

# **Chapter 10**

## Miscellaneous

# Chapter 10—Miscellaneous

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## A. Regulatory Offences Act 1985 (Qld)

### 10-1 Regulatory offence

The [Regulatory Offences Act 1985](#) (Qld) (which commenced operation on 29 April 1985) created a new category of offence previously unknown to the law—a ‘regulatory offence’. Section 3 of the [Criminal Code Act 1899](#) (Qld) was repealed and a fresh section inserted, which defined offences as being ‘of 2 kinds, namely, criminal offences and regulatory offences’ (Criminal Code, s 3(1)).

The amendment stated that ‘[c]riminal offences comprise crimes, misdemeanours and simple offences’. Also, ‘[C]rimes and misdemeanours are indictable offences; that is to say, the offenders can not, unless otherwise expressly stated, be prosecuted or convicted except upon indictment’ (Criminal Code, ss 3(2) and (3)). However, ‘a person guilty of a regulatory offence or a simple offence may [only] be summarily convicted by a Magistrates Court’ (Criminal Code, s 3(4)).

### 10-2 New offences created

The Regulatory Offences Act created three new offences categorised as regulatory offences. They are:

- unauthorised dealing with shop goods (s 5)
- leaving restaurant, hotel etc. without payment (s 6)
- unauthorised damage to property (s 7).

Each offence is examined in more detail below.

### 10-3 Unauthorised dealing with shop goods

Section 5 of the Regulatory Offences Act reads:

‘(1) Any person who, with respect to goods in a shop of a value of \$150 or less—

- (a) consumes them without the consent, express or implied, of the person in lawful possession of them; or

- (b) deliberately alters, removes, defaces or otherwise renders indistinguishable a price shown on them, without the consent, express or implied, of the person in lawful possession of them; or
- (c) whether or not the property in the goods has passed to the person, takes them away without discharging, or attempting honestly, or making proper arrangements, to discharge his or her lawful indebtedness therefor; is guilty of a regulatory offence and, subject to section 9, is liable to a fine of 6 penalty units.

(1a) Without limiting subsection (1)(b), a price may be shown on goods by a bar code or a similar device.

(2) It is a defence to a charge of an offence defined in subsection 1(c) to prove the taking away of the goods was not dishonest'.

This section relates to all types of shoplifting and related offences, and makes it a regulatory offence to take away, consume, alter or deal with the price markings on shop articles. The section is limited by the condition that the goods must be valued at \$150 or less. Although the section purports to cover shoplifting offences in general, the police will usually bring the charge against only first offenders. If a defendant has previous convictions for dishonesty, the police will usually prefer a charge of stealing under the Criminal Code.

## 10-4 Exclusion of general criminal law defences

Duty lawyers should particularly note s 36(2) of the Criminal Code, which excludes most of the general criminal law defences, with respect to regulatory offences, in the Criminal Code. Section 36(2) precludes the defendant from pleading intoxication, insanity, honest claim of right, extraordinary emergency and, most importantly, honest and reasonable but mistaken belief of fact and absence of intent.

The only defences allowed under the Criminal Code, where a person is deemed not criminally responsible, are the following:

- A person is not criminally responsible if they do or omit an act that contravenes a statutory instrument of which that person was unaware and which had not been published (s 22(3)).
- A person under 10 is not criminally responsible for any act and, if under 14, is not responsible unless the prosecution prove that the person had the capacity to know the act was illegal (s 29).
- A person who acts 'in execution of the law', 'in obedience to an order of a competent authority' or 'when the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person', or when the act is done to save himself, herself or another person from the immediate threat of death or grievous bodily harm (s 31).

## 10-5 Effect of exclusion of general criminal law defences

The effect of the exclusions referred to in 10-4 is that the prosecution does not need to establish that the defendant intended to steal the goods or take them away. The 1989 amendment to s 5(2) of the Regulatory Offences Act does state that it 'is a defence to the charge...[for the defendant] to prove the taking away of the goods was not dishonest'. Proof on the balance of probabilities will be sufficient to establish the defence.

Before accepting instructions to plead guilty, duty lawyers should discuss this issue with the client. Instructions that the client merely forgot to pay for the goods may be sufficient to establish the defence.

## 10-6 Leaving restaurant, hotel etc. without payment

Section 6 of the Regulatory Offences Act reads:

- '(1) Any person who, with respect to food, drink, accommodation, or like goods and services, of the value of \$150 or less obtained from any restaurant or hotel, motel, boarding house or like premises—
- (a) leaves such premises without discharging, or attempting honestly, or making proper arrangements, to discharge, his or her lawful indebtedness therefor; or

- (b) purports to pay for them with a cheque that is not met on presentation or a credit card or similar document the person is not authorised to use;  
is guilty of a regulatory offence and, subject to section 9, is liable to a fine of \$300.
- (2) It is a defence to a charge of an offence defined in subsection 1(b) to prove the defendant believed on reasonable grounds the cheque would be paid in full on presentation or the defendant was authorised to use the credit card or similar document’.

Under s 9(1) of this Act, the court can, after convicting an offender, ‘also order the offender to pay by way of fine an amount not exceeding the costs of bringing the charge, including the costs of all reasonable investigations relating thereto, the costs of court and the cost of compensating any person injured thereby’.

## 10-7 When a person will be charged under s 6

The police will usually prefer a charge under s 6 only in the case of a first offender. If a person has previous convictions of a similar nature, police will usually prefer a charge of fraud or another equally appropriate criminal offence.

## 10-8 Defences

The general criminal law defences referred to in 10-5 are excluded, but you should see whether the defendant can rely on the defence provided in s 6(2).

## 10-9 Unauthorised damage to property

Section 7 reads:

‘Any person who wilfully destroys or damages the property of another and without the consent, express or implied, of the person in lawful possession thereof and thereby causes loss of \$250 or less is guilty of a regulatory offence and, subject to section 9, is liable to a fine of \$500’.

## 10-10 Effect of this section

Section 7 provides an alternative charge to the criminal offence of wilful damage or wilful destruction. Prosecution under this section is uncommon and, in most cases, the prosecution will prefer a charge under the Criminal Code. As with the other offences, most of the general criminal law defences are again excluded.

## 10-11 Further power to fine

Under s 9, the magistrate can, in addition to a fine, order that a convicted person pay the costs of the charge’s investigation, court and compensation for any person injured thereby.

## 10-12 Regulatory offences to be heard summarily

All regulatory offences are determined by a magistrate and there is no right to a jury trial (Criminal Code, s 3(4)). However, the defendant still has the normal avenues of appeal against the magistrate’s decision (i.e. an appeal to the district court under s 222 of the [Justices Act 1886](#) (Qld)).

## 10-13 Effect of conviction for regulatory offence

Although a conviction under the Regulatory Offences Act is not a criminal conviction and does not burden an offender with a criminal record, you should be cautious when advising defendants of the likely effects of such a conviction. A defendant convicted of a regulatory offence can, in all honesty, declare that they have no criminal convictions when applying for employment.

However, if an employment application asks specifically for details about convictions for other offences, they would be obliged to include all regulatory offences (but see also 10-46 to 10-50 regarding disclosure of criminal convictions). A conviction under the Regulatory Offences Act is still a conviction for dishonesty, which may still prejudice them in future employment.

Some Commonwealth government departments, such as the Department of Foreign Affairs, may not employ people who have been convicted of this type of offence. Some private institutions, such as banks, may also refuse to employ someone with such a conviction. It may even prevent someone being employed in the Queensland Public Service.

## 10-14 Penalties

The Regulatory Offences Act states that any penalties imposed shall be by way of a fine. This means that probation and community service orders are a sentencing option, as, under the Penalties and Sentences Act, these are now available for regulatory offences as well as offences where a magistrate can impose a custodial sentence as punishment ([Penalties and Sentences Act 1992](#) (Qld), ss 91 and 101).

Under s 31 of the Penalties and Sentences Act, a good behaviour bond is also an option, as it applies to summary offences. A defendant can also apply for a discharge without conviction under s 19 of the Penalties and Sentences Act. You should always consider requesting a discharge under this section where appropriate. For instance, a charge under s 5 will invariably involve goods of minimal value and, arguably, the offence will be trivial, particularly if it can be shown that taking the goods was negligent. (For more on s 19, see the section on [discharge](#) in Chapter 13).

If the defendant cannot pay the fine and/or restitution and compensation (imposed by way of a fine under s 9), the defendant can apply for a fine option order to convert the fine into community service (see the section on [community service orders](#) in Chapter 13).

## B. Weapons Act 1990 (Qld)

### 10-15 Criminal Law Duty Lawyer Handbook not a complete guide

The [Weapons Act 1990](#) (Qld) was assented to on 19 September 1990. This handbook is not a complete guide to this Act but deals only with matters that the duty lawyer is likely to face. If you are in doubt about any section, you should refer to the Act.

### 10-16 Weapons Act

Generally, the Weapons Act allows for the licensing of people to possess weapons and firearms. Under Schedule 2, a weapon:

- ‘(a) means—
  - (i) a firearm; or
  - (ii) another thing prescribed under a regulation to be a weapon or within a category of weapon; or
  - (iii) a thing that would be a weapon mentioned in subparagraph (i) or (ii), if it were not temporarily inoperable or incomplete; and
- (b) does not include a public monument’.

Schedule 2 also defines a firearm as:

- ‘(a) a gun or other thing ordinarily described as a firearm; or
- (b) a thing ordinarily described as a weapon that, if used in the way for which it was designed or adapted, is capable of being aimed at a target and causing death or injury by discharging—
  - (i) a projectile; or
  - (ii) noxious, corrosive or irritant liquid, powder, gas, chemical or other substance; or

- (c) a thing that would be a firearm mentioned in paragraph (a) or (b), if it were not temporarily inoperable or incomplete; or
  - (d) a major component of a firearm;
- but does not include—
- (e) an antique firearm, explosive tool, captive bolt humane killer, spear gun, longbow or crossbow; or
  - (f) a replica of a spear gun, longbow or crossbow; or
  - (g) a slingshot, shanghai or sword; or
  - (h) a public monument’.

## 10-17 Offences

The magistrates court deals with offences summarily under the Weapons Act, unless it is an offence under s 65 of unlawfully trafficking in weapons (s 161). If a defendant is charged with an offence under this Act and also faces an indictable offence arising from the same facts (e.g. armed robbery), the magistrate should not deal with the summary offence until the superior court has dealt with the indictable offence (see [12-5](#) and *Byrne v Gibbons; ex parte Gibbons* (1966) QWN 2).

There is no longer any division or categorisation of offences, and the offences that duty lawyers are more likely to see are listed below.

Section 50(1):

‘1. A person must not unlawfully possess a weapon.

Maximum penalty—

- (a) if the person unlawfully possesses 10 or more weapons at least 5 of which are category D, E, H or R weapons—13 years imprisonment; or;
- (b) if paragraph (a) does not apply and the person unlawfully possesses 10 or more weapons—500 penalty units or 10 years imprisonment; or
- (c) if paragraphs (a) and (b) do not apply—
  - (i) for a category D, H or R weapon—300 penalty units or 7 years imprisonment; or
  - (ii) for a category C or E weapon—200 penalty units or 4 years imprisonment; or
  - (iii) for a category A, B or M weapon—100 penalty units or 2 years imprisonment’.

See [10-22](#) for weapons listed in the various categories.

