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Reform of Vagrancy Laws in Queensland: The Summary Offences Bill 2004 (Qld)

The Summary Offences Bill 2004 (Qld) represents an overhaul and reform of a range of summary offences and provides for certain 'pre-emptive' offences. The Bill will repeal the Vagrants, Gaming and Other Offences Act 1931 (Qld) while recasting some of its more contemporary offences as new provisions of the Bill. Of particular note is that a person will no longer be deemed to be a vagrant on a variety of grounds such as 'having no visible lawful means of support' or 'pretend[ing] ... to tell fortunes for gain...'. The offences established by the Bill, set out in Part 2, are –

- *Offences about quality of community use of public spaces;*
- *Offences involving presence on property;*
- *Possession offences;*
- *Offences of performing particular body piercing and tattooing on minors; and*
- *Other offences.*

Nicolee Dixon

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Research Publications and Resources Section

Ms Karen Sampford, Director	(07) 3406 7116
Mrs Nicolee Dixon, Senior Parliamentary Research Officer	(07) 3406 7409
Ms Renee Giskes, Parliamentary Research Officer	(07) 3406 7241

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Inquiries should be addressed to:

Director, Research Publications & Resources

Queensland Parliamentary Library

Parliament House

George Street, Brisbane QLD 4000

Ms Karen Sampford. (Tel: 07 3406 7116)

Email: Karen.Sampford@parliament.qld.gov.au

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EXECUTIVE SUMMARY

The **Summary Offences Bill 2004 (Qld)** (the Bill) represents an overhaul and reform of a range of summary offences and provides for certain ‘pre-emptive’ offences. The Bill will repeal the *Vagrants, Gaming and Other Offences Act 1931* (Qld) (*Vagrants Act*) while recasting some of its more contemporary offences as new provisions of the Bill.

One of the major reforms of the Bill is to abolish the notion of a person being declared a ‘vagrant’ on any of the numerous grounds set out in s 4(1) of the *Vagrants Act*. For example, having ‘no visible means of support’ will no longer be a ground upon which a person can be deemed a vagrant.

Vagrancy laws appear to have originated in English laws dating back to the Black Death. The vagrancy provisions in the *Vagrants Act* have been the subject of much derision and criticism, particularly from groups representing, or advocating on behalf of, those who are the main users of public spaces and the most likely to be deemed to be vagrants – the homeless and the Indigenous (**pages 1-2**).

On Census night 2001, there were 99,900 homeless Australians, including around 24,600 in Queensland. Those included people ‘sleeping rough’, staying in Supported Accommodation Assistance Program (SAAP) shelters or refuges, living temporarily with family or friends, or living in caravan parks and boarding houses. The profile of homeless persons has been changing from mainly older, lone men to embrace more women (men making up 58% and women 42%), young people (46% of homeless persons were less than 25 years of age, with 26% aged 12-18), and families (people with children making up 23% of homeless persons) (**pages 2-4**).

The SAAP began in 1985 and forms part of Australian Governments’ overall response to homelessness. Its costs are shared between the Commonwealth, State and Territory Governments. The Queensland Government, through agencies such as the Department of Communities, has a number of initiatives in place (discussed on **pages 4-7**) to address the issue in this State.

Homeless persons’ advocates contend that the homeless are amongst the most criminalised of all population groups in Australia and are mostly charged and imprisoned for minor property offences and summary offences (**pages 7-9**).

A recent survey conducted by the Rights in Public Spaces Action Group (RIPS) in Brisbane sought the views of homeless people and those providing services to them on the use of the *Vagrants Act* in regulating the use of public spaces in Queensland, the outcomes of which are discussed on **pages 9-11**.

Part 2, Division 1 creates offences about **quality of community use of public places**. **Clause 6** provides that a person must not commit a **public nuisance** offence and is similar to the existing s 7AA of the *Vagrants Act*, a provision which has been criticised by some commentators as discriminating against the homeless and Indigenous persons (**pages 11-13**). The constitutional validity of the predecessors of cl 6 (including s 7(1)(d) of the *Vagrants Act*) have been challenged in the Queensland Court of Appeal and High Court (**pages 13-14**). In September

2004, the High Court in *Coleman v Power* held that s 7(1)(d) was valid but for varying reasons, as discussed on **pages 14-17**.

Other offences about quality of community use of public places, discussed on **pages 17-21**, are **begging, wilful exposure** and **public drunkenness**.

Offences involving presence on property are considered on **pages 21-22**; possession offences on **pages 22-23**; offences relating to minors on **page 23**; and **other offences** on **pages 23-24**.

1 INTRODUCTION

The **Summary Offences Bill 2004 (Qld)** (the Bill) represents an overhaul and reform of a range of summary offences and provides for certain ‘pre-emptive’ offences. The Bill will also repeal the *Vagrants, Gaming and Other Offences Act 1931 (Qld)* (*Vagrants Act*) while recasting some of its more contemporary offences as new provisions of the Bill. Of particular note is the proposed removal of a provision which deems a person to be a vagrant on certain grounds such as ‘*having no visible lawful means of support*’ or ‘*pretend[ing] ... to tell fortunes for gain...*’. The offences established by the Bill, set out in **Part 2**, are –

- Offences about quality of community use of public spaces;
- Offences involving presence on property;
- Possession offences;
- Offences of performing particular body piercing and tattooing on minors; and
- Other offences.

Part 3 contains procedural provisions. Offences against the new laws will be simple offences proceedings which are to be brought summarily under the *Justices Act 1886 (Qld)*. The Part also provides that, for certain possession offences, the thing to which the offence relates may be ordered to be forfeited to the State. An evidentiary provision is included.

