



# Summary Offences Act 2005

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Queensland

# Summary Offences Act 2005

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# Summary Offences Act 2005

**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—

- (a) if the person commits a public nuisance offence within licensed premises, or in the vicinity of licensed premises—25 penalty units or 6 months imprisonment; or
- (b) otherwise—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 Urinating in a public place

- (1) A person must not urinate in a public place.
- Maximum penalty—
- (a) if the person urinates within licensed premises, or in the vicinity of licensed premises—4 penalty units; or
  - (b) otherwise—2 penalty units.
- (2) In a proceeding for an offence against subsection (1), evidence that liquid was seen to be discharged from the vicinity of a person's pelvic area is enough evidence that the person was urinating.
- (3) In this section—
- public place* does not include a facility in a public place that is designed for use as a toilet.

## 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.

[s 10]

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- (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 intoxicated in a public place**

- (1) A person must not be intoxicated in a public place.

Maximum penalty—2 penalty units.

- (2) In this section—

*intoxicated* means drunk or otherwise adversely affected by drugs or another intoxicating substance.

## **Division 1A Unlawful assembly offences**

### **10A Unlawful assembly**

- (1) If—
- (a) 3 or more persons are present together for a common purpose; and
- (b) the conduct of them taken together—
- (i) would cause a person in the vicinity to reasonably fear that unlawful violence will be used to a person or property; or

- 
- (ii) if the conduct unlawfully happens on, or unlawfully affects, land mentioned in section 13(1)—
- (A) poses a risk to the health or safety of a person; or
  - (B) poses a risk to the welfare of an animal; or
  - (C) poses a biosecurity risk as defined under the *Biosecurity Act 2014*; or
  - (D) is likely to directly disrupt the operation of a business carried out on the land; or
- Example of conduct for sub-subparagraph (D)—*
- conduct that stops, or interferes with, the operation of equipment or machinery that is necessary for a business's production of a product
- (E) poses a risk to the safety of food produced for human or animal consumption;

each of the persons commits an offence.

Maximum penalty—

- (a) if—
    - (i) the offender continues to participate in the unlawful assembly after anyone in the assembly has used unlawful violence to a person or property; and
    - (ii) the offender knows of, or ought reasonably to know of, the violence—2 years imprisonment; or
  - (b) otherwise—1 year's imprisonment.
- (2) The following are immaterial—
- (a) whether the original assembling was lawful or unlawful;
  - (b) what the common purpose is and whether it is lawful or unlawful;
  - (c) whether there is or is likely to be a person in the vicinity who holds the fear mentioned in subsection (1)(b)(i).

(2A) Subsection (1)(b)(ii) applies subject to the *Industrial Relations Act 2016*.

(3) In this section—

*unlawful assembly* means an assembly of persons who commit the offence under subsection (1).

## **Division 1B            Offence about wearing or carrying particular clothing, jewellery or accessories in public places**

### **10B    Objects of division**

The objects of this division are, as far as practicable—

- (a) to ensure members of the public may lawfully use and pass through public places without experiencing fear or intimidation because others are visibly wearing or carrying prohibited items; and
- (b) to reduce the likelihood of public disorder or acts of violence in public places.

### **10C    Wearing or carrying prohibited item in a public place**

(1) A person in a public place must not wear or carry a prohibited item so that the item can be seen.

Maximum penalty—

- (a) for a first offence—40 penalty units or 6 months imprisonment; or
  - (b) for a second offence—60 penalty units or 9 months imprisonment; or
  - (c) for a third or later offence—100 penalty units or 12 months imprisonment.
- (2) A person who is in or on a vehicle that is in a public place must not wear or carry a prohibited item so that the item can be seen from the public place.

Maximum penalty—

- (a) for a first offence—40 penalty units or 6 months imprisonment; or
  - (b) for a second offence—60 penalty units or 9 months imprisonment; or
  - (c) for a third or later offence—100 penalty units or 12 months imprisonment.
- (3) In this section—  
*prohibited item* see the *Liquor Act 1992*, section 173EA.