Section 50A:

‘(1) A licensee must not possess an unregistered firearm.

Maximum penalty—120 penalty units’.

Section 50B:

‘(1) A person must not unlawfully supply a weapon to another person.

Maximum penalty—

- (a) if the person unlawfully supplies 5 or more weapons at least 1 of which is a category D, E, H or R weapon—13 years imprisonment; or
- (b) if paragraph (a) does not apply and the person unlawfully supplies 5 or more weapons—500 penalty units or 10 years imprisonment; or
- (c) if paragraphs (a) and (b) do not apply—
  - (i) for a category D, H or R weapon—500 penalty units or 10 years imprisonment; or
  - (ii) for a category C or E weapon—300 penalty units or 7 years imprisonment; or
  - (iii) for a category A, B or M weapon—200 penalty units or 4 years imprisonment’.

Section 51:

- '(1) A person must not physically possess a knife in a public place or a school, unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units or 1 year's imprisonment.
- (2) It is a reasonable excuse for subsection (1) to physically possess a knife—
- to perform a lawful activity, duty or employment; or
  - to participate in a lawful entertainment, recreation or sport; or
  - for lawfully exhibiting the knife; or
  - for use for a lawful purpose'.
- '(3) However, it is not a reasonable excuse to physically possess a knife in a public place or a school for self-defence purposes.'
- '(4) Also, it is a reasonable excuse for subsection (1), to the extent that the subsection relates to a public place, to physically possess a knife for genuine religious purposes.'
- '(5) However, it is not a reasonable excuse to physically possess a knife in a school for genuine religious purposes.
- (6) In deciding what is a reasonable excuse for subsection (1), regard may be had, among other things, to whether the way the knife is held in possession, or when and where it is held in possession, would cause a reasonable person concern that he or she, or someone else in the vicinity, may be threatened or harmed.
- (7) In this section—  
**knife** includes a thing with a sharpened point or blade that is reasonably capable of—
- being held in 1 or both hands; and
  - being used to wound or threaten to wound anyone when held in 1 or both hands.'

Section 56:

- '(1) In this section—  
**owner** of private land includes the occupier of the land.  
**private land** means land that is not a public place.  
**weapon** includes an antique firearm, spear gun, longbow and slingshot.
- (2) A person must not, without reasonable excuse, discharge a weapon on or across private land without the express consent of the owner.  
Maximum penalty—40 penalty units or 6 months imprisonment'.

Section 57:

- '(1) In this section—  
**weapon** includes—
- an antique firearm, spear gun, longbow or sword; and
  - a replica of a weapon; and
  - a replica of a thing mentioned in paragraph (a); and
  - a slingshot or shanghai.
- (2) A person must not, without reasonable excuse, carry a weapon exposed to view in a public place.  
Maximum penalty—40 penalty units or 6 months imprisonment.
- (3) A person must not without, reasonable excuse, carry in a public place a loaded firearm or a weapon capable of being discharged.  
Maximum penalty—120 penalty units or 2 years imprisonment.
- (4) A person must not, without reasonable excuse, discharge a weapon in, into, towards, over or through a public place.  
Maximum penalty—200 penalty units or 4 years imprisonment'.

Section 58:

‘(1) In this section—

**weapon** includes:

- (a) an antique firearm, explosive tool, captive bolt humane killer, spear gun, longbow, or sword; and
- (b) a replica of a weapon; and
- (c) a replica of a thing mentioned in paragraph (a); and
- (d) an explosive; and,
- (e) a slingshot or shanghai; and
- (f) a laser pointer.

(2) A person must not—

- (a) without reasonable excuse; and
- (b) by the physical possession or use of a weapon; engage in conduct, alone or with another, likely to cause—
- (c) death or injury to a person; or
- (d) unlawful destruction or damage to property; or
- (e) alarm to another person.

Maximum penalty—200 penalty units or 4 years imprisonment’.

Section 59:

‘(2) A person must not have physical possession of or use a weapon if the person is under the influence of liquor or a drug.

Maximum penalty—40 penalty units’.

Section 60:

‘(1) A licensee who has control of a weapon at a place must keep the weapon in secure storage facilities at the place when a person is not in physical possession of the weapon.

Maximum penalty—100 penalty units or 2 years imprisonment’.

The prescribed method of storage differs between licence classes (see [Weapons Regulation 1996](#) (Qld)).

Regulation 30 of the Weapons Regulation states that ‘[a] weapon possessed under an armourer’s, dealer’s or theatrical ordnance supplier’s licence that is not in the licensee’s physical possession may only be stored unloaded in a locked gun rack, safe or vault.

Regulations 31-38 specify the requirements of the floors, walls, ceiling, external doors, window and door grilles, burglar alarms, vaults and safes, and gun racks of the premises where weapons are stored under such a licence.

Regulation 39 states that:

‘(1) A weapon possessed under a collector’s licence (weapons) that is not in the licensee’s physical possession must be stored unloaded—

- (a) in a locked container, or locked gun rack, in a locked room (the storeroom) complying with this part; or
- (b) in a locked vault complying with this part’.

This requirement applies if more than 30 weapons are possessed under that licence.

Regulations 40 to 43 specify the requirements of vaults, storerooms, gun racks and containers in such cases.

Regulation 60 applies in all other cases. The weapon must be stored ‘unloaded in a locked container with the bolt removed or the action broken’ if not in the person’s physical possession.

Section 67:

‘(1) A person must not, without reasonable excuse, possess or acquire:

- (a) handcuffs, thumbcuffs or any similar restraints;



- (b) nunchaku or kung fu sticks or any similar device...;
- (c) a billy club, a baton or any device constructed or designed as a telescopic baton...;
- (d) any studded glove which if used offensively against a person is capable of causing bodily harm;
- (e) a laser pointer' (see [Weapons Categories Regulations 1997](#) (Qld), reg. 9).

The maximum penalty is 10 penalty units.

## 10-18 Criminal Code to be read and construed with the Weapons Act

Section 159 of the Weapons Act notes that the Criminal Code is to be read and construed with the Weapons Act. This has two effects:

- some offences are duplicated in the Criminal Code and Weapons Act. Police can use discretion in relation to the charge
- the Criminal Code's defence provisions (ss 22–36) apply to offences under the Weapons Act.

## 10-19 Summary proceedings

Under s 161(1), all offences under the Weapons Act may be prosecuted summarily except:

- s 65—unlawful trafficking in weapons
- s 50(1)(a)—unlawful possession of '10 or more weapons at least 5 of which are category D, E, H or R weapons'
- s 50B(1)(a)—unlawful supply of '5 or more weapons at least 1 of which is a category D, E, H or R weapon'.

Section 161(8) states that 'the maximum penalty that may be imposed on a summary conviction of an indictable offence is 150 penalty units or 3 years imprisonment'.

## 10-20 Time for commencement of proceedings

Section 161(1) states that proceedings must be commenced within 1 year of the offence being committed or within '1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence'.

## 10-21 Disqualification by a court

When a person is convicted of any offence, the court may, in addition to any other penalty it imposes, revoke a person's licence, disqualify them from holding or obtaining a licence, and/or order that any weapon etc that they own or possess be forfeited to the Crown (s 155).

You should be prepared to make submissions about the order to be made under this section.

## 10-22 Schedule of weapons

### Schedule 1 – Categories of weapons (see Weapons Categories Regulation)

#### Category A weapons

- (1) Each of the following is a category A weapon if it has not been rendered permanently inoperable—
- (a) a miniature cannon under 120cm in barrel length that is a black powder and muzzle loading cannon, depicting a scale model of an historical artillery piece or naval gun;
  - (b) an air rifle;
  - (c) a blank-fire firearm at least 75 cm in length;
  - (d) a rimfire rifle (other than a self-loading rimfire rifle);
  - (e) a single or double barrel shotgun;
  - (f) a powerhead.
- (2) A conversion unit is also a category A weapon.

(3) In this section—

**conversion unit** means a unit or device or barrel that is capable of being used for converting a category A weapon that is a firearm from one calibre to another calibre’.

### Category B weapons

‘(1) Each of the following is a category B weapon if it has not been rendered permanently inoperable—

- (a) a muzzle-loading firearm;
- (b) a single shot centre fire rifle;
- (c) a double barrel centre fire rifle;
- (d) a repeating centre fire rifle;
- (e) a break action shotgun and rifle combination.

(2) A conversion unit is also a category B weapon.

(3) In this section—

**conversion unit** means a unit or device or barrel that is capable of being used for converting a category B weapon that is a firearm from one calibre to another calibre’.

### Category C weapons

‘Each of the following is a category C weapon if it has not been rendered permanently inoperable—

- (a) a semiautomatic rimfire rifle with a magazine capacity no greater than 10 rounds;
- (b) a semiautomatic shotgun with a magazine capacity no greater than 5 rounds;
- (c) a pump action shotgun with a magazine capacity no greater than 5 rounds’.

### Category D weapons

(1) ‘Each of the following is a category D weapon—

- (a) a self-loading centre fire rifle designed or adapted for military purposes or a firearm that substantially duplicates a rifle of that type in design, function or appearance;
- (b) a non-military style self-loading centre fire rifle with either an integral or detachable magazine;
- (c) a self-loading shotgun with either an integral or detachable magazine with a capacity of more than 5 rounds and a pump action shotgun with a capacity of more than 5 rounds;
- (d) a self-loading rimfire rifle with a magazine capacity of more than 10 rounds’.

### Category E weapons

‘(1) A bulletproof vest or protective body vest or body armour designed to prevent the penetration of small arms projectiles is a category E weapon’.

### Category H weapons

‘(1) A firearm, including an air pistol and a blank-fire firearm, under 75cm in length, other than a powerhead, is a category H weapon, regardless of whether it has been rendered permanently inoperable.

(2) A conversion unit is also a category H weapon.

(3) This section does not apply to a powerhead or category C, D or R weapon.

(4) In this section—

**conversion unit** means a unit or device or barrel that is capable of being used for converting a category H weapon that is a firearm from one calibre to another calibre’.

### Category H weapon classes

‘For Schedule 2 of the Act, each of the following comprises a class of category H weapon—

- (a) an air pistol;
- (b) a centre-fire pistol with a calibre of not more than .38 inch or a black-powder pistol;
- (c) a centre-fire pistol with a calibre of more than .38 inch but not more than .45 inch;
- (d) a rim-fire pistol’.

