Street Offences

CHAPTER CONTENTS

Introduction

Street offences comprise a variety of behaviours that are considered to be contrary to reasonable standards of public behaviour and include:

- being a public nuisance by behaving in a disorderly, offensive, violent or threatening manner
- urinating in a public place
- begging
- wilful exposure
- public drunkenness
- graffiti.

Police officers can, under the same restrictions as with any other simple offence in Queensland, arrest any persons found committing a street offence. Alternatively, as with any offence, a police officer may proceed by giving the offender a notice to appear (for more information see the *Arrest and Interrogation* chapter).

This chapter encompasses a range of street offences relating to the use of public space and the charges that may result from interaction with police (e.g. failure to obey police directions).

The *Summary Offences Act 2005* (Qld) (Summary Offences Act) is the major piece of legislation that governs street offences.

Offences Relating to Community Use of Public Places

With certain street offences, a police officer may at their discretion issue a person with an infringement notice or an 'on-the-spot' fine which then requires the defendant to elect court proceeding if they wish to argue against guilt. Where an offender is dealt with in this manner, no criminal history is recorded.

The offences that attract the option of an infringement notice are:

- public nuisance
- public urination
- obstruct police or contravene requirement of a police officer (but only in relation to a public nuisance offence or where failing to state a correct name or address).

When issuing the infringement notice, police must also give the person a Public Nuisance Ticket Information Sheet, which provides information about court election and payment options among other things.

Public nuisance

A person commits a public nuisance offence (s 6 Summary Offences Act) if:

- they behave in a disorderly, threatening, violent or offensive way

- their behaviour interferes, or is likely to interfere, with the peaceful passage through, or the enjoyment of, a public place by a member of the public.

It is important to note that police must prove two facts to make out a public nuisance offence:

- the disorderly, offensive, threatening or violent behaviour of that person and
- the actual or likely interference by that person with the use or enjoyment of a public place by a member of the public.

A public place is widely defined as a place that is open to, or used by, the public whether or not on payment of a fee.

Since the High Court's decision in *Coleman v Power* (2004) 220 CLR 1, there has been some significant litigation on the correct interpretation of this provision. The case law suggests these scenarios:

- It is enough if the offending behaviour is simply heard from a public place (e.g. when a person is screaming obscenities from inside their own home, and such obscenities are audible from the public footpath).
- The manner in which words are said can be considered when determining whether the words are offensive.
- A member of the public includes a police officer attending to their duties.
- The conduct must be likely to cause a disturbance or, at the very least, considerably annoy members of the public.
- There must be a real, not a remote, likelihood that a member of the public will have their peaceful passage or enjoyment interfered with.

The maximum penalty for a public nuisance offence is a $2945 fine or six months imprisonment.

Urinating in a public place

A person must not urinate in a public place (s 7 Summary Offences Act). Evidence that liquid was seen to be discharged from the pelvic area is proof of urination. This offence carries a maximum penalty of $471.20. Police have the option, at their discretion, to issue an infringement notice instead of commencing prosecution (i.e. going to court).

Begging in a public place

A person must not beg, solicit donations, or cause or encourage a child to beg for money or goods in a public place (s 8 Summary Offences Act). This provision does not apply to authorised buskers or collectors for certain charities. This offence carries a maximum penalty of $1178 or six months imprisonment.

Wilful exposure

A person in a public place, or visible from a public place, must not wilfully expose their genitals unless they have a reasonable excuse (s 9 Summary Offences Act). This charge is commonly used for nude sunbathers, flashers, streakers and people who urinate in public areas (e.g. hotel car parks).

The Summary Offences Act introduced a defence where a person has a reasonable excuse for the exposure. It is anticipated that the reasonable excuse defence may be open if a defendant is able to demonstrate that there were no public toilet facilities available for use prior to their public urination.

The maximum penalty for wilful exposure is $235.60. It is a circumstance of aggravation for a person to wilfully expose their genitals in the attempt to offend or embarrass another person. Where a circumstance of aggravation exists, the maximum penalty is increased to $4712 or one year imprisonment.

Being drunk in a public place

Section 10 of the Summary Offences Act creates the offence of being drunk in public. The offence carries a fine of $235.60. Each year, Queensland Police bring more than 12 000 charges of public drunkenness. The Royal Commission into Aboriginal Deaths in Custody found that Aboriginal and Torres Strait Islander people were being brought into custody unnecessarily because of this offence and recommended that public drunkenness be decriminalised.

This recommendation has not yet been implemented. In Queensland, ss 378 and 390E of the *Police Powers and Responsibilities Act 2000* (Qld) (PPR Act) empowers police to divert a person arrested for public drunkenness to a safe place. This power is supported by relevant sections of the *Police Operational Procedures Manual*. However, anecdotal evidence suggests that this power is not widely used by police.