Part 4 repeals the *Vagrants Act* and Schedule 1 provides for the amendment of other Acts.

2 VAGRANCY

One of the major reforms of the Bill is to abolish the notion of a person being declared a ‘vagrant’ on any of the numerous grounds set out in s 4(1) of the *Vagrants Act*. A person deemed to be a vagrant is liable to a penalty of \$100 or to a term of imprisonment for six months.

As s 4 has not received any degree of reform since its introduction in 1931, many of the grounds of ‘vagrancy’ have become obsolete and, in contemporary society, regarded as somewhat peculiar. To have ‘*no visible means of support*’ is a ground upon which a person could be deemed a vagrant. A number of ‘association’ type grounds make one a vagrant such as ‘*habitually consorting with reputed criminals or known prostitutes or persons convicted of having no visible means of support*’. One can also be declared a vagrant if, ‘*with intent to commit any indictable offence*’, one was ‘*found by night wearing felt or other slippers...*’. A vagrant is also a person who

‘loiters or places himself or herself in a public place to beg or gather alms...’; or even a person who ‘pretends or professes to tell fortunes for gain or payment of any kind’.

The quaintness of some of the laws in the *Vagrants Act* is owed to many having been drawn from the *Vagrants Act 1824* (UK), which Act also informed similar early legislation in several Australian jurisdictions. Vagrancy laws appear to have originated in English legislation dating back to the Black Death, and the first Act to criminalise vagrancy was passed in 1349. Such laws found acceptance in subsequent generations as founded on the notion that the homeless were unwilling to work and idleness led to crime. That view justified the arrest and imprisonment of homeless people as a means of disciplining them. Their incarceration was also seen as a public welfare measure – to prevent the sight of vagrants and beggars reducing a town’s appeal to visitors and to discourage young people and servants from a life of vagrancy.¹

The vagrancy provisions have been the subject of much derision and criticism, particularly from groups representing, or advocating on behalf of, those who are the main users of public spaces and the most likely to be deemed to be vagrants – the homeless and the Indigenous. For example, it has been argued that s 4 of the *Vagrants Act* has been used to charge and convict persons for eating out of rubbish bins and sleeping in public places.² It has been claimed that this provision, and many others in the *Vagrants Act*, effectively discriminate against those who use public space the most – homeless persons, young people and Indigenous people.³

Some of the grounds contained in the now to be repealed paragraphs of s 4 have been modified and updated to form the basis of new offences in the Bill, as will be seen below.

2.1 HOMELESSNESS TRENDS

While there is some debate about the definition of ‘homelessness’ it appears that a ‘cultural’ definition has been accepted, particularly by the Australia Bureau of Statistics (ABS) and the Commonwealth Government’s *National Homelessness*

¹ T Walsh, “‘Waltzing Matilda’ One Hundred Years Later: Interactions Between Homeless Persons and Criminal Justice System in Queensland”, *Sydney Law Review*, 25(75) 2003, pp 75-95, pp 76-77.

² T Walsh, ‘Who is the ‘Public’ in ‘Public Space’? A Queensland Perspective on Poverty, homelessness and vagrancy’, *Alternative Law Journal* 29(2) April 2004, pp 81-86, p 81, citing *Moore v Moulds* (1981) 7 *Queensland Lawyer* 227.

³ T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, p 86.

Strategy (discussed below). The ‘cultural’ definition⁴ comprises three types of homelessness: *primary homelessness* (such as persons ‘sleeping rough’ on the streets, in parks or squatting in disused buildings), *secondary homelessness* (persons moving from one form of temporary shelter (like a hostel) to another), and *tertiary homelessness* (e.g. persons living in boarding houses on a medium to long term basis without their own living space).

On Census night 2001, there were 99,900 homeless Australians, including approximately 24,600 in Queensland. Those comprised persons who were ‘sleeping rough’, staying in Supported Accommodation Assistance Program (SAAP) shelters or refuges, living temporarily with family and friends, or living in caravan parks and boarding houses. Around 14,200 Australians were actually ‘sleeping rough’ in improvised shelters or in streets, parks or derelict buildings. During 2002-2003, around 97,600 people across the nation were assisted by refuges, shelters and by agencies in the SAAP.⁵

The profile of homeless persons has been changing from mainly older, lone men to embrace more women (men making up 58% and women 42% at the 2001 Census), young people (46% of homeless persons were less than 25 years of age, with 26% aged 12-18), and families (people with children making up 23% of homeless persons). Men made up around two thirds of homeless people aged over 34 years. Although 2% of the Australian population identified themselves as Indigenous at the 2001 Census, Indigenous persons made up 9% of all homeless Australians and 19% of all those ‘sleeping rough’. A larger number of family breakdowns and changes in the structure labour market have been influencing the foregoing trends. Other contributing factors have been the deinstitutionalisation of people with mental illnesses and physical disabilities; declining low cost accommodation levels; more women fleeing domestic violence; and shifts in substance abuse patterns.⁶

The impetus for a *National Homelessness Strategy* began in May 2000 with the publication of a discussion paper, followed by the appointment of the Commonwealth Advisory Committee on Homelessness (CACH) in October 2000.

⁴ Developed by C Chamberlain et al, ‘Understanding Contemporary Homelessness: Issues of Definition and Meaning’, *Australian Journal of Social Issues* 27(4) 1992, p 274.

⁵ Australia Bureau of Statistics (ABS), *Australian Social Trends – Housing: Homelessness*, 15 June 2004, at <http://www.abs.gov.au/Ausstats/abs@.nsf/0/DDC8DC3787E2D9FCCA256E9E0028F91E?Open>.