## Category M weapons

‘Each of the following is a category M weapon—

- (a) any clothing, apparel, adornment, accessory or other thing—
  - (i) designed to disguise any weapon or other cutting or piercing instrument capable of causing bodily harm; or
  - (ii) designed for use as a weapon or a cutting or piercing instrument capable of causing bodily harm;
- (b) any knife so designed or constructed so as to be used as a weapon that while the knife is held in 1 hand, the blade may be released by that hand;
- (c) a ballistic knife that propels or releases a knife-like blade of any material by any means other than an explosive;
- (d) a butterfly knife, a knife known as a “balisong”, a pantographic knife, or a similar device that consists of a single-edged or multi-edged blade or spike that fits within 2 handles attached to the blade or spike by transverse pivot pins or pantographic linkage and is capable of being opened by gravity or centrifugal force;
- (e) a flick knife, or a similar device of any material that has a blade folded or recessed into the handle that opens automatically by gravity or centrifugal force or if pressure is applied to a button, spring or device in or attached to the handle of the device;
- (f) a push knife, or a similar device designed as a weapon that consists of a single-edged or multi-edged blade or spike and allows the blade or spike to be supported by the palm of the hand so that stabbing blows or slashes can be inflicted by a punching or pushing action;
- (g) a sheath knife, or a similar device of any material that has a sheath which withdraws into its handle by gravity or centrifugal force or if pressure is applied to a button, spring or device attached to or forming part of the sheath, handle or blade of the device;
- (h) a star knife, or a similar device that consists of at least 2 angular points, blades or spikes, of any material, disposed outwardly about a central axis point and that are designed to spin around the central axis point in flight when thrown at a target;
- (i) a trench knife, or a similar device that consists of a single-edged or multi-edged blade or spike of any material that is fitted with a handle made of any hard substance that is designed to be fitted over the knuckles of the hand of the user to protect the knuckles and increase the effect of a punch or blow;
- (j) a riding crop that contains, conceals or disguises a knife, stiletto or any other single-edged or multi-edged blade or spike of any length or of any material;
- (k) a walking stick or cane that contains, conceals or disguises a sword or any other single-edged or multi-edged blade, knife or spike of any length or of any material;
- (l) any incendiary or inflammable device containing any substance capable of causing bodily harm or damage to property that is primarily designed for vegetation management;
- (m) any pistol crossbow designed to be discharged by the use of 1 hand (that is not a toy pistol crossbow) that when discharged is capable of causing damage or injury to property or capable of causing bodily harm;
- (n) any crossbow designed to be discharged by the use of 2 hands that, when discharged, is capable of causing damage or injury to property or capable of causing bodily harm;
- (o) a Chinese throwing iron that is a hard non-flexible plate having 3 or more radiating points with 1 or more sharp edges in the shape of a polygon, trefoil, cross, star, diamond or geometric shape and constructed or designed to be thrown as a weapon;
- (p) a flail or similar device constructed and designed as a weapon consisting of in part a striking head and which, if used offensively against a person, is capable of causing bodily harm;
- (q) a device known as a ‘manrikiguisari’ or ‘kusari’, consisting of a length of rope, cord, wire or chain fastened at each end to a geometrically shaped weight or handgrip and constructed or designed for use as a weapon;
- (r) a device known as a knuckleduster or any device made or adapted for use as a knuckleduster and which, if used offensively against a person, is capable of causing bodily harm;
- (s) a weighted glove designed or constructed to be used as a weapon;
- (t) a mace or any similar article (other than a ceremonial mace made for and used solely as a symbol of authority on ceremonial occasions);

- (u) any device, not a toy, constructed or designed as a telescopic baton, the extension of which is actuated by the operation of a mechanical trigger’.

### Category R weapons

‘(1) Each of the following is a category R weapon—

- (a) a machine gun or submachine gun that is fully automatic in its operation and actuated by energy developed when it is being fired or has multiple revolving barrels, and any replica or facsimile of a machine gun or submachine gun that is not a toy;
- (b) a unit or device that is capable of being used for converting any firearm to a weapon mentioned in paragraph (a);
- (c) a firearm capable of firing 50 calibre BMG cartridge ammunition;
- (d) an antipersonnel gas, and an antipersonnel substance, of a corrosive, noxious or irritant nature or that is capable of causing bodily harm, and any weapon capable of discharging the gas or substance by any means, other than a gas or substance and any weapon capable of discharging the gas or substance that is primarily designed for the control of native or feral animals;
- (e) an acoustical antipersonnel device of an intensity that is capable of causing bodily harm;
- (f) an electrical antipersonnel device of an intensity that is capable of causing bodily harm;
- (g) a hand grenade, other than an inert hand grenade, and an antipersonnel mine;
- (h) a silencer or other device or contrivance made or used, or capable of being used or intended to be used, for reducing the sound caused by discharging a firearm;
- (i) a rocket launcher, recoilless rifle, antitank rifle, a bazooka or a rocket propelled grenade type launcher;
- (j) a mortar, all artillery and any incendiary or inflammable device containing any substance capable of causing bodily harm or damage to property, other than an incendiary or inflammable device primarily designed for vegetation management’.

### Restricted items

‘The following items are restricted items for section 67 of the Act—

- (a) handcuffs, thumbcuffs or other similar restraints;
- (b) nunchaku or kung-fu sticks or any similar device which consists of 2 hard non-flexible sticks, clubs, pipes or rods connected by a length of rope, cord, wire or chain constructed or designed to be used in connection with the practice of a system of self-defence and which if used offensively against a person is or are capable of causing bodily harm;
- (c) a billy club, a baton or any device constructed or designed as a telescopic baton, not being a toy or a category M weapon, that if used is capable of causing bodily harm;
- (d) any studded glove which if used offensively against a person is capable of causing bodily harm;
- (e) a laser pointer’.

## C. Invasion of Privacy Act 1971 (Qld)

### 10-23 Introduction

The [Invasion of Privacy Act 1971](#) (Qld) was amended in 1976 with the addition of s 48A. This amendment created several offences that approximate to breaking and entering but are summary offences, which means they can be dealt with only in the magistrates court.

Police may elect to charge under this Act where there is no intent or no intent can be proved. Section 48A contains its own definitions, provisions for means of prosecution, provisions for arrest and dealing with arrested people, and a complicated scheme of offences and possible defences.

## 10-24 Entering a dwelling house without consent

Section 48A(1) creates the first and basic prohibition, namely, that ‘any person who enters a dwelling house without the consent of the person in lawful occupation or, where there is not a person in lawful occupation, without the consent of the owner is guilty of an offence’. The maximum penalty is 20 penalty units or 1 year’s imprisonment.

The penalty and elements of the offence are almost identical to the offence of trespass under the [Summary Offences Act 2005](#) (Qld).

## 10-25 Entering a dwelling house by force or other means

This section creates a series of alternative offences by providing alternatives to the element of lack of consent referred to in s 48A(1A). The section states that ‘[i]f the offender gains entry to the dwelling house—

- (a) by force; or
- (b) by threats or intimidation of any kind; or
- (c) by deceit; or
- (d) by any fraudulent trick or advice; or
- (e) by false and fraudulent representations as to the reason for entry;

the offender is guilty of an offence whether or not the offender has the consent of the person in lawful occupation or the owner’. The maximum penalty is 30 penalty units or 18 months’ imprisonment.

## 10-26 Defences

A person is not guilty under s 48A(1) or (1A) if they show that their entry was:

- authorised, justified or excused by law
- to protect or succour any person inside, or
- to preserve or protect the dwelling house.

## 10-27 A person without lawful excuse in a dwelling house or yard

Section 48A states that ‘any person who without lawful excuse...is found in a dwelling house or the yard of a dwelling house is guilty of an offence’. The person charged is responsible for proving a lawful excuse. The maximum penalty is 20 penalty units or 1 year’s imprisonment.

## 10-28 Definitions

- ‘Dwelling house’ (s 48A(12)) is defined as having ‘the meaning it has from time to time in the Criminal Code’.
- ‘Entry of a dwelling house’ in (s 48A(13)) is defined as occurring ‘as soon as any part of the person’s body or any part of any instrument used by the person is within the dwelling house’.
- ‘Yard’ (s 48A(3A)) is defined as ‘any path, garden, curtilage, courtyard, enclosure, lawn or other ground or area within the precincts of or appurtenant to or under the dwelling house in question’.

## 10-29 Method of proceeding under this Act

Section 48A(4) of the Invasion of Privacy Act indicates that any person who finds another committing any offences referred to in s 48A may arrest that person without warrant. Section 48A(5) provides power to proceed alternatively by way of a complaint and summons under the Justices Act and, presumably, a notice to appear.

## 10-30 Invasion of Privacy Act provisions in addition to the Criminal Code

Section 48A(11) notes that the section's provisions are in addition to provisions under the Criminal Code or any other Act and that, accordingly, the police in any given situation would choose whether to proceed under this Act or the Criminal Code, or another Act that may apply.

## D. Summary Offences Act 2005 (Qld)

### 10-31 Summary offences duty lawyers will likely face

As a duty lawyer, you will often face offences under this Act. As the name suggests, all charges under the Summary Offences Act are dealt with summarily regardless of the plea entered.

Some of these offences are similar to those in other Acts, such as the unlawful use of a motor vehicle in s 408A of the Criminal Code and trespass, which can also appear as a charge under s 48A of the Invasion of Privacy Act.

### 10-32 Penalties

Sections 19, 22 and 31 of the Penalties and Sentences Act all apply to offences under this Act.

#### Public nuisance

'(1) A person must not commit a public nuisance offence.

Maximum penalty—10 penalty units or 6 months imprisonment.

(2) A person commits a public nuisance offence if—

(a) the person behaves in—

(i) a disorderly way; or

(ii) an offensive way; or

(iii) a threatening way; or

(iv) a violent way; and

(b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

(3) Without limiting subsection (2)—

(a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and

(b) a person behaves in a threatening way if the person uses threatening language' (s 6).

#### Urinating in a public place

'(1) A person must not urinate in a public place.

Maximum penalty—2 penalty units' (s 7).

#### Begging in a public place

'(1) A person must not—

(a) beg for money or goods in a public place; or

(b) cause, procure or encourage a child to beg for money or goods in a public place; or

(c) solicit donations of money or goods in a public place.

Maximum penalty—10 penalty units or 6 months imprisonment' (s 8).

The section does not apply to individuals authorised by a registered charity or authorised buskers.

## Wilful exposure

Under s 9, a person who is in a public place or so near a public place that they may be seen from the public place, must not wilfully expose their genitals unless the person has a reasonable excuse.

Maximum penalty is 2 penalty units or, if the offence involves aggravated circumstance, 40 penalty units or 1 year's imprisonment.

A circumstance of aggravation is defined as 'to wilfully expose his or her genitals so as to offend or embarrass another person' (s 9(3)).

If a defendant is charged under s 9(1)(b) or s 9(2)(b), you should consider whether a charge under s 7 would be more appropriate, given the differences in penalty.

## Being drunk in a public place

Section 10 states that 'a person must not be drunk in a public place'. The maximum penalty is 2 penalty units.

For the purposes of the above sections, '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*'.

## Trespass

Under s 11, a person must not unlawfully enter, or remain in, a dwelling, the yard of a dwelling, or a place or yard used for a business purpose. Maximum penalty is 20 penalty units or 1 year's imprisonment.

## 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' (s 14).

In addition to any penalty the court may impose, it can also order the defendant to pay the costs incurred by any person associated with any rescue or attempts to rescue.

## 10-33 Possession of implement

'(1) A person must not possess an implement that is being, or is to be, used [or 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' (s 15).

If the charge is that the implement has been used, the onus is on the defence 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' (s 15(3)).

See also ‘possession of things used in connection with unlawful entry’ of a dwelling or premises, or housebreaking instruments, under s 425 of the Criminal Code.

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

Under s 16, a ‘person must not unlawfully possess a things that is reasonably suspected of having been stolen or unlawfully obtained. Maximum penalty—20 penalty units or 1 year’s imprisonment’.

The prosecution need only establish that the circumstances in which the property was found gave the police officer reasonable suspicion that the property was stolen or unlawfully obtained (s 48(2)).

The defendant must satisfy the court that the property was legitimately obtained.

### **Graffiti instrument**

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

- (a) that 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’ (s 7).