Graffiti and Possession Offences

It is an offence for a person to possess:

- a graffiti instrument that is reasonably suspected of having been used for graffiti, is being used for graffiti or reasonably suspected of being about to be used for graffiti
- an implement that is being, is to be or has been used for breaking into a place or car, to injure a person or damage property
- a thing that is reasonably suspected of having been stolen or unlawfully obtained and is unlawfully possessed (ss 15–17 Summary Offences Act).

For the first and second offence, it may be a defence to prove that possession was not connected to any involvement by the person in the offence.

Graffiti instruments, as defined in sch 2 of the Summary Offences Act, include a container from which substance may be forced (i.e. spray paint can) or an etching instrument. The word ‘include’ in the definition means that the list is not exhaustive of the things that can constitute a graffiti instrument, and potentially a creative approach could be taken by police. In a particular case, the police alleged that a video camera and digital cameras used to record graffiti offences and mobile

phones used to make the necessary arrangements were graffiti instruments. The charge was later withdrawn on different grounds, so there has been no judicial determination as to whether or not cameras and phones could constitute a graffiti instrument.

Note that an alternative offence, the offence of wilful damage, exists under s 469 of the *Criminal Code Act 1899* (Qld) (Criminal Code). Wilful damage caused to public property (e.g. by spraying or etching) is a crime, and offenders are liable to imprisonment for five years. The charge preferred is at the discretion of the police. Often the police will elect the more serious offence of wilful damage where an offender has previously been charged on a number of occasions with the lesser graffiti offence.

Opportunity to Explain

Section 634(2) of the PPR Act provides that a police officer who suspects a person has committed any of the above graffiti or possession offences must, if reasonably practicable, give the person a reasonable opportunity to explain why the person was in possession of the relevant instrument, implement or thing. Police can charge the individual with the offence only if no explanation or an unreasonable explanation is given.

Each of the offences attracts a maximum penalty of $2356 or one year imprisonment. For graffiti instrument offences, punishment may include community service (e.g. cleaning up graffiti or payment of compensation).

Police 'Move On' Powers

The PPR Act enables a police officer to give people directions to 'move on' in certain circumstances. A move on direction may be given where a person's behaviour or presence:

- is reasonably suspected to be causing anxiety, interfering with trade or disrupting the peace
- is reasonably suspected to be disorderly, indecent, offensive or threatening
- raises the suspicion that the person is soliciting for prostitution (ss 44–48 PPR Act).

Directions can be given in relation to public places and prescribed places (not otherwise public places), both of which are defined in sch 6 PPR Act. Prescribed places include shops, childcare centres, schools, licensed premises, railway stations, automatic teller machines and any other areas as prescribed by regulation (e.g. the Strand at Townsville). Where a person is suspected of soliciting for prostitution, the prescribed place has a broader definition and means any place to which the public has access.

Directions given by police officers must be reasonable in the circumstances and can include a direction to leave the area in a specified direction to a certain distance and for a period of up to 24 hours. The legislation provides an example where a person is blocking the entrance to a shop, and it would be reasonable to direct them to move away from the entrance, but it may be unreasonable to direct them to move 100 metres away. Directions must also be specific enough for the offender to be capable of interpretation. For example, a direction to leave the Fortitude Valley (Brisbane) area may be too imprecise and unreasonable in the circumstances.

A direction given in relation to a public place (as opposed to a prescribed place) can only be given if the person remains in that same public place where the behaviour or presence occurred.

The officer must provide the people directed to move on with reasons for giving the direction.

A direction that interferes with the right of peaceful assembly may only be given if necessary in the interests of public safety, public order or the protection of the rights and freedoms of others. The right of peaceful assembly is broadly defined and includes family gatherings.

Failure to comply with a move on direction may lead to arrest. Further, contravening a direction without a reasonable excuse is an offence, and an individual found guilty of the offence is liable for a maximum penalty of $4000. It may be a reasonable excuse that the officer failed to provide reasons for the direction, or the direction was not reasonable in the circumstances.

Concern has been expressed that these powers encroach upon a citizen's right to move about freely in the community. During debate in parliament, assurances were given that these powers would be used sparingly and that their use would be monitored. Yet there is anecdotal evidence that suggests that the powers have, in some instances, been overly used by police, particularly against young or Indigenous people.

The capacity for the power to be misused is accentuated by the absence of any mechanism to challenge an unlawful direction other than to disobey, be charged with an offence (of contravening a direction) and raise the unlawfulness of the direction as a defence in court. This is particularly concerning given that the power has now been extended to public places.