⁶ ABS, *Australian Social Trends – Housing: Homelessness*; Commonwealth Department of Family and Community Services, *Working Towards a National Homelessness Strategy – Response to Consultations*, 2003.

A consultation paper, *Working Towards a National Homelessness Strategy*, was released in July 2001 and a final report responding to those consultations was published in 2003. The CACH provides the Minister for Families with advice and recommendations on homelessness and engages in community consultation on the *National Homelessness Strategy*. The Strategy focuses upon on the following areas concerning homelessness: prevention, early intervention, coordinated approaches and crisis support. The Strategy re-affirms the SAAP in assisting homeless people and those in crisis.

2.2 SOME HOMELESS ASSISTANCE PROGRAMS

The Supported Accommodation Assistance Program (SAAP) began in 1985 and is underpinned by the *Supported Accommodation Assistance Act 1994* (Cth). It is aimed at assisting homeless persons or those at risk of becoming homeless. It forms part of Australian Governments' overall response to homelessness. The costs are shared between the Commonwealth, State and Territory Governments, supported by five-yearly Memoranda of Understanding between Australian Community Services Ministers.⁷ The SAAP brings together a diverse range of agencies. There are 1,282 of these agencies (primarily non-government but with some local government participation), providing flexible services to meet the disparate needs of clients.

The AIHW's *Demand for SAAP Assistance by Homeless People 2002-2003 Report* indicates that SAAP agencies provided accommodation and other help to over 97,600 clients a year and to 53,800 accompanying children. However, the agencies have had to turn away around 51% of people seeking immediate accommodation as the demand is unable to be completely met.⁸ The services provided under SAAP range from a few hours of counselling, giving refuge to women escaping violent partners, to providing several months of accommodation for longer-term homeless persons. Advocacy support can be provided (e.g. assistance with legal matters) and basic support services such as meals and showers. The SAAP's overall aim is to support clients in finding safe accommodation (including public and private rentals and owner occupied dwellings) and to help them to live independently.⁹ Figures

⁷ *Supported Accommodation Assistance Program 2000-2005 Memorandum of Understanding IV* provides \$1.4 b for the Program: ABS, *Year Book Australia 2005* – Housing, Cat. No. 1301.0, at <http://www.abs.gov.au/Ausstats>

⁸ AIHW, *Demand for SAAP Assistance by Homeless People 2002-2003*, A report from the SAAP National Data Collection, October 2004, Summary, at <http://www.aihw.gov.au/publications/hou/dsaapahp02-03/dsaapahp02-03.pdf>.

⁹ *SAAP 2000-2005 Memorandum of Understanding*, p 7.

from 2002-2003 indicate that those SAAP clients who gained independent housing increased from 31% before assistance to 39% after being helped (with those who were no longer 'sleeping rough' the greatest improvement).¹⁰

The Queensland Department of Communities provides funding under the SAAP for supported accommodation and related services for Queenslanders who are homeless or those at risk of becoming so. During 2003-2004 the Department undertook a review of service standards for supported accommodation to ensure their adequacy and accountability in recognition of the right that homeless people have to quality services. The Department is also involved in negotiations with the Commonwealth Government regarding new SAAP multilateral and bilateral agreements for 2005-2010.¹¹ The Department's 2004-2005 Budget includes \$579,000 for local initiatives to address community issues including homelessness.¹² The Department of Housing's 2004-2005 Budget provides \$30 million over three years to increase the supply of affordable public housing in targeted high need areas, \$20 million for new boarding house construction over three years to assist low income earners, \$20.1 million towards the Crisis Accommodation Program which provides services for people at risk of homelessness, and funding for a range of other initiatives, including partnerships with other community bodies, to help low-income earners in Queensland.¹³

The Queensland Government's *Coordinated Response to Homelessness Policy* was endorsed by Cabinet in 2001, the focus being on eliminating inadvertent gaps in previous government policies and practices regarding, and delivery of services to, homeless people. The Health and Community Care (HACC) Homeless Program was developed as part of this response in order to deliver services to HACC eligible homeless persons. There are currently a number of HACC Homeless Programs in operation across Queensland. These seek to provide services for the holistic care of clients, such as access to housing, food and opportunities for social interaction. Statistics contained in the HACC Program's *Homeless Program Annual Report 2004* indicate that the main age range of HACC clients is the 35-54

¹⁰ AIHW, *Homeless People in SAAP: SAAP (National Data Collection) Annual Report 2002-2003*, AIHW, Canberra, Summary, at <http://www.aihw.gov.au/publications/hou/saapndcar02-03/saapndcar02-03.pdf>.

¹¹ Queensland Department of Community Services, *Annual Report 2003-2004*, p 23, at <http://www.communities.qld.gov.au/departments/publications/annualreport/index.html>.

¹² Hon Warren Pitt MP, Minister for Communities and Disability Services, 'Budget Focus on Prevention and Early Intervention, Youth Justice and Child Care', *Ministerial Media Statement* 15 June 2004.