#### **10D Defence for s 10C**

For section 10C(1) and (2), it is a defence for the person to prove—

- (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal or law enforcement purpose; and
- (b) the person's conduct was, in the circumstances, reasonable for that purpose.

#### **10E Forfeiture of prohibited item to which offence relates**

On a person being convicted of an offence against section 10C, a prohibited item to which the offence relates that is lawfully in the possession of the Queensland Police Service is forfeited to the State.

*Note—*

Under the *Police Powers and Responsibilities Act 2000*, a police officer has the power to seize all or part of a thing that may provide evidence of the commission of an offence in particular circumstances. See, for example, sections 29(2) and 31(5) of that Act.

## **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, or remaining in, a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.

### **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.

- (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.

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- (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, or remaining in or on, a workplace in accordance with the terms of the person’s appointment as an authorised industrial officer.

### **13 Unlawfully entering or remaining on particular land**

- (1) A person must not unlawfully enter, or remain on, land used for—
  - (a) an agricultural activity; or
  - (b) an animal husbandry activity; or
  - (c) a holding facility; or
  - (d) a food production facility, including, for example, a facility that produces food for animal consumption; or
  - (e) the exhibition of animals.  
*Examples for paragraph (e)—*  
wildlife park or zooMaximum penalty—20 penalty units or 12 months imprisonment.
- (2) Subsection (1) applies whether or not the person lawfully entered the land.
- (3) 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—
  - (a) an agricultural activity; or



- 
- (b) an animal husbandry activity; or
  - (c) a holding facility; or
  - (d) a food production facility, including, for example, a facility that produces pet food; or
  - (e) the exhibition of animals.

*Examples for paragraph (e)—*

wildlife park or zoo

Maximum penalty—10 penalty units or 6 months imprisonment.

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

- (5) In this section—

***agricultural activity*** includes—

- (a) cultivating soil; and
- (b) broadcasting seed to establish an improved pasture; and
- (c) planting, gathering or harvesting a crop, including a food or fibre crop; and
- (d) growing non-indigenous grasses, legumes or forage cultivars; and
- (e) horticulture or viticulture activities.

***animal husbandry activity*** includes—

- (a) breeding, keeping, raising or caring for animals, for commercial purposes; and
- (b) establishing or operating a dairy, feedlot, piggery or animal saleyard; and
- (c) grazing animals; and
- (d) aquaculture; and
- (e) beekeeping; and

- (f) poultry farming of more than 100 birds; and
- (g) testing or inoculation of animals, including using diagnostic agents, serums and vaccines.

**exhibit**, an animal, includes display the animal at a private event.

**holding facility** means a place where 1 or more types of animal are regularly or periodically held or kept on a temporary basis, including, for example, any of the following—

- (a) a local government reserve or commonage;
- (b) a pound;
- (c) an animal refuge;
- (d) a meat processing facility;
- (e) a live export holding;
- (f) a showground for animals;
- (g) a sporting ground for animals;
- (h) a stock route.

**live export holding** means—

- (a) a depot for the live export of animals; or
- (b) an embarkation point for the export of live animals.

**meat processing facility** means an abattoir or other facility at which animals are killed for meat for trade or commerce.

**stock route** see the *Stock Route Management Act 2002*, schedule 3.

## 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 2A                      Offence involving use of dangerous attachment devices**

### **14A    What is an *attachment device***

- (1) An *attachment device* is a device that reasonably appears to be constructed or modified to enable a person using the device to resist being safely removed from a place or safely separated from a thing.