Every move on direction given by police officers must be recorded in a register. At any time within three years after a move on direction has been given, the person to whom the direction was given to is entitled to inspect the register and obtain a copy of the information recorded about the direction. The information that must be recorded in the register includes:

- when the direction was given
- the location of the person when given the direction
- the name of the person given the direction, if known
- the reason given for the direction.

It is unclear whether the register of move on directions is maintained in accordance with the requirements of the PPR Act.

Prostitution

Prostitution in Queensland is regulated by the Criminal Code and the *Prostitution Act 1999* (Qld) (Prostitution Act).

Prostitution occurs when a person engages in a sexual act with another person pursuant to a commercial arrangement.

Certain provisions of the Criminal Code apply to prostitutes, their clients and other persons involved in prostitution (e.g. the owners of premises used for prostitution). However, not all acts of prostitution

are outlawed. Engaging in prostitution is not in itself unlawful (*Kelsey v Hill* [1995] 1 Qd R 182). For example, a prostitute who uses their own premises for their own prostitution (single worker establishments) does not commit an offence under law (*Bell v Stewart; ex parte Bell* [1993] 1 Qd R 40).

A client visiting such an establishment commits no offence. Also, a prostitute who visits a client's place commits no offence. However, a prostitute or client may be liable for the offence of soliciting if they approach a prospective client in a public place.

A range of other offences relating to prostitution in ch 22A of the Criminal Code include:

- procuring another person to engage in prostitution
- knowingly participating, directly or indirectly, in the provision of prostitution by another person. This prohibition would apply to pimps, drivers and persons who finance the establishment of a premises used for prostitution
- leaving a place suspected on reasonable grounds of being used for the purposes of prostitution by two or more prostitutes without reasonable excuse, unless the premises is a licensed brothel
- knowingly allowing premises (other than a licensed brothel) to be used for the purposes of prostitution by two or more prostitutes
- knowingly allowing a child or an intellectually impaired person to be at a place used for the purposes of prostitution by two or more prostitutes.

The Prostitution Act is designed to be a complete system for the regulation and licensing of brothels in Queensland. Essentially, the legislation limits the size, location and number of brothels and regulates the persons who own and work in the brothels and the activities that occur in the brothels, including the consumption of alcohol. The Prostitution Act established the Prostitution Licensing Authority (PLA). The PLA is authorised to investigate licence applications and the persons associated with the ownership and operation of the brothel and premises. The PLA also conducts inspections and compliance checks on established licensed brothels.

The Prostitution Act also provides for local authorities (e.g. councils) to deal with the process of licensing brothels. For more information and how to apply for a licence visit the PLA website.

Since the passing of the Prostitution Act, approximately 23 brothels have obtained a licence, and a number of applications remain outstanding, however, unlicensed brothels continue to operate in Queensland. The lack of applications may in part be due to the significant costs involved in making an application and the severe restrictions placed on licensed brothels. In particular, the restrictions on the number of prostitutes (five) that are allowed to operate from a licensed brothel make it considerably less financially rewarding to operate under this legislation. In addition, alcohol is banned from licensed brothels.

The location of the brothel must meet all the criteria specified in the Prostitution Act and the *Sustainable Planning Act 2009* (Qld), including requirements that the brothel must be a certain distance from certain locations (e.g. currently a brothel must be at least 100 m from a school

measured by a straight line between each place). A brothel must keep certain records and is subject to scrutiny and police powers of entry and inspection.

Offences Directed at Police

Section 790 of the PPR Act provides that any person who assaults or obstructs a police officer in the performance of the officer's duties is liable to a maximum fine of $4400 or six months imprisonment.

The offence under s 790 normally arises when a person is being arrested for another offence. Therefore, a charge under this section is usually coupled with another charge. A person may still be convicted of this offence even if the other charge is dismissed, as long as the arresting police officer had reasonable grounds for believing that the other offence had in fact been committed (*Veivers v Roberts; ex parte Veivers* [1980] Qd R 226). However, when the main charge is dismissed, a close investigation of the circumstances of the arrest and the reason for obstructing the police officer must be made. In circumstances where the police officer was acting unlawfully or unreasonably, there may be grounds for the citizen to sue the police officer involved. Additionally, the unlawfulness of the conduct of police may have made the obstruction lawful and reasonable, so a person may successfully have the charge dismissed.

Assaulting police

For assault, police can proceed under s 790 of the PPR Act, which is a summary offence, or s 340 or other provisions of the Criminal Code such as grievous bodily harm, which are indictable offences (for classification of offences and procedure flowing from the classification of summary or indictable, see the *Introduction to Criminal Law* chapter). The charge depends on the seriousness of the assault and the nature of the injuries received by the police officer. Charges under the Criminal Code are usually only laid when physical injuries are sustained or in cases involving spitting at or biting a police officer. In such circumstances, the concern that a disease may be transmitted and the availability of criminal compensation where a conviction has been recorded in a higher court dictates the police policy in ensuring such actions are tried on indictment rather than summarily.