For the definition of ‘graffiti’, Schedule 2 refers to s 469 of the Criminal Code (wilful damage/punishment in special cases, paragraph 9):

‘(1) If the property in question is in a public place, or is visible from a public place, and the destruction or damage is caused by—

- (a) spraying, writing, drawing, marking or otherwise applying paint or another marking substance; or
- (b) scratching or etching;

the offender commits a crime and is liable to imprisonment for 5 years’.

In Schedule 2, ‘graffiti instrument’, 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’.

In addition to any penalty it may impose, the court can also order the defendant to perform community service or pay compensation under the Penalties and Sentences Act.

If a person is charged with possessing an instrument reasonably suspected of having been used for graffiti, they can raise the defence that the instrument was not connected to any involvement by them in preparing the offence or any criminal responsibility relating to the offence.

If a court finds a person guilty of an offence against ss 15, 16 or 17, the court may order the instrument to which the offence relates to be forfeited to the state (s 47).

### **Body piercing and tattooing of minors**

Section 18 prohibits the body piercing of nipples and genitalia of minors. It is not a defence that the parent or guardian of the minor gave consent. The maximum penalty is 40 penalty units or 6 months’ imprisonment; however, if the minor has an intellectual impairment, or their decision making is impaired due to alcohol or a drug, the maximum penalty is 80 penalty units or 1 year’s imprisonment.

Section 19 prohibits the tattooing of minors. Maximum penalty is 40 penalty units or 6 months’ imprisonment.

### **Imposition**

Under s 22, 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’.



## Sale of spray paint to minors

Section 23B prohibits the sale of spray paint to minors, with a maximum penalty of 140 penalty units for a first offence, 280 penalty units for a second offence and 420 penalty units for a third offence.

If a court finds a person guilty of an offence against s 23B, it may order the thing to which the offence relates to be forfeited to the state (s 47).

## Unlawful entry or 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 it of the vehicle.

Maximum penalty—20 penalty units or 1 year's imprisonment' (s 25).

See also the offence of 'unlawful use or possession of a motor vehicle' under s 408A and 'unlawful entry of a motor vehicle' under s 427 of the Criminal Code.

## Endangering safe use of vehicles by throwing an object

(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 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' (s 19).

It does not matter what the offender's intention is in throwing the object, whether they make contact with a vehicle, whether a vehicle is moving or stationary in the course of travel, or whether a vehicle is in the offender's sight when they throw the object.

In Schedule 2, 'vehicle' includes a motor vehicle, bicycle and boat.

Under s 26A, it is an offence to interfere with graves, war memorials or things fixed at a place of religious worship. The maximum penalty is 1 year's imprisonment.

# E. *Police Powers and Responsibilities Act 2000 (Qld)*

## 10-34 Purposes of the Police Powers and Responsibilities Act

Under s 5 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA), the purposes of the Act are:

- (a) to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
- (b) to provide powers necessary for effective modern policing and law enforcement;
- (c) to provide consistency in the nature and extent of the powers and responsibilities of police officers;
- (d) to standardise the way the powers and responsibilities of police officers are to be exercised;
- (e) to ensure fairness to, and protect rights of, persons against whom police officers exercise powers under this Act;
- (f) to enable the public to better understand the nature and extent of the powers and responsibilities of police officers'.

If any inconsistency occurs between the PPRA and any other Act regarding police powers, the PPRA takes precedence (s 11).

As the PPRA is voluminous (852 pages as at May 2012), the summary below is a guide only. You may need to refer to the PPRA to provide detailed advice to a client on a specific issue.

## 10-35 Summary of police powers under the PPRA

Power	PPRA	Notes
Power to enter and stay at a place for a reasonable time	s 19	For what constitutes a reasonable time, see s 20.
	s 19(5)	'[I]f the place contains a dwelling, the only part of the place a police officer may enter without the consent of the occupier is the part of the place that is not a dwelling'.
	s 19(6)	'[T]he police officer may only use minimal force to enter the place'.
Power to stop and search a person without a warrant if a 'prescribed circumstance'	s 29	Prescribed circumstances are very wide— see s 30
Power to search a vehicle without a warrant in a 'prescribed circumstance'	s 31	Prescribed circumstances are very wide—see s 32
Power to enter, search, dig up, open locked areas etc in a public place	s 33	
Power to require name and address	s 40	Prescribed circumstances are very wide—see s 41
Power to require age	s 42	Section 42 relates to a requirement to provide a date of birth when a person is engaged in certain activities (e.g. smoking).  The relevant offence provision is s 791 (Offence to contravene direction or requirement of police officer). Maximum penalty is 40 penalty units.
Move-on powers	s 48	Police 'may give a person or group of persons doing a relevant act any direction that is reasonable in the circumstances' (s 48(1)).  This allows police to move on people who have been causing anxiety, interrupting trade, disturbing the peace etc. (See s 46 for detailed list.)  It applies to any public area or prescribed area.  Schedule 6 defines a 'prescribed place' as: (a) a shop; or (b) a child-care; or (c) a pre-school centre; or (d) a primary, secondary or special school; or (e) premises licensed under the <i>Liquor Act 1992</i> ; or (f) railway station and any railway land around it; or (g) a mall; or (h) the part of the corporation area under the <i>South Bank Corporation Act 1989</i> declared to be the site under that Act; or (i) a licensed venue under the <i>Racing Act 2002</i> ; or (j) an automatic teller machine; or, (k) a war memorial'.  The relevant offence provision is s 791 (Offence to contravene direction or requirement of police officer). Maximum penalty is 40 penalty units.

Power to take steps to prevent a riot	s 51	'It is lawful for a police officer to take the steps the police officer reasonably believes are necessary to suppress a riot'.
Power to take steps to prevent an offence being committed	s 52	'It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the commission, continuation or repetition of an offence'.
Prevention of particular offences relating to liquor	s 53	Power to seize and empty containers
Powers relating to vehicles and traffic	s 55	Power to require people to provide information about vehicles, ownership, etc.
	s 58	Production of driver licence: '(1) This section applies if a police officer— <ul style="list-style-type: none"> <li>(a) finds a person committing an offence against the Road Use Management Act; or</li> <li>(b) reasonably suspects a person has committed an offence against the Road Use Management Act; or</li> <li>(c) is making inquiries or investigations for establishing whether or not a person has committed an offence against the Road Use Management Act; or</li> <li>(d) reasonably suspects a person who was present at the scene of a relevant vehicle incident may be able to give information or evidence about the incident; or</li> <li>(e) reasonably considers it is necessary for enforcing the Road Use Management Act in relation to a heavy vehicle'.</li> </ul>
Impounding vehicles	s 74	Police officers can impound vehicles for various offences if they include a speed trial, race between motor vehicles, or burn out.  Police officers can impound vehicles for other offences where the driver has previously been charged with various traffic offences (s 69A(2))
Forfeiture orders for vehicles	ss 90, 90A, 91	These sections set out powers and procedures for orders (see s 102—power of court to order community service (up to 240 hours) instead of impounding or forfeiting).
Search warrants	s 151	To obtain a search warrant from a justice, magistrate or Supreme Court judge under s 151, a police officer must satisfy the issuer that 'there are reasonable grounds for suspecting the evidence' of an offence 'is at the place; or is likely to be taken to the place within the next 72 hours'.
	ss 156, 157	Section 156 sets out what a search warrant must state and s 157 specifies a police officer's wide powers under a search warrant.
Emergent searches	s 159	This power is available only with respect to <ul style="list-style-type: none"> <li>(a) an indictable offence;</li> <li>(b) an offence involving gaming or betting;</li> <li>(c) an offence against any of the following Acts— <ul style="list-style-type: none"> <li>• Confiscation Act</li> <li>• <i>Explosives Act 1999</i></li> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Weapons Act 1990</i>;</li> </ul> </li> <li>(d) an offence against the <i>Liquor Act 1992</i>, section 168B or 168C'.</li> </ul>

	s 160	<p>If a police officer reasonably suspects that evidence at a place ‘may be concealed or destroyed unless the place is immediately entered and searched’, they may enter the place and exercise search warrant powers</p> <p>The police officer cannot structurally damage a building in exercising these powers. They may exercise the same powers in relation to a transport vehicle.</p>
	s 161	‘As soon as reasonably practicable after exercising powers under section 160, the police officer must apply to a magistrate in writing for an order approving the search’.
Arrest without warrant	s 365	<p>A police officer may arrest an adult without warrant—</p> <ul style="list-style-type: none"> <li>(a) to prevent the continuation or repetition of an offence or the commission of another offence;</li> <li>(b) to make inquiries to establish the person’s identity;</li> <li>(c) to ensure the person’s appearance before a court;</li> <li>(d) to obtain or preserve evidence relating to the offence;</li> <li>(e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;</li> <li>(f) to prevent the fabrication of evidence;</li> <li>(g) to preserve the safety or welfare of any person, including the person arrested;</li> <li>(h) to prevent a person fleeing from a police officer or the location of an offence;</li> <li>(i) because the offence is an offence against section 790 or 791;</li> <li>(j) because the offence is an offence against the <i>Domestic and Family Violence Protection Act 1989</i>, section 80;</li> <li>(k) because of the nature and seriousness of the offence;</li> <li>(l) because the offence is— <ul style="list-style-type: none"> <li>(i) an offence against the <i>Corrective Services Act 2006</i>, section 135(4); or</li> <li>(ii) an offence to which the <i>Corrective Services Act 2006</i>, section 136 applies’.</li> </ul> </li> </ul>
Detention for investigation or questioning	s 403	<p>This allows a police officer to ‘detain a person for a reasonable time to investigate or question’ about an indictable offence for which they have been arrested or are suspected to have committed.</p> <p>‘However, the person must not be detained...for more than 8 hours, unless the detention period is extended’ (s 403(2)). During the 8 hours, ‘the person may be questioned for not more than 4 hours’ (s 403(4)).</p>
	s 405	<p>This allows a police officer to apply to a magistrate or justice of the peace (magistrates court) for an order to extend the detention period. If either is unavailable, they can apply to any justice of the peace except a commissioner for declarations. However, they must apply to a magistrate if the extended period will be more than 12 hours.</p>

	s 406	An order extending the detention period cannot be for more than 8 hours and the person in custody must be able to make submissions about the application.
Safeguards ensuring rights of and fairness to persons questioned for indictable offences	s 418	‘Before a police officer starts to question a relevant person for an indictable offence, the police officer must inform the person that’ they have the right to contact a friend, relative or lawyer and ask that they be present during any questioning (see 420—special procedures for ATSI interviewees; 422—impaired capacity; and 423—intoxicated interviewees).
Searching people in custody	s 443	This allows police to search and re-search a person lawfully arrested, in custody or detained. Police may retain any evidence found in the search, and anything that may endanger anyone’s safety or be used to escape while that person is in custody.
Identifying particulars notice	s 470	This allows a police officer to require a person by way of an ‘identifying particulars notice’ to report to a stated police station, between stated hours and within 7 days, so that identifying particulars can be taken.  The notice must state that ‘it is an offence to fail to comply with the notice’ and that identification is required on reporting. The notice must be given to the person with a notice to appear and be signed by the police officer serving the notice. The police officer must further warn the person that it is an offence to contravene a requirement of the notice.  A court can order the taking of identifying particulars under s 471.  Section 474 allows a defendant to have their identifying particulars destroyed in the presence of a justice on acquittal or if there are no longer proceedings for the offence.
DNA	ss 481–488A	These sections involve provisions relating to the taking of DNA.  Under s 484, a court may make an order in a proceeding against an adult for an indictable offence if it ‘is satisfied it is reasonably necessary, having regard to the rights and liberties of the person and the public interest, to take a DNA sample for DNA analysis from the person’.  In all cases, approval for taking a DNA sample, whether by a commissioned officer or a court, must be given after considering the rights and liberties of the person and the public interest.  However, under s 485, an exception is where a court finds an adult guilty of an indictable offence. Here, the court does not need to consider the person’s rights and liberties in making an order.
Taking blood and urine samples	s 540	A police officer may apply to take samples if a person is accused of committing certain offences (i.e. Chapter 18 offences, such as rape, incest, etc).
	s 542	A disease test order may be made.
Powers relating to noise	s 577	A police officer must investigate a noise complaint ‘unless the officer believes the complaint is frivolous or vexatious’.