¹³ Hon Robert Swarten MP, Minister for Public Works, Housing and Racing, 'Key Budget Initiatives Boost Housing Supply', *Ministerial Media Statement*, 15 June 2004.

age group (55%) and around 22% are over 55. Indigenous persons represent 29% of clients. The primary disability of 20% of clients is mental illness and a high number (20%) have mental illnesses and alcohol and drug issues. The main service accessed is social support while access to nursing care is also in high demand.¹⁴

During 2003, the Queensland Government commissioned the *Voices from within Report* to provide information on delivery of services to homeless Indigenous people in the Brisbane Inner City Area. The Report made some suggestions about ways to successfully provide services to that group. In August 2004, the Minister for Communities announced that the Department and the SAAP would provide total funding of over \$380,000 a year for three years to eligible organisations applying to it if they could show how they would use the funds to develop innovative models of service delivery to meet cultural needs of Indigenous homeless people.¹⁵

In September 2001, the Queensland Government and the Brisbane City Council established the Joint Inner City Homelessness Response Project as a three month trial. The Project has continued ever since. It is delivered jointly by Brisbane Youth Services and the community outreach service, Micah. The Project is directed at homeless people and those at risk of becoming homeless in Inner Brisbane. Funding of over \$500,000 helped Micah to broker 1,069 nights of shelter for 200 individuals and 32 families up to January 2005 as well as services such as showers, laundry facilities, medical needs and advocacy. The Project was extended, with further funding of over \$73,000 for a further six months from January 2005. An evaluation of its effectiveness is underway with a decision about the long term funding for the Project expected in the near future.¹⁶

In July 2004, the Queensland Premier announced that a dedicated information and referral centre would be established as part of a new action plan to address Inner Brisbane homelessness. The centre would be used to enable better access to those organisations that provide existing Government and Government funded services to homeless people. Mr Beattie said that the pilot centre could expand to other regions if it proves successful.¹⁷

¹⁴ Queensland Health, HACC Program,; *Homeless Program Annual Report 2004*, pp 8-9 (which gives an analysis of preliminary data yet to be finalised), at <http://www.health.qld.gov.au/hacc/Checklistforservices/HomelessProgrep04.pdf>.

¹⁵ Hon Warren Pitt MP, 'State Government Offers Funding to Support Indigenous Homeless', *Ministerial Media Statement*, 21 August 2004.

¹⁶ Hon Robert Schwarten MP, 'Inner City Homeless Project Expanded', *Ministerial Media Statement*, 7 January 2005.

¹⁷ Hon Peter Beattie MP, Premier & Minister for Trade, 'Beattie Outlines Inner Brisbane Homeless Pilot', *Ministerial Media Statement*, 9 July 2004.

While few people are homeless by choice, perhaps the best local example of a man who has a bank account and a pension but appears to have chosen to live on the streets of Toowong for the past two decades is ‘Ziggy the bagman’. His presence has caused some consternation among residents and business people in the area who regard his ‘camp’ as unsightly.¹⁸ In addition, Indigenous people are often seen to have a connection with the land and some actually choose to live in the open rather than being compelled to do so by economic or social circumstances.¹⁹

2.3 IMPACT OF VAGRANCY LAWS ON HOMELESS AND INDIGENOUS PERSONS

Some commentators and advocates for the homeless argue that homeless people engage in ‘vagrant’ types of behaviour in public spaces because they lack access to private space. Many have grown to feel affinity with certain public spaces they go to and the people they meet there. Because such areas are effectively, their ‘home’ they will have to live out their daily existence in them – including drinking alcohol, sleeping, and urinating.²⁰

Homeless persons’ advocates contend that the homeless are amongst the most criminalised of all population groups in Australia and are mostly charged and imprisoned for minor property offences and summary offences.²¹

ABS *Criminal Courts* statistics for 2002-2003 show that 40,751 persons were found guilty of public order offences, including 12,645 in Queensland.²² ‘Public order offences’ are defined as those involving personal conduct that involves or may lead to a breach of public order and decency or is indicative of criminal intent, or is otherwise regulated or prohibited on moral or ethical grounds. It includes conduct such as offensive language and offensive behaviour, disorderly conduct,

¹⁸ Madonna King, ‘Bagman causes a suburban stink’, *Courier Mail*, 1 April 2003, p 15.

¹⁹ C Keys & S Young ‘Homelessness in the Aboriginal and Torres Strait Islander context and its possible implications for the supported accommodation assistance program, 1998, Sydney; T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, p 84, citing C Goldie, ‘Living in Public Space: A Human Rights Wasteland?’, *Alternative Law Journal*, 27(6) 2002, p 277-281.

²⁰ T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, p 84, citing other research.

²¹ T Walsh, “‘Waltzing Matilda’ One Hundred Years Later’, p 75.

²² ABS, *Criminal Courts 2002-2003*, Cat 4513.0, Appendix 1 – Experimental Magistrates Court Data: Defendants Proven Guilty, p 64. The data is ‘experimental’ as it has not yet been subjected to the same data quality control processes as applied to other data in the ABS publication.

and offences against public order sexual standards.²³ Of those found guilty in Queensland Magistrates' Courts, 189 received a custodial order while 11,524 were given a monetary non-custodial order (e.g. a fine) and 932 were given another non-custodial order, such as a good behaviour bond.²⁴

It appears likely that many homeless persons charged with offences like begging or public drunkenness will be sent to prison even if a fine is initially imposed. That is because they are unable to pay the fine. The *State Penalties Enforcement Act 1999* (Qld) and the *Penalties and Sentences Act 1992* (Qld) relieve those who are bona fide unable to pay a monetary penalty by enabling them to perform community service in lieu thereof. However, the criteria upon which an application for such a community service order may be made will rarely be met by homeless persons. The order cannot be made if the offender is judged to be unsuitable for community service work and many convicted homeless persons may be too dependent on alcohol or unable to obtain transport in order to perform the work. Another criterion is that the offender must comply with the order and the problem is that many, for the same reasons, may be unable to comply. Instead of a community service work order in cases where the offender has a medical or psychiatric condition, a good behaviour order can be made. The difficulty is that for the very reasons it is made, it could well be breached.²⁵

Some supporters of homeless persons argue that arresting people for being homeless and mentally ill is reprehensible.²⁶ The link between mental illness and homelessness has been noted in many studies, particularly as treatment has become more deinstitutionalised. Persons suffering mental illness are less likely to be able to compete for, and keep, jobs and to understand processes for obtaining accommodation.

