Subsection (1) does not apply to a person actually participating in a sporting event who throws or propels an object the person ordinarily throws or propels as part of the sporting event.
- (3) Also, subsection (1) does not apply to a person who is a spectator at a sporting event who returns an object ordinarily used in the sporting event to a person actually participating in the sporting event in a way not intended to contravene subsection (1).

*Example for subsection (3)—*

Returning to a cricket player a cricket ball that has been hit over the fence in a cricket match.

## **24A Unlawful SMS messages etc.**

- (1) A person must not, in trade or commerce, provide, in Queensland or elsewhere, a service of informing another person of the location of a traffic enforcement site for the purpose of, or that has the effect of, enabling the other person to avoid, or be prepared for, a check made at the site.

Maximum penalty—100 penalty units.

- (2) For subsection (1), a person provides a service of informing another person of the location of a traffic enforcement site if the person makes information about the location of a traffic

enforcement site available to the other person by a relevant message.

- (3) Subsection (1) does not apply to the provider of a telephone service or an internet service provider only because another person uses the provider's telephone or internet service to inform someone else of the location of a traffic enforcement site.

- (4) In this section—

**internet message** means a message that may be viewed by a person on a website.

**message** includes information in any form, whether or not for a particular person.

**relevant message** means any of the following that informs a person of the location of a traffic enforcement site—

- (a) an internet message;
- (b) an SMS message;
- (c) another type of message that may be heard, read or otherwise viewed by a person using a mobile phone.

**SMS message** means a text message sent using the mobile phone service known as the short messaging service.

**traffic enforcement site** means a place being used by a police officer to perform random or systematic checks of compliance by drivers with the *Transport Operations (Road Use Management) Act 1995*.

*Examples of traffic enforcement site—*

- the site of a speed camera
- a random breath test site
- a vehicle safety check site

## 25 Use of vehicles

A person must not—

- (a) unlawfully use a vehicle without the consent of the person in lawful possession of the vehicle; or



- (b) have a vehicle in the person's possession without the consent of the person in lawful possession of it (the *other person*) with intent to temporarily or permanently deprive the other person of the use or possession of the vehicle.

Maximum penalty—20 penalty units or 1 year's imprisonment.

## 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.

***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;

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- (ii) working on property that creates a border along the public place; and
- (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—
- (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
  - (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.

## Part 4                      Procedural provisions

### 46      **Offences are simple offences**

- (1) An offence against this Act is a simple offence.
- (2) A proceeding for an offence against this Act is a summary proceeding under the *Justices Act 1886*.

### 47      **Forfeiture**

If a court finds a person guilty of an offence against section 15, 16, 17, 23B or 23C, the court may order that the thing to which the offence relates be forfeited to the State.

*Note—*

For how something forfeited to the State may be disposed of, see the *Police Powers and Responsibilities Act 2000*, chapter 21 (Administration), part 3 (Dealing with things in the possession of police service), division 7 (Dealing with forfeited things).

### 48      **Evidentiary provision**

- (1) In a proceeding, a statement in a charge of an offence that a place is a place to which a provision of this Act applies is evidence that the place is what it is claimed to be.
- (2) In a proceeding for an offence against section 16, it is not necessary to prove that the police officer starting the proceeding knew anything had recently been stolen or

unlawfully obtained, or that in fact anything had been stolen or unlawfully obtained, if the circumstances in which the property had been found gives rise to a reasonable suspicion that the property had been stolen or unlawfully obtained.

*Note—*

See the *Police Powers and Responsibilities Act 2000*, section 634 for procedural safeguards a police officer must follow before charging a person with an offence against section 16 of this Act.

## **Part 5                      General**

### **49      Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Part 6                      Repeal**

### **50      Act repealed**

The Vagrants, Gaming and Other Offences Act 1931 22 Geo 5 No. 27 is repealed.

## Schedule 2      Dictionary

### section 3

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

*approved form*, for part 3, see section 27.

*authorised industrial officer* means—

- (a) an authorised industrial officer appointed under the *Industrial Relations Act 1999*, section 364; or
- (b) an authorised officer appointed under the *Workplace Relations Act 1996* (Cwlth), section 83BG.

*business purpose* includes commercial purpose.

*consent*, for part 3, see section 27.