	s 581	A police officer may make a ‘noise abatement direction’ by entering the place from which the noise is being emitted, without a warrant, and direct the occupier or other persons causing or permitting the noise ‘to immediately abate the excessive noise’.
	s 582	A person who either receives a noise abatement direction or knows of such a direction for the place must immediately comply for 12 hours after it is given. If not, they are committing an offence with a maximum penalty of 10 penalty units.
	s 583	If s 582 is contravened, ‘[a] police officer may— (a) without warrant, enter the place from which the noise is being emitted; and (b) in relation to property that is or was being used to produce or contribute to the production of the noise— (i) lock, seal or otherwise deal with it in a way to prevent its further use; or (ii) seize it and remove it from the place; or (iii) make it inoperable by removing any part or parts and seize and remove the part or parts from the place’.
Assault/obstruct police	s 790	‘A person must not assault or obstruct a police officer in the performance of the officer’s duties. Maximum penalty—40 penalty units or 6 months imprisonment’ (s 790(1)).  A person is taken to obstruct a police officer if they obstruct ‘a police dog or police horse under the control of a police officer in the performance of the police officer’s duties’ (s 790(2)).  ‘Assault’ is defined by s 245 of the <i>Criminal Code</i> . Police can choose whether a charge of assault should proceed under either s 790 of the PPRA or the <i>Criminal Code</i> . The police will usually proceed under s 790 if the assault is relatively minor.  ‘Obstruct’ is defined as including ‘hinder, resist, and attempt to obstruct’.
Contravene direction or requirement	s 791	Unless otherwise provided, a person is liable to a penalty of 40 penalty units if they contravene a requirement or direction given by a police officer under the PPRA without reasonable excuse.  Unless otherwise provided, a reasonable excuse under s 791(4) would be if the information directed or required would incriminate the person.

## F. Breach of probation/community service

### 10-36 Specific offences

Proceedings for breaches of probation and community service orders are brought against the defendant under the Penalties and Sentences Act (see ss 90–110 and 120–142).

#### Breach for contravening requirement of community-based order

Breaches under these circumstances can include failing to report to a probation officer, failing to notify of a change of address, leaving Queensland without a probation officer's approval, failing to pay restitution as ordered and breaching due to a subsequent conviction. The breaching conduct need not have occurred in Queensland (s 123).

### 10-37 Institution of proceedings

Proceedings for probation breaches are instituted by the Probation and Parole Office and, if the offender's whereabouts are known, usually commenced with a summons (s 128(1)—single community-based order; s 129(1)—multiple orders).

If the offender cannot be located, proceedings for breach of a community-based order are commenced with a warrant ordering all police officers to arrest the offender and bring them before the court (ss 128(2) and 129(2)).

If a summons is issued, the offender is summonsed to appear before the court.

Proceedings for breaching an order may be commenced after the end of the order (s 132).

### 10-38 Appropriate court to deal with breach

Any magistrates court can deal with proceedings for an offence against s 123(1) (s 124). If the Supreme Court or a district court made the original community-based order, the magistrate may, instead of dealing with the breach, commit the offender into custody or grant the offender bail to be brought before the original higher sentencing court (see s 125(4)(b)).

### 10-39 Procedure on issue of warrant

If a warrant is issued, and the defendant is arrested and taken before the nearest magistrates court, the magistrates court may either commit the defendant to custody or grant bail to appear before the next sittings of the appropriate court to be dealt with for the breach.

### 10-40 Penalty for breach of community-based orders

In imposing penalties, the magistrates court can choose to:

- impose a fine not exceeding 10 penalty units (s 125)
- in addition to or instead of the above, admonish and discharge the offender or make one of the following orders:
  - order the payment of unpaid restitution or compensation and make further orders for enforcement
  - with the offender's consent, increase the number of community service hours
  - extend the period of one year allowed for the offender to perform community service
  - if the community-based order was made by the magistrates court, deal with the offender for the original offence as if the offender had just been convicted of that offence
  - if the community-based order was made by the Supreme Court or a district court, commit the offender into custody or grant the offender bail to appear before the original sentencing court.

The same options apply to the district court and Supreme Court under s 126 of the Penalties and Sentences Act.

If a disqualification period was imposed for the original offence, the court dealing with the breach cannot change or revoke the disqualification period (s 126A)

### **10-41 Consulting with prosecuting corrections officer**

An officer of the Probation and Parole Office deals with breaches of probation and community service orders. As the duty lawyer, you should consult that officer and ask for their recommendation to the magistrate in dealing with the person charged.

### **10-42 Taking full instructions on the breach and original offence**

If the magistrates court is the appropriate court, the magistrate can not only punish for the breach, but also for the original offence, as if the offender had just been convicted of that offence. In such circumstances, you must obtain full instructions on both the breach and original offence.

Depending on the circumstances of the breach and original offence, and the amount of mitigating material, you could advise the offender to seek a remand, obtain legal advice and obtain legal representation at the next appearance. Such advice is especially appropriate if the prosecuting probation officer has indicated that they will recommend that the offender be dealt with for the original offence.

### **10-43 Legal assistance for breaches of probation/community service**

Legal Aid Queensland may provide legal assistance for probation breaches in the magistrates court, and the district court and Supreme Court.

## **G. Corrective Services Act 2006 (Qld)**

### **10-44 Introduction**

The [Corrective Services Act 2006](#) (Qld) contains various offences that may be committed either by prisoners or people coming into contact with prisoners. These offences are contained in ss 122 ('Unlawful assembly, riot and mutiny'), 123 ('Prohibited things'), 124 ('Other prisoner offences') and 126–137.

Breaches of discipline are dealt with within the corrective services system. The offences listed above are dealt with in the court process. Note that, in relation to prisoner offences, a person may be convicted of an offence but no longer be a prisoner when proceedings relating to the offence are commenced or heard. This handbook deals briefly with the offences that you are more likely to face as a duty lawyer.

### **10-45 Unlawful assembly, riot and mutiny**

Offences under s 122 are crimes and cannot be dealt with summarily. Those offences are as follows:

- (1) A prisoner must not take part in an unlawful assembly.  
Maximum penalty—3 years imprisonment.
- (2) A prisoner must not take part in a riot or mutiny.  
Maximum penalty—
  - (a) if, during the riot or mutiny, the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, property that is part of a corrective services facility and the security of the facility is endangered by the act—life imprisonment; or
  - (b) if, during the riot or mutiny, the prisoner demands something be done or not be done with threats of injury or detriment to any person or property—14 years imprisonment; or



- (c) if, during the riot or mutiny, the prisoner escapes or attempts to escape from lawful custody, or helps another prisoner to escape or attempt to escape from lawful custody—14 years imprisonment; or
- (d) if, during the riot or mutiny, the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, any property—10 years imprisonment; or
- (e) otherwise—6 years imprisonment’.

## 10-46 Summary jurisdiction

Under s 350, all offences under this Act are to be dealt with summarily except offences under s 122. The ‘proceeding must start—

- (a) within 1 year after the offence was committed; or
- (b) within 6 months after the offence comes to the complainant’s knowledge, but within 2 years after the offence was committed’.

The only exception is for proceedings for an offence under s 28F(1) or (5) (offences regarding holding prisoner’s artwork), which ‘may start at any time but, if started more than 1 year after the commission of the offence, must start within 6 months after the offence comes to the complainant’s knowledge’.

### Dealing with prohibited thing

Under s 123(2):

‘(2) A prisoner in a corrective services facility must not deal, or attempt to deal, with—

- (a) a prohibited thing; or
- (b) something intended to be used by a prisoner to make a prohibited thing.

Maximum penalty—2 years imprisonment.

(3) However, subsection (2) does not apply to—

- (a) making or attempting to make a thing if the prisoner has the chief executive’s written approval to make it; or
- (b) possession of a thing if the prisoner has the chief executive’s written approval to possess it.

(4) The finding of a prohibited thing in a prisoner’s room that is not shared with another prisoner, or on the person of a prisoner, in a corrective services facility is evidence the thing was in the prisoner’s possession when it was found.

(5) In this section—

**deal with**, a thing, means make, possess, conceal or knowingly consume the thing’.

The [Corrective Services Regulation 2006](#) (Qld) (regulation 20) prescribes what constitutes a prohibited thing for the purposes of this section. The list is extensive:

- ‘(a) a weapon, replica of a weapon or other replica under the *Weapons Act 1990*;
- (b) an explosive or ammunition under the *Explosives Act 1999*;
- (c) a flammable substance;
- (d) anything capable of being used to scale a fence, wall, door or gate;
- (e) anything capable of cutting or spreading metal bars;
- (f) anything capable of damaging or destroying a fitting or fixture designed to detain prisoners;
- (g) a key, card, or other device capable of opening a mechanical or electronic lock;
- (h) soap or another substance containing an impression of a prohibited thing, including, for example, a key;
- (i) a knife, a saw, scissors or another cutting implement;
- (j) kitchen utensils or equipment or tools;
- (k) a spirituous or fermented fluid or substance of an intoxicating nature;
- (l) a drug or medicine;
- (m) a syringe or other device capable of administering a drug;
- (n) cash, a credit card, debit card, cheque or money order or another negotiable instrument;
- (o) a document containing a person’s credit card or debit card details;

- (p) a form of identification, including, for example, false identification;
- (q) anything capable of being used to alter a prisoner's appearance so that it significantly differs from the prisoner's appearance described in the record kept under section 10 of the Act;
- (r) a communication device;
- (s) a device capable of enabling a prisoner to access information that could be a risk to the security of a corrective services facility;
- (t) an objectionable computer game under the *Classification of Computer Games and Images Act 1995*;
- (u) a film classified as an "R" film under the *Classification of Films Act 1991*, an objectionable film under that Act, or a film that, if it were classified under that Act, would be classified as an "R" film or an objectionable film;
- (v) a prohibited publication under the *Classification of Publications Act 1991*;
- (w) anything modified from its usual form to enable something to be concealed in it;
- (x) anything that poses a risk to the security or good order of a corrective services facility, including, for example, a drawing, plan or photo of the facility;
- (y) any part of a thing mentioned in paragraphs (a) to (x)'.