- (2) To remove any doubt, it is declared that none of the following things is an attachment device unless it is a component of a dangerous attachment device—
- (a) glue;
  - (b) a bike lock;
  - (c) a padlock;
  - (d) a rope;
  - (e) a chain.
- (3) In this section—

***bike lock*** means a device manufactured and sold as a device for securing a bicycle while the device is locked.

#### **14B What is a *dangerous attachment device***

- (1) An attachment device is a ***dangerous attachment device*** if it—
- (a) reasonably appears to be constructed or modified to cause injury to a person who attempts to interfere with the device; or
  - (b) reasonably appears to be constructed or modified to cause injury to a person if another person interferes with the device; or
  - (c) incorporates a dangerous substance or thing.
- (2) Also, a sleeping dragon, dragon's den, monopole and tripod are each a ***dangerous attachment device***.
- (3) An attachment device is a ***sleeping dragon*** if it incorporates—
- (a) an anchor point for a person to hold or to which a person's hand can be bound or locked; and
  - (b) a casing that shields the person's hand, or the binding or lock, from being released by another person.

*Example of a sleeping dragon—*

two large steel pipes welded together at an angle with a thick pin fixed in the centre

- 
- (4) An attachment device is a ***dragon's den*** if it—
- (a) incorporates 1 or more sleeping dragons or tubes large enough to pass a person's hand through; and
  - (b) reinforces the casing of the sleeping dragon or tube by adding bulk and weight.

*Example of a dragon's den—*

a 44-gallon drum incorporating a sleeping dragon and otherwise filled with concrete

- (5) An attachment device is a ***monopole*** if—
- (a) it relies on a long pole and support riggings to suspend a person off the ground; and
  - (b) it reasonably appears to be set up to fall if another person interferes with the support riggings; and
  - (c) a fall of the device would cause injury to the person suspended from it.
- (6) An attachment device is a ***tripod*** if—
- (a) the legs of the device form a tripod large enough to be used to suspend a person off the ground; and
  - (b) it reasonably appears to be set up to collapse if another person interferes with the legs of the device or any support riggings for the device; and
  - (c) a collapse of the device would cause injury to the person suspended from it.
- (7) To remove any doubt, it is declared that a device is a dangerous attachment device under this section regardless of whether—
- (a) persons using the device can release themselves from it; or
  - (b) the device would automatically deactivate or release itself after a period of time; or
  - (c) protective clothing or other shielding would prevent injury to any person.

- (8) In this section—

**attachment device** see section 14A.

**dangerous substance or thing**, for a dangerous attachment device, means—

- (a) any thing likely to explode, when struck or compressed, causing injury to a person; or
- (b) any thing likely to cut a person's skin while a person is being extricated from the dangerous attachment device; or
- (c) any substance or thing that requires a person to wear protective clothing to safely handle, cut or break up the thing while a person is being extricated from the dangerous attachment device.

*Example for paragraph (c)—*

a pipe or casing made of asbestos

**interfere**, with a thing, includes to cut, damage, deactivate, move or release the thing.

**protective clothing** means clothing, eyewear or masks designed to protect the wearer from infection or injury caused by chemicals, electricity or heat.

**support riggings**, for a thing, means the cables, chains, ropes or other materials used to stabilise the thing in a particular position.

## **14C Use of dangerous attachment device to disrupt lawful activities**

- (1) A person must not use a dangerous attachment device to unreasonably interfere with the ordinary operation of transport infrastructure, unless the person has a reasonable excuse.

*Example of unreasonably interfering with transport infrastructure—*

placing an obstacle, on a railway, that stops the passage of rolling stock

Maximum penalty—50 penalty units or 2 years imprisonment.

- 
- (2) A person must not use a dangerous attachment device to do either of the following, unless the person has a reasonable excuse—
- (a) stop a person from entering or leaving a place of business;
  - (b) cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person.

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

- (3) However, subsection (2) does not apply to a monopole or tripod unless it incorporates a dangerous substance or thing.

- (4) In this section—

*dangerous attachment device* see section 14B.

*dangerous substance or thing* see section 14B(8).

*monopole* see section 14B(5).

*transport infrastructure* see the *Transport Infrastructure Act 1994*, schedule 6.

*tripod* see section 14B(6).

## 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.



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## 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 a person with an impairment of the mind 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.

***person with an impairment of the mind*** 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 4A                      Offences associated with hooning offences**

### **19A    Object of division**

The object of this division is to discourage the commission of racing, burn out and other hooning offences by prohibiting—

- (a) conduct that promotes or encourages the commission of these offences; and
- (b) the possession of things being, to be or having been used to commit those offences.