In a luncheon address on 'Poverty and the Law', Queensland Chief Justice Paul de Jersey AC noted that, during 2001-2002, 203 people were convicted of begging and 7 were convicted of having no visible means of support, while a recent survey indicated that most of the people charged under vagrancy laws in February 2004 were very poor homeless persons. While His Honour did not seek to comment on the social utility of this type of law or contend that those charged should not be, his

²³ ABS, *Criminal Courts 2002-2003*, Glossary, p 81.

²⁴ ABS, *Criminal Courts 2002-2003*, p 64.

²⁵ T Walsh, "'Waltzing Matilda' One Hundred Years Later', p 93.

²⁶ T Walsh, "'Waltzing Matilda' One Hundred Years Later', p 90.

point was to illustrate the jeopardy in which the very disadvantaged in the community stand.²⁷

The Queensland Government's consideration of reforms to vagrancy laws prompted the Rights in Public Spaces Action Group (RIPS) to conduct a survey during 2003 (the RIPS survey). The RIPS is a coalition of community agencies, community legal services and academics who seek to promote the rights of marginalised people in their use of public spaces in Queensland. The RIPS survey sought views on the use of the *Vagrants Act* in regulating the use of public spaces in Queensland. The respondents were 30 'marginalised public space users' in Brisbane (which included young people, people with mental illnesses, and Indigenous persons – all of whom were homeless) and 20 community workers servicing homeless people in Queensland.²⁸

Both groups of respondents to the survey agreed that people should behave appropriately in public spaces and that these areas should be regulated to ensure community safety and enjoyment of the public spaces. Even so, many homeless people and service providers differed from the Government on the types of conduct that should be regarded as criminal behaviour. Some respondents commented generally about the regulation of public space and the policing of the relevant laws. Homeless respondents indicated that they believed they were unfairly targeted by the police because they were homeless or Indigenous and that the police lacked cultural sensitivity and an understanding of problems facing those marginalised groups. One homeless respondent commented that '[the police] *shouldn't be able to pick on you just 'cos you haven't got shoes or a wallet or you are not clean. It's not your fault.*' Some service providers felt that rather than arresting and fining public space users, the police should be helping by directing them to various support services. Some homeless respondents reported being treated differently to other users of public space when engaging in identical conduct. One service provider commented that if laws prevented Indigenous persons from assembling in public parks they would ultimately stop Indigenous heritage.²⁹

It appears that the results of the RIPS survey reflect the outcomes of a number of similar surveys carried out all over the world. Within Australia there have been surveys conducted and reports made regarding the impact of summary offence

²⁷ Chief Justice Paul de Jersey AC, 'Poverty and the Law', Luncheon Address to the Queensland Council of Social Services and National Education and Employment Foundation, 19 October 2004, pp 4-5.

²⁸ T Walsh, 'Who is the 'Public' in 'Public Space'?', citing a report of a 2003 survey carried out by social workers from Brisbane's Caxton Legal Centre.

²⁹ T Walsh, 'Who is the 'Public' in 'Public Space'?', p 83.

provisions and vagrancy laws on Indigenous and homeless people.³⁰ In addition, law reform bodies of some jurisdictions have called for an overhaul of vagrancy laws and related provisions. For example, the Law Reform Commission of Western Australia's *Report on Police Act Offences* noted that a number of offences (which were, prior to their being repealed, similar to those in s 4 of Queensland's *Vagrants Act*) singled out persons on the basis of their status rather than their particular conduct.³¹ This was because the original intention of vagrancy provisions was to deal with the problems attending poorer classes in general. However, according to the Commission, laws targeting classes or types of person rather than the particular conduct engaged in seemed unsatisfactory in contemporary society.³²

It has also been claimed that there is no real evidence to show that vagrancy laws protect the public. Thus, the perception that persons who loiter or sleep in public places pose a threat to public safety is not a realistic one.³³

Moreover, it has been argued that the process for dealing with vagrancy offences unnecessarily diverts police resources while the imprisonment of those convicted (usually through inability to pay the fine imposed) places a strain on the prison system.³⁴

Homeless people who go to prison often have no support or accommodation plans for when they are released. This means that the circumstances that led to their incarceration are unchanged. Given this situation and the fact that ex-prisoners tend to have higher unemployment rates and lower incomes than the rest of the population, the risk of reoffending is quite strong for these people.³⁵ One of the aims of the *National Homeless Strategy* is to prevent homeless people becoming enmeshed in the criminal justice system for minor misdemeanours and to reduce the over-representation of homeless people in the criminal justice system and in prisons. This requires the establishment of programs designed to prevent ex-

³⁰ See, for example studies etc. cited in AIHW, *Australia's Welfare 2003*, p 397, at <http://www.aihw.gov.au/publications/index.cfm/title/9629>.

³¹ Law Reform Commissioner of Western Australia, *Report on Police Act Offences*, Project No. 85, August 1992, p 14. See also E Johnston, *Royal Commission into Aboriginal Deaths in Custody National Report*, 1991.

³² LRCWA, *Report on Police Act Offences*, p 14.

³³ T Walsh, "'Waltzing Matilda' One Hundred Years Later", p 83.

³⁴ T Walsh, "'Waltzing Matilda' One Hundred Years Later", pp 92-93.