## Other offences

Under s 124:

'A prisoner must not—

- (a) prepare to escape from lawful custody; or
- Note—See the Criminal Code, section 142 for the offence of escaping from lawful custody.
- (b) assault or obstruct a staff member who is performing a function or exercising a power under this Act or is in a corrective services facility; or
  - (c) disobey a lawful direction of the proper officer of a court or a person assisting the proper officer of a court; or
  - (d) organise, attempt to organise or take part in any opposition to authority under this Act, whether inside or outside a corrective services facility; or
  - (e) threaten to do grievous bodily harm to someone else; or
  - (f) unlawfully kill or injure, or attempt to unlawfully kill or injure, a corrective services dog; or
  - (g) obstruct a corrective services dog working under the control of a corrective services officer who is performing duties under this Act; or
  - (h) assume another identity, or disguise himself or herself, in order to commit an offence against this Act; or
  - (i) wilfully and unlawfully destroy, damage, remove or otherwise interfere with any part of a corrective services facility or any property in the facility; or
  - (j) without lawful authority, abstract or remove information from, copy or destroy information in, or make a false entry in, a record kept under this Act; or
  - (k) without reasonable excuse, be unlawfully at large.

Maximum penalty—2 years imprisonment'.

It is also important to note the following sections of the Penalties and Sentences Act and their relationship with the Corrective Services Act:

### Cumulative order of imprisonment must be made in particular circumstances

Under s 156A of the Penalties and Sentences Act:

'(1) This section applies if an offender—

- (a) is convicted of an offence—
  - (i) against a provision mentioned in schedule 1 [i.e. s 122(2) ('Unlawful assembly, riot and mutiny) and s 124(a) ('Other offences')]; or
  - (ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and

- (b) committed the offence while—
  - (i) a prisoner serving a term of imprisonment; or
  - (ii) released on post-prison community based release under the *Corrective Services Act 2000* or released on parole under the *Corrective Services Act 2006*; or
  - (iii) on leave of absence, from a term of imprisonment, granted under the *Corrective Services Act 2000* or the *Corrective Services Act 2006*; or
  - (iv) at large after escaping from lawful custody under a sentence of imprisonment.
- (2) A sentence of imprisonment imposed for the offence must be ordered to be served cumulatively with any other term of imprisonment the offender is liable to serve’.

## Parole

Sections 160–160H of the Penalties and Sentences Act govern these orders. As a duty lawyer appearing or giving advice on sentence to prisoners, you will often need to consider the relationship between the Corrective Services Act and these provisions.

This is not an exhaustive examination of the relationship between the two Acts. You should closely scrutinise the provisions as they relate to each particular case.

Note, in particular, s 160B of the Penalties and Sentences Act—‘Sentence of 3 years or less and not a serious violent offence or sexual offence’:

- ‘(1) This section applies if neither section 160C nor 160D applies.
- (2) If the offender has had a court ordered parole order cancelled under the *Corrective Services Act 2006*, section 205 or 209 during the offender’s period of imprisonment, the court must fix the date the offender is eligible for parole.
- (3) If subsection (2) does not apply, the court must fix a date for the offender to be released on parole.
- (4) If the offender had a current parole eligibility date or current parole release date, a date fixed under subsection (2) or (3) must not be earlier than the current parole eligibility date or current parole release date’.

Section 205 of the Corrective Services Act allows the parole board to amend, suspend or cancel a parole in certain circumstances.

Section 209 of the Corrective Services Act states:

- ‘(1) A prisoner’s parole order is automatically cancelled if the prisoner is sentenced to another period of imprisonment for an offence committed, in Queensland or elsewhere, during the period of the order.
- (2) Subsection (1) applies even if the period of the parole order has expired.
- (3) However, subsection (1) does not apply if—
  - (a) the prisoner is required to serve the period of imprisonment mentioned in the subsection in default of—
    - (i) paying a fine or another amount required to be paid under a court order; or
    - (ii) making restitution required to be made under a court order; or
  - (b) the period of imprisonment mentioned in the subsection—
    - (i) is required to be served under an intensive correction order; or
    - (ii) is wholly suspended under the *Penalties and Sentences Act 1992*, part 8; or
    - (iii) is wholly suspended because of an order, under the *Drug Court Act 2000*, section 20(1)(a), contained in an intensive drug rehabilitation order; or
    - (iv) is required to be served until the court rises’.

## H. Disclosure of criminal convictions—*Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)*

### 10-47 Introduction

The *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) came into force on 1 November 1986. It was introduced to allow people to avoid disclosure of previous convictions in certain circumstances.

The Act's provisions apply to both the person with the conviction and the body responsible for collecting and distributing the details of a person's criminal convictions (the Queensland Police Service).

### 10-48 Application of the Act

The Act applies to convictions only where the offender is not ordered to serve a period in custody or, if the offender is so ordered, whether through default or otherwise, the period does not exceed 30 months (s 3(2)).

The 'rehabilitation period', after which a person can claim the protection of this Act, is 10 years for a conviction upon indictment recorded as an adult or 5 years for a conviction recorded as a child, unless those convictions are 'revived' under s 11 (s 3). Note, if the magistrate makes any order regarding the conviction (e.g. fine or restitution), the person or child does not benefit from the Act's provisions until the order is satisfied (i.e. they pay the fine or restitution) (s 3).

A conviction is revived if, after incurring a conviction to which a rehabilitation period applies, the person is convicted of another offence. If this occurs, the rehabilitation period starts again from the date of the fresh conviction.

However, a conviction for a simple or regulatory offence does not revive a previous conviction to which a rehabilitation period applies unless the court specifically orders that it should (s 11(2)).

### 10-49 Non-disclosure of convictions once rehabilitation period expires

Once the rehabilitation period has expired, if it has not been revived, no person can disclose the conviction unless:

- the person who was convicted wishes to disclose it (s 6(a))
- a person who knows about the conviction either is authorised to disclose it by a permit authorised by the attorney-general (ss 6(b) and 10) or discloses it under s 9.

Section 9 covers people who are required by law to disclose their criminal history if they have an application to be assessed for a profession, occupation or calling (ss 6(c), and 9(1)(a), (b) and (c)) or application to the Parole Board (ss 6(c) and 9(2)).

### 10-50 Lawful to deny certain convictions

Once a person's rehabilitation period has expired and not been revived, they can lawfully claim, on oath or otherwise, that they have not incurred a conviction unless a rule of practice or provision of law requires disclosure (s 8).

### 10-51 Exception to the non-disclosure provisions for certain professions or occupations

This Act notes that when certain people (including police officers, prison officers, justices of the peace and registered teachers) apply for specified positions, they must disclose some or all previous convictions. Section 9A contains a comprehensive table that sets out the conditions for each employment category.

# I. Restrictions on publication and attendance at court

## 10-52 Publication of names

Defendants or unrepresented witnesses may approach you, as the duty lawyer, to establish whether the publication of their names or other information presented in court may be restricted and whether there are restrictions on who may be present in court during all or part of the proceedings.

You should be prepared to make the relevant applications, where appropriate, on a defendant's instructions.

## 10-53 Bail applications

The court can restrict the information that may be published about a bail application (see [Bail Act 1980](#) (Qld), s 12). This includes submissions, reasons for decision etc.

The maximum penalty for breaching a court order made under s 12 is 10 penalty units or 6 months' imprisonment.

## 10-54 General provisions

### Magistrates Court proceedings

The magistrate may, in the interests of public morality, exclude anyone from the court (Justices Act, s 70).

### Committal proceedings

The magistrate may exclude people from committal proceedings only if 'it appears to them that the ends of justice require them to do so' (Justices Act, s 71).

## 10-55 Sexual offences—*Criminal Law (Sexual Offences) Act 1978* (Qld)

Section 5 of the [Criminal Law \(Sexual Offences\) Act 1978](#) (Qld) requires a court to exclude the public from the court when a complainant is giving evidence in any examination of witnesses or trial. The section provides a list of people who cannot be excluded, including defence lawyer, crown officers, support people and parents of young complainants.

Section 6 provides that any report relating to the examination of witnesses or a trial about a sexual offence cannot reveal a complainant's name, address, school, place of employment or any other particular likely to identify the complainant, unless a court order permits it.

Section 7 contains a similar provision to prevent the disclosure of the same information about a defendant. Section 7 applies only to prescribed offences, which s 3 defines as:

- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) a sexual assault defined in the Criminal Code, section 352' (including indecent assault, and procurement of a person to commit or witness an act of gross indecency, including by threats or while armed).

The information referred to in s 7 may be published after a defendant is committed for trial, as long as the report does not reveal information about any other defendant who has not been committed for trial (s 8).

## 10-56 Childrens court proceedings

Childrens court proceedings are governed by the [Childrens Court Act 1992](#) (Qld), which has specific provisions about the people who may be present at court proceedings (Childrens Court Act, s 20).

## J. Domestic violence orders

The [Domestic and Family Violence Protection Act 2012](#) (Qld) sets out the civil regime for preventing domestic violence through domestic violence orders. Once an order has been breached it becomes a criminal matter and a duty lawyer may have to represent a respondent in court. An overview is contained below.

### The civil process

#### 10-57 What is domestic violence and when can a court make an order?

Duty lawyers do not represent respondents in the civil proceedings in which the court considers whether to make a domestic violence order. Section 37 of the Domestic and Family Violence Protection Act outlines when a court can make a domestic violence order, that is, if the court is satisfied that:

- (a) a relevant relationship exists between the aggrieved and the respondent; and
- (b) the respondent has committed domestic violence against the aggrieved; and
- (c) the protection order is necessary or desirable to protect the aggrieved from domestic violence.

Domestic violence is defined in the Domestic and Family Violence Protection Act (s 8) as being where there is behaviour by one person towards another person in a “relevant relationship” that –

- (a) is physically or sexually abusive; or
- (b) is emotionally or psychologically abusive; or
- (c) is economically abusive; or
- (d) is threatening; or
- (e) is coercive; or
- (f) in any other way controls or dominates the second person and causes the second person to fear for the second person’s safety or wellbeing or that of someone else.

Examples include:

- threatening or causing personal injury;
- coercing a person to engage to sexual activity;
- damaging property;
- depriving liberty;
- threatening a person with death or injury;
- threatening to commit suicide or self harm so as to frighten the person;
- unlawful stalking; or
- unauthorised surveillance of a person.

#### 10-58 Relevant relationships

Section 13 explains what a “relevant relationship” is for the purposes of the Domestic and Family Violence Protection Act. These are:

- (a) an intimate personal relationship; or
- (b) a family relationship; or
- (c) an informal care relationship.

Section 14 defines an intimate personal relationship to include a spouse (see ss 36 and 32DA of the *Acts Interpretation Act 1954*), a former spouse, a parent or former parent of a child of the person, a fiancé, or a couple relationship (also see ss 15–18).

Section 19 defines a ‘family relationship’ as existing between relatives. ‘Relatives’ are defined as people who are connected by blood or marriage, or regard themselves as relatives culturally or religiously.

Section 20 defines an ‘informal care relationship’ as existing when one person is dependent on another person who helps them in an activity of daily living.

### **10-59 Court may include name of relative or associate**

Section 52 allows a court to name a relative or associate of the person applying for a domestic violence order (aggrieved) if the court is satisfied that it is necessary or desirable to protect the relative or associate from associated domestic violence.

Section 53 allows a court to name a child of the aggrieved (or child who usually lives with the aggrieved) if the court is satisfied that the naming of the child is necessary or desirable to protect the child from associated domestic violence or being exposed to domestic violence.