*dwelling* includes, when used as a dwelling, a boat or part of a boat, a caravan, and a tent.

*employee*, of a seller, means a person who sells, or may sell, spray paint in the course of the person's employment.

*graffiti*, for section 17, see the Criminal Code, section 469, punishment in special cases, paragraph 9.

*graffiti instrument*, for section 17, includes—

- (a) a container from which paint or another marking substance may be forced by pressure, suction or in another way; or
- (b) an etching instrument.

*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.

*implement* includes equipment and substance.

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

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

*place* includes dwelling, other premises and vacant land.

## Schedule 2 (continued)

**possession** has the same meaning as in the Criminal Code.

*Note—*

Under the *Acts Interpretation Act 1954*, section 32, if an Act defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

**potentially harmful thing** see section 23.

**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.

**sell** includes—

- (a) sell by wholesale, retail or auction; and
- (b) supply in trade or commerce or under an arrangement; and
- (c) agree, attempt or offer to sell; and
- (d) keep or expose for sale; and
- (e) cause or permit to be sold.

**seller**, of potentially harmful things or of spray paint, means a person who, in trade or commerce, sells potentially harmful things or spray paint to the public, and includes an employee of a seller.

**spray can** includes a thing that is made or adapted for use for emitting paint by the operation of air, gas or vapour pressure on the contents of the thing.

## Schedule 2 (continued)

**spray paint** includes—

- (a) any liquid or other substance in a spray can that, if applied to a surface of a thing by using a spray can, is designed to colour, stain, mark or corrode the surface of the thing; and
- (b) the spray can.

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

**unlawfully** means without authorisation, justification or excuse by law.

**vehicle** includes a motor vehicle, bicycle and boat.

**yard** means—

- (a) for a dwelling other than a boat, the parcel of land related to the dwelling that appears to be within identifiable boundaries; or

*Examples for paragraph (a)—*

- 1 The boundaries may be defined by the position of fencing.
  - 2 There may be a garden along a boundary of the land giving a general indication of where the boundary is.
  - 3 It may be easy to recognise the position of the front boundary of land because of the position of fencing along the front of adjoining land.
- (b) for a place used for a business purpose, a part of the place not occupied by buildings—
    - (i) that is fenced in a way that ordinarily restricts access to the place when the place is not open to the public; or
    - (ii) that is otherwise ordinarily enclosed to restrict access to the place; or
    - (iii) to which entry is prohibited by signs displayed on the premises.

*Example for paragraph (b)—*

The place may have a high chain-wire fence along its boundaries.



## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 September 2008. Future amendments of the Summary Offences Act 2005 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	21 March 2005	
1A	2005 Act No. 64	1 July 2006	
1B	2006 Act No. 26 2000 Act No. 5 (amd 2006 Act No. 26)	21 July 2006	
1C	2007 Act No. 1	16 February 2007	
1D	2007 Act No. 1	3 September 2007	
1E	2008 Act No. 42	30 September 2008	

## 5 List of legislation

### **Summary Offences Act 2005 No. 4**

date of assent 3 March 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 21 March 2005 (2005 SL No. 34)

amending legislation—

### **Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005 No. 64 pts 1, 4**

date of assent 28 November 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2006 (2006 SL No. 107)

### **Police Powers and Responsibilities and Other Acts Amendment Act 2006 No. 26 ss 1–2(1), 119 sch 2**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

### **Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A) (this Act is amended, see amending legislation below)**

amending legislation—

### **Police Powers and Responsibilities and Other Acts Amendment Act 2006 No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Summary Offences and Other Acts Amendment Act 2007 No. 1 ss 1–2(1), pt 2**

date of assent 16 February 2007

ss 1–2 commenced on date of assent

ss 4–5, 7–8 commenced 3 September 2007 (2007 SL No. 180)

remaining provisions commenced on date of assent

**Summary Offences (Graffiti Removal Powers) Amendment Act 2008 No. 42**

date of assent 8 September 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 30 September 2008 (2008 SL No. 315)