³⁵ *Working Towards a National Homelessness Strategy – Response to Consultations*, p 83.

prisoners from becoming homeless. Such programs include employment and training; ensuring that persons leaving prison have a support plan for the post-release period and secure housing upon release; and access to any necessary drug and alcohol support services.³⁶

3 OFFENCES ABOUT QUALITY OF COMMUNITY USE OF PUBLIC PLACES

Part 2, Division 1 of the Bill reproduces, with minor modifications, the existing ss 7 and 7AA of the *Vagrants Act* which cover ‘public nuisance’.³⁷ The new objects provision in **cl 5** states that the Division has the object of ensuring, as far as practicable, that members of the public may lawfully use and pass through public places without interference from acts of nuisance committed by others. This is similar to the current objects provision in s 5 of the *Vagrants Act* apart from the latter’s reference to *unlawful* acts of nuisance.

3.1 PUBLIC NUISANCE

Clause 6 provides that a person must not commit a public nuisance offence. The maximum penalty is a fine of \$750 or 6 months imprisonment, as is the case under the existing s 7AA of the *Vagrants Act*. As with the current provision, cl 6 then sets out the behaviours which constitute a public nuisance offence (disorderly, offensive, threatening or violent behaviour), provided that this behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of a public place by a member of the public.³⁸ If a person uses offensive, obscene, indecent, or abusive language they will be acting in an ‘offensive way’ and will behave in a ‘threatening way’ if they use threatening language. The *Explanatory Notes* for the Bill state that a court should take into account the examples given at pp 3-4 of the *Explanatory Notes* in determining if a public nuisance offence has occurred. One ‘offensive language’ example provided is ‘calling another person a slut in a shopping centre or park’. Another example of a public nuisance is ‘a person running over the roofs of parked cars’ or ‘urinating in view of another in a public place’. The behaviour

³⁶ *Working Towards a National Homelessness Strategy – Response to Consultations*, pp 81-82.

³⁷ The provision for review of the public nuisance section is now separated out and forms **cl 7** of the Bill.

³⁸ See the Queensland Legislative Assembly Scrutiny of Legislation Committee’s discussion on the lack of limitation upon the characteristics of such a member of the public in cl 6 of the Bill in *Alert Digest No. 7 of 2004*, p 34, at <http://www.parliament.qld.gov.au/Committees/Comdocs/Scrutiny/2004/SLCD0407T.pdf>.

does not have to be the subject of a complaint by a member of the public before the police can take action under this provision.

A 'public place' is defined in **Schedule 2** as a place that is open to or used by the public, whether or not on payment of a fee. A 'place' includes a dwelling.

The current s 7AA of the *Vagrants Act*, which cl 6 reproduces, was introduced in 2003 to replace the old offensive language and behaviour provision (s 7(1)). The substantive effect of the old and the current sections was virtually the same, apart from an increase in the amount of the fine from \$100 to \$750.

At the time when the current s 7AA was enacted it was subject to some criticisms by advocates for the homeless, Indigenous, and other users of public spaces. The same disapproval would possibly be levelled at cl 6, given its similarity. It has been argued that contemporary community standards would indicate that 'offensive behaviour' should not form the grounds for arrest and/or imprisonment unless it is accompanied by some additional aggravating factor such as violence. Some commentators consider that the kinds of offences caught under s 7AA (and, now by cl 6) are selectively enforced against vulnerable groups such as the homeless, Indigenous people, and young persons as these groups are more likely to occupy public spaces than other members of the population.³⁹

During 2003-2004, 2,843 language offences reports were made to police while there were 7,322 reports of disorderly conduct for police to deal with.⁴⁰

Some commentators question the need for some of the offences created within the 'public nuisance' provision when the *Criminal Code* covers them (e.g. threatening violence (s 75); threatening to apply force (s 245)).⁴¹

The RIPS survey (described earlier) asked respondents to comment on the offensive language law in the *Vagrants Act*. Of the 30 homeless respondents, 29 said that this conduct should not be a criminal offence unless it became threatening or excessively abusive. They, as well as the service provider respondents, considered that such language is fairly much a part of the vocabulary of the streets and not intended to cause offence.⁴² It was also pointed out that many words that were obscene at one time are now commonly used on television and radio.

³⁹ T Walsh, "'Reforms" to the *Vagrants, Gaming and Other Offences Act* – what do they achieve?' *Proctor*, 24(1) February 2004, pp 23-24, p 24.

⁴⁰ Queensland Police Service, *Annual Statistical Review 2003-2004*, p 7. These offences were replaced by the offence category 'public nuisance' in April 2004.

⁴¹ T Walsh, 'Who is the 'Public' in 'Public Space'?', p 85.

⁴² T Walsh, 'Who is the 'Public' in 'Public Space'?', p 83.

Another argument was that much of the ‘offensive language’ was used towards police, often as a reflex action when the person using the language thought they were being unfairly targeted. It was also claimed that the police often use the same language to those they charge with offensive language offences.⁴³

Some advocates for users of public spaces have suggested that if the ‘public nuisance’ offence is to remain on the statute books it should incorporate a defence of ‘lawful excuse’ similar to the New South Wales *Summary Offences Act 1988* provision concerning offensive conduct and offensive language. This, it is argued, would enable the context of the behaviour to be taken into account so if the use of obscene words was an impulsive response to a police action and not aimed at making a threat, then it may not be seen as public nuisance behaviour.⁴⁴

3.1.1 Judicial Consideration

The constitutional validity of a predecessor of cl 6 of the Bill (i.e. s 7(1) of the *Vagrants Act*) has been dealt with in Queensland Court of Appeal and High Court judgements. The question was whether the laws infringed the implied constitutional right of freedom of communication about political and governmental matters.