“Being exposed to domestic violence” is defined in s 10 to mean if the child sees or hears domestic violence or otherwise experiences the effects of domestic violence. (See s 10 for examples of being exposed to domestic violence such as seeing or hearing assaults, comforting a person who has been physically abused, observing bruising or other injuries or cleaning up a site after property has been damaged).

### **10-60 Protection orders to include standard conditions**

Section 56 outlines the standard conditions on a domestic violence order. The court must impose a condition that the respondent—

- (a) be of good behaviour towards the aggrieved and not commit domestic violence; and
- (b) if a named person or child is specified in the order—be of good behaviour towards the named person and/or child and not commit an act of associated domestic violence against the person and/or child.

### **10-61 Court may make a temporary protection order**

Section 44 of the Domestic and Family Violence Protection Act sets out when a court can make a temporary protection order, such as when it adjourns the hearing of an application for a domestic violence order. Section 45 outlines the matters that the court must be satisfied of to make a temporary protection order, that is that a relevant relationship exists and that the respondent has committed domestic violence.

A domestic violence order takes effect on the day it is made or at the end of a previous existing order (s 34). It can continue for up to two years, or longer if the court believes there are special reasons for it (s 34A).

### **10-62 Court may make domestic violence order**

A court may, on its own initiative, make a domestic violence order against a person who pleads guilty to, or is found guilty of, an offence that involves domestic violence (s 42).

The court must give the offender reasonable opportunity to present evidence and make submissions.

### **10-63 Weapons Act**

Sections 79–83 of the Domestic and Family Violence Protection Act relate to weapons.

The Weapons Act applies to professional people who may hold a weapon’s licence and who are responding to a domestic violence order application (despite s 2 of the Weapons Act which exempts its application to defence forces and police etc).

A domestic violence order must include information about weapons on the order (s 82).

The court must consider matters relating to weapons before making a domestic violence order (s 80). It can include information on the domestic violence order if it is reasonable (such as information about a weapon or a weapon used due to the respondent's employment).

## **10-64 Registration of interstate order**

Sections 170–176 relate to the ability of a person to register an interstate order. A person may apply to a magistrates court for the registration of an interstate order (s 170). A registered interstate order has the same effect as a domestic violence order; and may be enforced against a person as if it were a domestic violence order that had been personally served on the person as a respondent (s 174).

## **10-65 Police protection notice**

Sections 101–114 outline the circumstances where a police officer may issue a police protection notice under the Domestic and Family Violence Protection Act. A police protection order is like an “on-the-spot” version of a domestic violence order. A police officer has to be present at the same location as the respondent and reasonably believe that –

- the respondent has committed domestic violence
- a current domestic violence order has not been made
- a current police protection order has not been issued
- a police protection notice is necessary or desirable to protect the aggrieved from domestic violence
- the respondent should not be taken into custody,

and they have obtained approval from a supervising police officer to issue the notice.

The police protection notice must include a condition that the respondent be of good behaviour towards the aggrieved (s 106).

It may include other conditions such as a cool down condition that prohibits the respondent from entering or approaching or contacting the aggrieved (s 107).

The police officer issuing the police protection notice must personally serve it on the respondent and give a copy of the notice to the aggrieved. The notice takes effect when the notice is served on the respondent (s 109).

Once a police protection notice is issued, a copy of the notice is filed with the local magistrates court for the respondent and will be taken to be an application for a domestic violence order (s 111–112).

A police protection notice continues in force until the hearing of the application for the domestic violence order.

## **10-66 Closed court**

Applications under the Domestic and Family Violence Protection Act are made in a closed court.

However, the court may open the proceedings or part of the proceedings to the public or specific persons. (For example, where the court is hearing another proceeding that concerns the same events or where the court considers that it is in the public interest to hear the proceeding in an open court).

An aggrieved is entitled to have an adult with the aggrieved throughout the proceedings to provide support and other help (s 158).

## **10-67 Prohibition on publication of certain information**

It is an offence to publish information given in evidence in a proceeding under the Domestic and Family Violence Protection Act or information that identifies or is likely to lead to identification of a person who is a party, witness or child in a proceeding under the Domestic and Family Violence Protection Act.



The maximum penalty is 100 penalty units or two years imprisonment for an individual or 1000 penalty units for a corporation. There are certain exemptions such as where a court expressly authorises the publication or it is for the purposes of law reporting research or permitted under law (see s 159).

## **10-68 Police investigatory function**

Section 100 of the Domestic and Family Violence Protection Act states that if a police officer reasonably suspects that domestic violence has been committed, the police officer must investigate or cause to be investigated the complaint, report, or circumstances on which the officer's reasonable suspicion is based.

If, after the police officer has investigated the domestic violence and they reasonably believe that it has been committed, they can do any of the following –

- Apply for a protection order
- Apply to vary a protection order
- Issue a police protection notice
- Take the respondent into custody
- Apply to a magistrate for a temporary protection order
- Take any other action appropriate in the circumstances.

The section does not limit the responsibility of the police officer to investigate whether a criminal offence has been committed (s 100(5)).

## **10-69 When police officer may apply for temporary protection order**

Section 129 states that a police officer may apply for a temporary protection order against a person if – an application for a protection order against the person has been prepared and they reasonably believe that the application will not be decided quickly enough by a court to protect the aggrieved from domestic violence and they reasonably believe that a temporary protection order is necessary or desirable to protect the aggrieved.

Section 130 allows the application to be made to a magistrate by way of telephone, fax, radio, email or other similar facility. The section requires the police officer to inform the magistrate of the particulars of the application for the protection order. The magistrate is entitled to presume that the person making the application for the temporary protection order is a police officer and that an application for a protection order has been prepared. The magistrate is required to make a record in writing of the application (s 130).

## **10-70 Power to take a person into custody**

The Domestic and Family Violence Protection Act gives a investigating police officer power to take a person into custody if they reasonably suspect that the person has committed domestic violence and that another person is in danger of personal injury or property is in danger (s 116).

The police officer must prepare an application for a domestic violence order as soon as reasonably practicable after taking the person into custody (s 118).

Section 119 sets out how long a person can be held in custody but it can be up to eight hours. A police officer can apply to extend the detention period (s 121) to a magistrate before the detention period ends.

# **The criminal process**

## **10-71 Breaching an order**

As a duty lawyer, you may be asked to represent a respondent charged with breaching a domestic violence order.

A person can only be charged with breaching a domestic violence order if they were present in court when the order was made, or have been served with a copy of the order, or have been told by a police officer about the existence of the order (s 177).

A respondent who contravenes an order commits an offence and is liable to a fine of 60 penalty units or two years imprisonment.

However, if a respondent has committed an offence under s 177 within five years of previously being convicted of an offence under that part of the Domestic and Family Violence Protection Act, then they are liable to a fine of 120 penalty units or three years imprisonment (s 177(a)). (See s 177 for details about offences and the onus of proof.)

A respondent must not contravene a police protection notice and if they do, they are liable to a maximum penalty of 60 penalty units or two years imprisonment (s 178).

Note that for the purposes of s 7 of the Criminal Code Act 1899, an aggrieved or named person on a domestic violence order cannot be found to have committed an offence by encouraging the commission of an offence under the Domestic and Family Violence Protection Act and is not punishable as a principal offender (see s 180).

## **10-72 Plea of not guilty**

When a person pleads not guilty to breaching a domestic violence order, a hearing date is generally set and the question of bail arises. Invariably, bail will contain a condition that the defendant have no contact with the complainant. As a duty lawyer, you may need to take instructions about any difficulties the person may have in complying with this condition, such as:

- spending time with their children
- whether contact with the complainant will be needed for an ongoing family law dispute and how that could occur
- gaining access to a home to obtain clothing and other necessary belongings.

## **10-73 Plea of guilty**

When entering a plea of guilty to breaching a domestic violence order, you should be cautious about whether there have been any previous breaches. Depending on the seriousness of the breach or the frequency of breaches, the court may impose a term of imprisonment. See [10-71](#).

## **10-74 Summary prosecution**

A prosecution for an offence under the Domestic and Family Violence Protection Act must be taken in a summary way under the Justices Act 1886. A complaint for an offence must be laid by a police officer (s 181).

## **10-75 Arrest of certain offenders**

Section 116 outlines the conditions where a police officer may take a person into custody. It references s 615 of the Police Powers and Responsibilities Act 2000 which gives police the power to use force against individuals.

Section 126 provides particular safeguards for the detention of a child.

Section 127 gives guidance about when a person may be taken to a place for treatment (such as a hospital or medical practice) and s 128 gives guidance about when an intoxicated person may be taken to a place of safety.

# K. Prostitution

## 10-76 Introduction

The laws regarding prostitution and associated offences were substantially amended by the [Prostitution Amendment Act 2001](#) (Qld) and the [Prostitution Act 1999](#) (Qld). Further amendments and offence provisions were introduced by the [Prostitution and Other Amendments Act 2010](#) (Qld).

The Prostitution Act and Chapter 22A of the Criminal Code (inserted in 2001) both regulate prostitution. This legislation contains numerous offences that are categorised as crimes. This chapter overviews the prostitution laws and how they are likely to affect you as a duty lawyer.

In particular, the chapter provides a summary of the offence provisions you are most likely to encounter. Note that some of the offence provisions have specific exceptions in circumstances where the alleged activity took place in a legal brothel.

## 10-77 Summary proceedings

Under s 552B of the Criminal Code, all offences under Chapter 22A that carry maximum penalties of more than three years' imprisonment must be dealt with summarily unless the defendant elects for jury trial. Of course, this provision is subject to the overriding discretion of the magistrate under s 552D.

Sections 127–128 of the Prostitution Act govern the issue of elections for proceedings under that Act. Offences against the Act are summary offences except ss 77, 78(1), 79(1), 81(1) and 82, which are indictable. The defendant has the election in these matters unless 'the magistrate considers that the charge should be prosecuted on indictment' (s 128(2)).

## 10-78 Definitions under the Criminal Code

Many of these provisions refer to 'persons with an impairment of the mind', which s 1 of the Criminal Code defines as 'a person with a disability that—

- (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
- (b) results in—
  - (i) a substantial reduction of the person's capacity for communication, social interaction or learning; and
  - (ii) the person needing support'.

An 'adult' is defined as 'a person of or above the age of 18 years'.

Section 229F of the Criminal Code defines 'carry on a business' as a situation where 'a person must at least—

- (a) provide finance for the business; and
- (b) either—
  - (i) take part in the management of the business; or
  - (ii) control the business'.

## 10-79 Offences under the Criminal Code

### Obtaining prostitution from a person who is not an adult

Under s 229FA:

'(1) A person (a client) who obtains prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult, commits a crime.

Maximum penalty—imprisonment for 7 years

- (2) If the person who provides the prostitution is under 16 years, the offender is liable to a maximum penalty of 14 years imprisonment’.

### **Procuring engagement in prostitution**

Under s 229G:

- (1) ‘A person who—
- (a) procures another person to engage in prostitution [defined in s 229E], either in Queensland or elsewhere; or
  - (b) procures another person—
    - (i) to leave Queensland for the purpose of engaging in prostitution elsewhere; or
    - (ii) to come to Queensland for the purpose of engaging in prostitution; or
    - (iii) to leave the other person’s usual place of residence in Queensland for the purpose of engaging in prostitution, either in Queensland or elsewhere;
- commits a crime.
- Maximum penalty—imprisonment for 7 years.
- (2) If the procured person is not an adult or is a person with an impairment of the mind, the offender is liable to a maximum penalty of 14 years imprisonment’.