Obstructing police

'Obstruct' means to hinder, resist or attempt to obstruct. These terms have consistently been interpreted broadly to mean anything that makes the police officer's job more difficult. Hindering police is not limited to just physical obstruction. For example, someone who gives false information to police investigating a matter would be guilty of the offence.

As outlined above where a person obstructs police in relation to a public nuisance offence, police have the additional option, at their discretion, to issue an infringement notice rather than commence a prosecution (i.e. going to court).

Resisting arrest

Resisting arrest, unlike obstructing police, is restricted to physical resistance. The mere failure to comply with a lawful request of a police officer or to argue about compliance does not constitute an offence. Pulling away from a police officer's grasp, refusing to move or going limp are examples of actions that would constitute resisting arrest.

Peaceful Assemblies and Processions

Section 5(1) of the *Peaceful Assembly Act 1992* (Qld) (Peaceful Assembly Act) provides that a person has a right to assemble peacefully with others in a public place.

The right to peaceful assembly is only subject to such restrictions as are necessary and reasonable in the interests of public safety, public order and the protection of the rights and freedoms of other persons, such as the rights of members of the public to enjoy the natural environment and the right to carry on business (s 5(2) Peaceful Assembly Act).

A public assembly is an assembly held in a public place, whether or not the assembly is held at a particular place or moves around. A public place is any place open to or used by the public as of right, and any place that is currently open to the public, either on the payment of money or by the express or implied consent of the owner or occupier. A public place can also be a road or footpath.

Requirements for a lawful public assembly or procession

In order to lawfully hold a public assembly or procession, the organiser of the proposed assembly must give a written notice of intention to a police station in the police district where the public assembly is sought to be held. A local authority, such as the Brisbane City Council, must also be provided with an assembly notice if the proposed assembly or procession is to be held in or pass through any public place under the control of the local authority (e.g. a park, square or mall (s 8 Peaceful Assembly Act)). The written notice must be addressed to the Commissioner of Police and, if necessary, the relevant local authority and must be signed by the organiser (s 9(1) Peaceful Assembly Act).

The notice must contain a number of details, such as the proposed date, time and place of the proposed assembly, the proposed route of the procession (if any), the length and time of the proposed procession or assembly and the expected number of participants (s 9(2) Peaceful Assembly Act).

Copies of the required notice are available from police stations.

A proposed assembly will become an authorised public assembly if the organiser receives a notice of permission from the Commissioner of Police, the local authority or the owner or occupier of the place where the public assembly is proposed to be held (ss 7, 10 Peaceful Assembly Act).

The commissioner or the local authority has no power to refuse to authorise the holding of the assembly, but they can impose conditions on the holding of a public assembly in limited circumstances. The conditions can relate only to matters such as concerns of public safety, maintaining public order, the protection of rights and freedoms of other persons and the payment of clean-up costs that may result from the holding of the assembly. It can also relate to the recognition of any inherent environmental or cultural sensitivity of the place of assembly or the application to the place of assembly of any resource management practice of a delicate nature (s 11(3) Peaceful Assembly Act). A condition cannot be specified unless the organiser has agreed to the condition in writing (s 11(2)(b) Peaceful Assembly Act).

Application for an order prohibiting an assembly

The Commissioner of Police or a local authority can apply to a magistrate for an order refusing to authorise the assembly. Such an application must be made not less than five business days before the day proposed for the assembly (s 12 Peaceful Assembly Act). The application can only be made after a mediation session has been held in an attempt to reconcile any conflicts between the commissioner or the local authority and the public assembly organiser (s 13 Peaceful Assembly Act).

The court can refuse authorisation for the assembly or specify conditions for the holding of the assembly.

Application for an order allowing an assembly

If an assembly notice has been given less than five business days before the proposed date for the holding of the assembly, the organiser of a proposed assembly may apply to a Magistrates Court for an order to authorise the assembly (s 14(1) Peaceful Assembly Act). Such an application may only be made if the organiser has not received permission to hold the assembly (s 15(1) Peaceful Assembly Act).

An organiser cannot apply for a magistrate's order unless a mediation session has been held.

In hearing an application under ss 12 or 14 of the Peaceful Assembly Act, the magistrate must have regard to the objects of the Act, hear it with the greatest possible speed and must conduct the proceeding with as little formality and technicality as possible (s 16(2) Peaceful Assembly Act). Each party to the application is to bear their own costs of the proceeding, regardless of the outcome.

Legal Notices

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