### **19B    Meaning of *racing, burn out or other hooning offence***

A *racing, burn out or other hooning offence* is a type 1 vehicle related offence under the *Police Powers and Responsibilities Act 2000*, section 69A(1).

### **19C    Unlawful conduct associated with commission of racing, burn out or other hooning offence**

A person must not—

- (a) willingly participate in a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence; or
- (b) organise, promote or encourage another person to participate in, or view, a group activity involving a motor vehicle being used to commit a racing, burn out or other hooning offence; or

[s 19D]

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- (c) for a purpose mentioned in paragraph (b), photograph or film, or publish a photograph or film of, a motor vehicle being used to commit a racing, burn out or other hooning offence.

Maximum penalty—40 penalty units or 1 year's imprisonment.

## **19D Possession of things used in commission of racing, burn out or other hooning offence**

- (1) A person must not possess a thing that is being, is to be, or has been used to commit a racing, burn out or other hooning offence.

Maximum penalty—40 penalty units or 1 year's imprisonment.

*Examples of things for use in committing a racing, burn out or other hooning offence—*

- number plates that are not related to a motor vehicle being used to commit a racing, burn out or other hooning offence
- a hydraulic jack and racing tyres for a motor vehicle being used in a street race

- (2) For subsection (1), a reference to a thing does not include a motor vehicle.

## **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

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## 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.

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**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 acknowledgement 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) a document that—
  - (i) is a driver licence, proof of age card or an Australian or foreign passport; and
  - (ii) bears a photograph of the person; and
  - (iii) indicates by reference to the person's date of birth or otherwise that the person has attained a particular age; or
- (b) a digital authority that complies with paragraph (a)(ii) and (iii); or
- (c) a digital evidence of age; or
- (d) a digital evidence of identity.

***digital authority*** see the *Transport Planning and Coordination Act 1994*, section 29AC.



*digital evidence of age* see the *Transport Planning and Coordination Act 1994*, section 29AD.

*digital evidence of identity* see the *Transport Planning and Coordination Act 1994*, section 29AE.

### **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* or the Heavy Vehicle National Law (Queensland).

*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 enter or 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.

## **25A Advertising a reward for the return of stolen property etc.**

(1) A person must not—

- (a) unlawfully offer a reward for the return of stolen or lost property; or
- (b) unlawfully print or publish an offer of a reward for the return of stolen or lost property.

Maximum penalty—2 penalty units.

(2) A person unlawfully offers a reward for the return of stolen or lost property if the person offering the reward makes the offer publicly and—

- (a) indicates in the offer that no questions will be asked, or that the person producing the property will not be seized or molested; or
- (b) offers to return to any person who may have bought or advanced money by way of loan on stolen or lost property the money paid or advanced, or to give to the person any other sum of money or reward, for the return of the property.

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- (3) A person unlawfully prints or publishes an offer of a reward for the return of stolen or lost property if the person publicly prints or publishes an offer of a reward that—
- (a) indicates in the offer that no questions will be asked, or that the person producing the property will not be seized or molested; or
  - (b) offers to return to any person who may have bought or advanced money by way of loan on stolen or lost property the money paid or advanced, or to give to the person any other sum of money or reward, for the return of the property.

## 26 **Endangering the safe use of a vehicle by throwing an object or by a similar activity**

- (1) A person must not unlawfully—
- (a) throw an object at a vehicle that is in the course of travelling; or
  - (b) place an object in or near to the path a vehicle is using or may use in the course of travelling; or
  - (c) direct a beam of light from a laser at or near a vehicle that is in the course of travelling;

in a way that endangers or is likely to endanger the safe use of the vehicle.

Maximum penalty—2 years imprisonment.