For this section, ‘procure’ includes to ‘knowingly entice or recruit for the purposes of sexual exploitation’ (s 229G(5)).

### **Knowingly participating in provision of prostitution**

Under s 229H:

- ‘(1) A person who knowingly participates, directly or indirectly, in the provision of prostitution by another person commits a crime.
- Maximum penalty—
- (a) for a first offence—imprisonment for 3 years; or
  - (b) for a second offence—imprisonment for 5 years; or
  - (c) for a third or subsequent offence—imprisonment for 7 years’.

If the person engaged in the provision of the prostitution is not an adult or is a person with an impairment of the mind, the offender is liable to a maximum penalty of 14 years’ imprisonment.

Examples of this offence include:

- providing financial resources to establish premises
- franchising prostitution
- driving any motor vehicle or providing any transport for prostitutes or clients
- receiving, directing or redirecting telephone calls or messages in connection with another person’s engaging of prostitution.

Section 229HA sets out the circumstances in which s 229H does not apply to a person (e.g. bodyguards or drivers).

### **Carrying on business of providing unlawful prostitution**

Section 229HB(1) states that a ‘person who knowingly carries on the business of providing unlawful prostitution’ is liable to a maximum penalty of 7 years’ imprisonment, which is increased to 14 years if ‘a person who is not an adult or is a person with an impairment of the mind is, to the offender’s knowledge, engaged in the provision of prostitution’ (s 229HB(2)).

### **Persons engaging in or obtaining prostitution through unlawful prostitution business**

Under s 229HC, a ‘person who engages in prostitution through a business suspected on reasonable grounds of providing unlawful prostitution’ is liable to the following penalties:

- first offence—three years’ imprisonment

- second offence—five years' imprisonment
- third offence—seven years' imprisonment.

Section 229HC(2) also criminalises the actions of 'a person who, without reasonable excuse, obtains prostitution through a business suspected on reasonable grounds of providing unlawful prostitution'. The penalties are the same as those for s 229HC(1).

Section 229J provides a procedure by which a defendant charged under this section can apply for a certificate of discharge. On applying, the defendant must give evidence and be cross-examined about the offence, including the involvement of other parties.

'If the court is satisfied that the evidence is a full and true disclosure by the defendant of all material particulars within the defendant's knowledge...the court must immediately give the defendant a certificate' of discharge. An order can be sought prohibiting the publication of any details that would identify the defendant.

### **People found in places reasonably suspected of being used for prostitution**

Under s 229I, a 'person who, without reasonable excuse, is found in, or leaving after having been in, a place suspected on reasonable grounds of being used for the purposes of prostitution by 2 or more prostitutes commits a crime.

Maximum penalty—

- for a first offence—imprisonment for 3 years; or
- for a second offence—imprisonment for 5 years; or
- for a third or subsequent offence—imprisonment for 7 years'.

Section 229I(2) states that 'if a person who is not an adult or is a person with an impairment of the mind is, to the offender's knowledge, in the place at the time of the offence, the maximum penalty is increased to 14 years' imprisonment'.

Section 229I(3) states that 'the court may, in mitigation of sentence, have regard to evidence of an appropriate sexual health check undergone by the offender [prostitute or client] within 3 months before the offence'.

People charged under this section may apply for a certificate of discharge under s 229J. This procedure is outlined above.

### **Having an interest in premises used for the purposes of prostitution**

Under s 229K(2):

'(2) A person who—

- is an interested person in relation to premises; and
- knowingly allows the premises to be used for the purposes of prostitution by 2 or more prostitutes; commits a crime'.

Maximum penalties are the same as for s 229I above (14 years if non-adult or person with an impairment of the mind).

### **Permitting a young person etc to be at place used for prostitution**

Under s 229L, '[a] person who knowingly causes or permits a person who is not an adult or is a person with an impairment of the mind to be at a place used for the purposes of prostitution by 2 or more prostitutes' is liable to a maximum penalty of 14 years' imprisonment.

## **10-80 Prostitution Act offences**

### **Public soliciting for the purposes of prostitution**

Under s 73 of the Prostitution Act:

- (1) 'A person must not publicly solicit for prostitution.

Maximum penalty—

- (a) for a first offence—15 penalty units; or
- (b) for a second offence—25 penalty units; or
- (c) for a third or subsequent offence—30 penalty units or 6 months imprisonment’.

To constitute soliciting by a prostitute, there must be an active approach from the alleged prostitute (see *Newman v Paties; ex parte Newman* [1979] Qd R 402). This offence applies to the conduct of men and women, prostitutes and their clients and other persons involved in the provision of prostitution. Section 73(4) specifically states that soliciting includes both:

- (a) ‘offer to provide prostitution;
- (b) accept an offer to provide prostitution’.

Under s 73(2):

‘(2) A person publicly solicits for the prostitution if, for that purpose, the person—

- (a) solicits a person who is in a public place; or
- (b) solicits a person at a place within the view or hearing of a person who is in a public place; or
- (c) loiters in or near a public place; or
- (d) loiters in a place that can be viewed from a public place’.

### **Nuisances connected with prostitution**

Under s 76, this offence criminalises the behaviour of those suspected of engaging in prostitution and seems to be a cover-all provision for when police do not have evidence implicating individuals in any of the other prostitution offences. As such, you, as a duty lawyer, should treat it with some caution. However, note that it does rely upon the behaviour in question impacting on a third party.

‘(1) This section applies to conduct—

- (a) that happens in ‘vicinity of a place that is reasonably suspected of being used for prostitution; and
- (b) that, to a significant extent, is caused by the presence, or suspected presence, of prostitution at the place’.

Under s 76(2):

‘(2) A person must not—

- (a) cause unreasonable annoyance to another person; or
- (b) cause unreasonable disruption to the privacy of another person.

Maximum penalties for subsection (2)—

- (a) for a first or second offence—15 penalty units; or
- (b) for a third or subsequent offence—25 penalty units’.

### **Duress**

Under s 77:

‘A person must not do any of the following acts, either directly or indirectly, to make another person continue to provide prostitution—

- (a) cause or threaten wilful injury to the person or any one else;
- (b) cause or threaten wilful damage to property of the person or any one else;
- (c) intimidate or harass the person or any one else;
- (d) make a false representation or use any false pretence or other fraudulent means.

Maximum penalty—200 penalty units or 7 years imprisonment’.

### **Sexual intercourse not to be provided without use of a prophylactic (condom)**

Under s 77A(1) and (2), a prostitute must not provide or offer to provide prostitution involving sexual intercourse or oral sex unless a prophylactic is used. Maximum penalty is 100 penalty units.

Under s 77A(3), a person must not ask a prostitute to or accept an offer from a prostitute to provide sexual intercourse or oral sex without a prophylactic being used. Maximum penalty is 100 penalty units.

Under s 77A(4), a person obtaining prostitution involving sexual intercourse or oral sex must not interfere with the efficacy of the prophylactic or use, or continue to use a prophylactic that the person knows, or could reasonably be expected to know, is damaged. Maximum penalty is 100 penalty units.

Further provisions (s 77A(5) and (6)), requiring licensees or approved managers of a licensed brothel to take reasonable steps to ensure the use of prophylactics and not discourage their use, carry maximum penalties of 120 penalty units.

### **Possessing liquor in a licensed brothel**

Under s 83, '[a] person must not possess liquor at a licensed brothel. Maximum penalty—40 penalty units'.

### **Person to state age**

Under s 85, if a police officer reasonably suspects that a person in a licensed brothel is a minor, they may require the person to give their age. If the officer does so, they 'must warn the person that it is an offence—

- (a) to fail, without reasonable excuse, to comply with the requirement; or
- (b) to give false particulars or evidence'.

This section states that it is an offence to, 'without reasonable excuse—

- (a) fail to comply with a requirement made under subsection (2) or (3); or
- (b) give false particulars of the person's age; or
- (c) give false evidence about the person's age.

Maximum penalty for [this offence]—20 penalty units'.

## **10-81 Advertising prostitution**

Under s 93, a 'person must not publish an advertisement for prostitution that describes the services offered', 'is not in the approved form', or is 'through radio or television or by film or video recording'.

The maximum penalty for offences under this section is 70 penalty units unless the publication is via the internet, in which case s 93(3)(a) and (b) apply.

# **L. Casino offences—*Casino Control Act 1982* (Qld)**

Duty lawyers in certain areas of Queensland require some knowledge of offences under the [Casino Control Act 1982](#) (Qld).

## **10-82 Excluded people**

It is an offence for a person who is prohibited from entering or remaining in a casino under a self-exclusion order (ss 91N and 91A), an exclusion direction or a written direction from a casino operator or manager (ss 92 or 94) to enter or remain in the casino. The maximum penalty is 40 penalty units (s 100).

### **Counselling**

Under s 100A, if a court 'finds a person guilty of, or accepts a person's guilty plea for, an offence against section 100...the court may, if satisfied the defendant is a problem gambler, postpone its decision on penalty on condition the defendant agrees to attend counselling on a basis decided by the court'.

The agreement for counselling cannot be for more than 12 months and must allow the counsellor to report to the court any failure to attend. If the court postpones the decision on penalty for counselling, it must decide on penalty as soon as practical after:

- the end of the counselling period
- receiving advice that the defendant does not wish to continue with counselling, or
- receiving a report that the defendant has failed to attend or participate satisfactorily in the counselling.

### **People under 18**

A person under 18 years is not permitted in a casino and is liable to a maximum penalty of 25 penalty units on breach (s 102).

‘An adult must not aid or enable a person under 18 years to enter or remain in a casino. Maximum penalty—20 penalty units’ (s 102(3B)).

## **10-83 Cheating**

Under s 103:

‘Any person who in a casino—

- (a) by any fraudulent trick, device, sleight of hand or representation; or
- (b) by any fraudulent act, practice or scheme; or
- (c) by the fraudulent use of any machine, equipment or other thing; or
- (d) by the fraudulent use of any instrument or article of a type normally used in connection with gaming or appearing to be of a type normally used in connection with gaming;

obtains for himself or herself or another person or induces any person to deliver, give or credit to the person or another person any money, chips, benefit, advantage, valuable consideration or security...is guilty of an offence’.

If the benefit is not more than \$50,000 in value, the maximum penalty is 200 penalty units or 2 years’ imprisonment. If the benefit is more than \$50,000 in value, the maximum penalty is 500 penalty units or 5 years’ imprisonment.

Under s 104:

‘Any person who in a casino uses or has in the person’s possession—

- (a) any chips that the person knows are bogus or counterfeit chips; or
- (b) any cards, dice or coins that the person knows have been marked, loaded or tampered with; or
- (c) for the purpose of cheating or stealing, any equipment, device or thing that permits or facilitates cheating or stealing;

is guilty of an offence.

Maximum penalty—200 penalty units or 2 years imprisonment’.

## **10-84 Proceedings for offences**

Offences are prosecuted summarily unless otherwise stated (s 120(1)). An offence of cheating under s 103 and offences under ss 109 (cheating by casino operator), 110 (forgery) and 111 (bribery of officers) can be dealt with either summarily or by way of indictment if the defendant elects.

The defendant’s election depends on the court believing that it should not deal with the matter summarily (s 120(4)).