In *Coleman v P and Another*⁴⁵ the appellant was convicted under the then s 7(1)(d) (use of threatening, abusive or insulting words to any person) and s 7A(1)⁴⁶ (concerning publishing threatening, abuse or insulting words) for orally stating ‘This is Constable [P], a corrupt police officer’ and distributing pamphlets headed ‘Get to know your local corrupt type coppers’. It was accepted that both were communications about governmental or political matters. Thus, the issue was whether, in accordance with the test of whether a law infringes the implied right of freedom of communication about such matters, the provisions were reasonably appropriate and adapted to a legitimate end.⁴⁷

⁴³ T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, pp 84-85, citing other studies. See also comments by some justices in *Coleman v Power* (2004) 209 ALR 182; [2004] HCA 39, 1 September 2004, for example, Gummow and Hayne JJ at [200].

⁴⁴ T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, p 86.

⁴⁵ [2001] QCA 539, 30 November 2001.

⁴⁶ Section 7A will not be considered as it is not reproduced in the Bill. It is a ‘defamation’ type of provision.

⁴⁷ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 620.

By majority, the Court of Appeal found that s 7(1)(d) was valid but s 7A(1) invalid on constitutional grounds. Davies JA commented that s 7(1)(d) contained two limitations not found in s 7A. Firstly, the words need to be used to a person (which is not a requirement of cl 6 of the Bill). Secondly, they must be used in or near a public place. Thus, the operation of s 7(1)(d) was confined to a situation in which a person who uses the threatening words and persons likely to be offended by them are in close proximity such that there is potential for acrimony escalating to violence. Therefore, in His Honour's view, the provision imposed only a slight burden on freedom of communication about political and governmental matters and was reasonably appropriate and adapted to the legitimate end of preventing public violence.⁴⁸ Thomas JA, in a separate judgement, agreed that s 7(1)(d) was valid.⁴⁹

However, dissenting on the validity of s 7(1)(d), McMurdo P found that while the sub-section was a by-product of a genuine regulatory scheme to stop breaches of the peace and ensure basic standards of conduct in public, its curtailment of political discussion was more than limited and incidental and went beyond what was proportionate and reasonable. Given the wide definition of 'public place', its potential reach to anywhere in Queensland was significant.⁵⁰ For McMurdo P, the problem with the law was its focus on words and expressions rather than conduct. For example, 'threatening words' might be 'you will lose the election unless you fund this worthy cause'. Also, words said when interjecting at a political candidate's speech or engaging in a heated discussion with street-walking political candidates could fall within the meaning of the provision. McMurdo J noted that the use of the word 'scab' was found to be 'insulting' by a previous court in 1938.⁵¹ Her Honour said that government and political matters were often discussed vigorously and the language might be seen by some as threatening.

Mr Coleman then successfully sought leave to appeal to the High Court challenging the validity of s 7(1)(d) of the *Vagrants Act*. In September 2004, the High Court in *Coleman v Power* held that s 7(1)(d) was valid (while a narrow majority overturned the appellant's conviction).⁵² The justices took a variety of different approaches to addressing the validity of the provision.

⁴⁸ [2001] QCA 539, 30 November 2001, [36]-[37].

⁴⁹ [2001] QCA 539, 30 November 2001, [71]ff.

⁵⁰ [2001] QCA 539, 30 November 2001, [21].

⁵¹ [2001] QCA 539, 30 November 2001, [12], citing *Voight v Loveridge; ex parte Loveridge* [1938] StR Qd 303.

⁵² (2004) 209 ALR 182; [2004] HCA 39, 1 September 2004.

Gummow and Hayne JJ found that s 7(1)(d) was valid but gave it a limited operation. Their Honours said that it does not suffice for a person to whom the relevant words are directed to assert that they were insulted nor does it suffice that the words used were calculated to hurt the self-esteem of the hearer. There must be something in the surrounding circumstances that make it reasonably likely that those hearing the words will be provoked to unlawful physical retaliation.⁵³ Their Honours also placed some importance for the validity of s 7(1)(d) on the fact that the words had to be used *to* a person (no longer a requirement under s 7AA of the *Vagrants Act* or in cl 6 of the Bill). On this limited construction, it was held that s 7(1)(d) was reasonably appropriate and adapted to serve the legitimate end of keeping public places free from violence. Their Honours held that the appellant's conviction should be set aside as there was no evidence to show that his words were intended or were reasonably likely to provoke physical retaliation. The words were used to a police officer whose temperament and training is such that they must be expected to resist the sting of insults directed to him or her.⁵⁴

Kirby J delivered a judgement similar to that of Gummow and Hayne JJ. Words uttered when communicating about government or politics, however emotional, upsetting or affronting, are not "offensive language" unless they rise to a level of arousing or risking the arousal of physical retaliation.⁵⁵

Thus, Gummow and Hayne JJ and Kirby J found s 7(1)(d) was constitutionally valid through a reading down of the provision but it did not apply to the appellant's conduct in question.

Gleeson CJ did not limit the operation of s 7(1)(d) to the same extent as Gummow and Hayne JJ and Kirby J by requiring an intention to provoke, or likelihood of provoking, unlawful physical violence. His Honour considered the law to be valid provided that it was limited to language that was of such a nature that the use of the language in the place where it is spoken to a person of that kind was contrary to contemporary standards of public order and goes beyond what, by those standards, was simply an exercise of freedom of expression of opinion. His Honour did not consider that the words would cover situations where there was no threat to the peace, no victimisation or no intimidation or bullying in the expression of opinion on political and governmental issues.⁵⁶ Gleeson CJ commented that the right of one person to ventilate a personal grievance might collide with the right of others to peacefully enjoy a public space. His Honour used the example of a migrant

⁵³ (2004) 209 ALR 182, [183].