**6 List of annotations****Unlawful driving of motorbike on public land**

s 11A ins 2005 No. 64 s 33

**Trespass**

s 11 amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

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

s 15 amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

**Sale of potentially harmful things**

s 23 amd 2007 No. 1 s 4

**Seller must take prevention measures in relation to spray paint**

s 23A ins 2007 No. 1 s 5

**Sale of spray paint to minors**

s 23B ins 2007 No. 1 s 5

**When employee of seller liable**

s 23C ins 2007 No. 1 s 5

**Seller of spray paint must display prohibition sign**

s 23D ins 2007 No. 1 s 5

**Provision about definition of “sell” for ss 23A–23D**

s 23E ins 2007 No. 1 s 5

**Unlawful SMS messages etc.**

s 24A ins 2007 No. 1 s 6

**PART 3—REMOVAL OF PUBLIC GRAFFITI**

pt hdg ins 2008 No. 42 s 6

**Division 1—Interpretation**

div 1 (s 27) ins 2008 No. 42 s 6

**Division 2—Graffiti removal power**

div hdg ins 2008 No. 42 s 6

**Graffiti removal power**

s 28 ins 2008 No. 42 s 6

**Powers of entry**

s 29 ins 2008 No. 42 s 6

**Notice about removal**s 30 prev s 30 om R1 (see RA s 40)  
pres s 30 ins 2008 No. 42 s 6**Protection of graffiti removal officers and helpers from civil liability**

s 31 ins 2008 No. 42 s 6

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

s 32 ins 2008 No. 42 s 6

**Prohibition on charging for removal of public graffiti**

s 33 ins 2008 No. 42 s 6

**Compensation**

s 34 ins 2008 No. 42 s 6

**Graffiti removal officer to give notice of damage**

s 35 ins 2008 No. 42 s 6

**Obstructing graffiti removal officer or helper**

s 36 ins 2008 No. 42 s 6

**Division 3—Graffiti removal officers**

div 3 (ss 37–45) ins 2008 No. 42 s 6

**PART 4—PROCEDURAL PROVISIONS**

pt hdg (prev pt 3 hdg) renum 2008 No. 42 s 4

**Offences are simple offences**

s 46 (prev s 26) renum 2008 No. 42 s 5

**Forfeiture**s 47 (prev s 27) amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86); 2007 No.  
1 s 7  
renum 2008 No. 42 s 5**Evidentiary provision**s 48 (prev s 28) amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86); 2006 No.  
26 s 119 sch 2  
renum 2008 No. 42 s 5**PART 5—GENERAL**pt hdg (prev pt 3A hdg) ins 2005 No. 64 s 34  
renum 2008 No. 42 s 4**Regulation-making power**s 49 (prev s 28A) ins 2005 No. 64 s 34  
renum 2008 No. 42 s 5**PART 6—REPEAL**pt hdg (prev pt 4 hdg) amd 2006 No. 26 s 119 sch 2  
renum 2008 No. 42 s 4

**Act repealed**

**s 50** (prev s 29) renum 2008 No. 42 s 5

**SCHEDULE 1—ACTS AMENDED**

om R1 (see RA s 40)

**SCHEDULE 2—DICTIONARY**

def “**appointing authority**” ins 2008 No. 42 s 7(2)

def “**approved form**” ins 2008 No. 42 s 7(2)

def “**consent**” ins 2008 No. 42 s 7(2)

def “**employee**” ins 2007 No. 1 s 8

def “**graffiti**” amd 2008 No. 42 s 7(3)

def “**graffiti instrument**” amd 2008 No. 42 s 7(4)

def “**graffiti removal notice**” ins 2008 No. 42 s 7(2)

def “**graffiti removal officer**” ins 2008 No. 42 s 7(2)

def “**helper**” ins 2008 No. 42 s 7(2)

def “**local graffiti removal officer**” ins 2008 No. 42 s 7(2)

def “**owner**” ins 2008 No. 42 s 7(2)

def “**place**” amd 2008 No. 42 s 7(5)

def “**potentially harmful thing**” ins 2007 No. 1 s 8

def “**public graffiti**” ins 2008 No. 42 s 7(2)

def “**public place**” sub 2008 No. 42 s 7(1)–(2)

def “**remove**” ins 2008 No. 42 s 7(2)

def “**sell**” ins 2007 No. 1 s 8

def “**seller**” ins 2007 No. 1 s 8

def “**spray can**” ins 2007 No. 1 s 8

def “**spray paint**” ins 2007 No. 1 s 8

def “**State graffiti removal officer**” ins 2008 No. 42 s 7(2)