- (2) For subsection (1)(a), throwing an object at a vehicle includes throwing or dropping an object onto or near the vehicle or into or near to the path of the vehicle.
- (3) The following do not matter—
- (a) the intention with which an object is thrown, dropped or placed or a beam of light from a laser is directed (in any case, the *initial act*);
  - (b) whether contact is made with a vehicle;

- (c) without limiting paragraph (a), whether a particular vehicle is involved;
  - (d) in relation to a requirement that a vehicle be in the course of travelling—whether the vehicle is moving or stationary;
  - (e) whether a vehicle is in the sight of the offender or present when the initial act is done.
- (4) In this section—
- at* includes towards.
- beam of light*, from a laser, means the beam of radiation produced by a laser device.
- laser* means a laser pointer, laser scope or other laser device.
- path* includes pathway, course and channel.
- place* includes insert and submerge.
- throw* includes propel, project and kick.
- vehicle* see the Criminal Code, section 1.

## **26A Interference with graves etc.**

- (1) A person must not interfere with—
- (a) a grave, vault, niche or memorial in a cemetery or at a crematorium; or
  - (b) a war memorial; or
  - (c) a thing fixed at a place of religious worship.
- Maximum penalty—1 year’s imprisonment.
- (2) It is a defence for the person to prove that the person was acting—
- (a) with lawful authority or in the reasonable belief that the person was acting with lawful authority; or
  - (b) with any other reasonable excuse.
- (3) In this section—

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**crematorium** includes the land or water where the crematorium is situated.

**interfere**, with a thing, includes—

- (a) destroy, damage, move or mark it; and
- (b) otherwise deal with it in a way that is likely to cause offence to a reasonable person.

**lawful authority** means authority under an Act or given lawfully by either of the following—

- (a) the owner of the thing interfered with;
- (b) if the thing interfered with is in a cemetery or at a crematorium and there is an entity responsible for managing and administering the cemetery or crematorium—the entity.

**memorial**, in a cemetery or at a crematorium, includes the following—

- (a) a headstone;
- (b) an inscribed plaque or commemorative plate;
- (c) a monumental, ornamental or other structure;
- (d) another thing erected or placed—
  - (i) to mark the site where human remains have been buried or placed; or
  - (ii) to commemorate a deceased person.

## **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 a 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.



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## 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;
  - (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

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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.

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- (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—

- (a) the chief executive of a department; or
- (b) the chief executive officer (however described) of a government owned corporation; or
- (c) the chief executive officer of a rail government entity.

(2) The chief executive of a department may subdelegate the delegated functions to an appropriately qualified officer in the department.

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- (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) The chief executive officer of a rail government entity may subdelegate the delegated functions to an appropriately qualified employee of the rail government entity.
  - (5) 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.

*rail government entity* see the *Transport Infrastructure Act 1994*, schedule 6.

## 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 of thing to which offence relates

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).

**47A Forfeiture of thing used to record, store or transmit image of graffiti**

- (1) This section applies if—
- (a) a person is convicted of an offence of possessing a graffiti instrument against section 17; and
  - (b) the person was an adult at the time of the commission of the offence; and
  - (c) the court is satisfied that a thing owned or possessed by the person was used to record, store or transmit an image of, or related to, the graffiti in relation to which the graffiti instrument was used, reasonably suspected of being used, or reasonably suspected of being about to be used.

*Example of a thing used to record, store or transmit an image—*

a camera, mobile phone or computer

- (2) When the court is imposing a sentence on the person for the offence, the court may order the thing be forfeited to the State.
- (3) Subsection (2) applies whether the thing to be forfeited has been seized or is in its owner's possession.
- (4) The court may also make any order that it considers appropriate to enforce the forfeiture.
- (5) This section does not limit the court's powers under the *Penalties and Sentences Act 1992*, the *Criminal Proceeds Confiscation Act 2002* or another law.
- (6) When forfeited to the State, the thing becomes the State's property and may be dealt with as directed by the chief executive.

## **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 2016*, section 337; or
- (b) a permit holder under the *Fair Work Act 2009* (Cwlth); or
- (c) a WHS entry permit holder under the *Work Health and Safety Act 2011*.

*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 a place, for part 3, see section 27.

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

**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*.

**racing, burn out or other hooning offence** see section 19B.

**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.

**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.