⁵⁴ (2004) 209 ALR 182, [200].

⁵⁵ (2004) 209 ALR 182, [254]-257].

⁵⁶ (2004) 209 ALR 182, [14]-[15].

family playing in a park when someone starts objecting to the Commonwealth Government's immigration policy using insulting or abusive language. The law was suitable to the end of maintaining public order in a manner consistent with an appropriate balance of all the various rights, freedoms and interests.⁵⁷ Gleeson CJ held that the appellant's conviction should stand.

Callinan J found s 7(1)(d) was valid. Like a number of the other justices, His Honour stressed the fact that the section required that the words must be used *to* a person. However, unlike the joint judgement and that of Kirby J, His Honour did not confine the provision to words that are likely or intended to provoke a breach of the peace. What is required is that, having regard to the huge range of human sensitivities, the words are either unnecessarily potentially provocative or so incompatible with civilised discourse and passage that they should be proscribed.⁵⁸ His Honour could not find any infringement of implied constitutional freedom of communication about political and governmental matters. Section 7(1)(d) was aimed at peaceable, civilised passage through, and assembly and discourse in, public places free from threat, abuse or insult to persons there – itself a valuable freedom. It was well adapted to preservation of peace in public places. It proscribed insulting words in or near a public place that invited the risk of offence, distress and anxiety to some people. Callinan J also found that the appellant's conviction should stand as his language produced a risk of retaliation and the fact they were directed at a police officer was not helpful to the appellant as there were others present who might have been moved to react because a constable was being insulted.⁵⁹

Similarly, Heydon J found that s 7(1)(d) was reasonably appropriate and adapted to protecting or vindicating the claims of people to live peacefully and with dignity by proscribing insulting statements that give rise to a risk of acrimony and lead to violence as well as other ends such as allowing people to feel secure in contributing to public debate without fear of insult and intimidation. His Honour considered that the conviction should stand.⁶⁰

A number of the High Court justices appeared to regard the fact that the insulting etc. words had to be used *to* a person as important to their finding that s 7(1)(d) was constitutionally valid, a requirement that does not appear to form part of cl 6.⁶¹

⁵⁷ (2004) 209 ALR 182, [32].

⁵⁸ (2004) 209 ALR 182, [287].

⁵⁹ (2004) 209 ALR 182, [295]-[296], [300]-[302].

⁶⁰ (2004) 209 ALR 182, [326].

⁶¹ On this point, see further, Scrutiny of Legislation Committee, pp 29-34.

McHugh J, in the minority on the constitutional validity of s 7(1)(d), held that s 7(1)(d) was invalid. A provision that, without qualification, made it an offence to utter insulting words in or near a public place could not validly apply to insulting words that are uttered in the course of making statements concerning political or governmental matters.⁶² His Honour held that the conviction should be quashed.

3.1.2 Other Jurisdictions

Many other jurisdictions have legislative provisions dealing with offensive language. For example, under s 17(1) of the *Summary Offences Act 1966* (Vic) it is an offence to use any threatening, abusive, or insulting words in or near a public place or within the view or hearing of any person being or passing therein or thereon. Similar provisions exist in Tasmania, South Australia, and New South Wales. The NSW provision contains a defence of 'reasonable excuse'.⁶³

3.2 BEGGING

Clause 8 of the Bill makes it an offence (carrying a maximum penalty of a \$750 fine or six months imprisonment) to beg in a public place; or to cause, procure or encourage a child to do so; or to solicit donations of money in a public place unless the person is collecting for a registered charity or has Council permission to busk.

Currently, s 4(1)(k)-(l) of the *Vagrants Act* provide that to loiter or to place one's self in a public place to 'beg or gather alms' or to solicit, gather or collect subscriptions or contributions will deem one to be a vagrant and make one liable to a fine of \$100 or to six months imprisonment. Similar consequences flow for causing, procuring or encouraging a child to beg or gather arms in a public place. Thus, begging will now be created as a discrete 'quality of use of public places' offence. Begging as a ground of vagrancy will be repealed by the Bill.

It has been argued by some researchers that begging behaviour is inextricably linked with poverty and homelessness.⁶⁴ The RIPS survey of Brisbane homeless people noted that many respondents thought that begging was 'humiliating' but often a practical necessity in order to survive. Some stated that they were on a disability pension for disorders such as schizophrenia and needed to supplement

⁶² (2004) 209 ALR 182, [36].

⁶³ *Police Offences Act 1935* (Tas), s 12; *Summary Offences Act 1953* (SA), s 22; *Criminal Code* (WA), s 74A; *Summary Offences Act 1988* (NSW), s 4A.

⁶⁴ T Walsh, 'Who is the 'Public' in 'Public Space'?', p 84 citing a number of studies.

that income. While 97% of the homeless respondents and 95% of service providers considered that begging should not be criminalised, a number thought that if the begging behaviour became threatening, aggressive, or violent the police should then be able to intervene. Another finding was that some homeless respondents did not realise that begging was an offence.⁶⁵

3.2.1 Other Jurisdictions

Begging is also an offence in some other jurisdictions.⁶⁶

3.3 WILFUL EXPOSURE

Clause 9 of the Bill makes it an offence for a person to wilfully expose his or her genitals in a public place unless the person has a reasonable excuse. It is also an offence to do so if the person is so near a public place that they may be seen from it unless there is a reasonable excuse. The maximum penalty will be a \$150 fine but if there are circumstances of aggravation, the person will be liable to a maximum fine of \$300 or one year in prison. It will be a circumstance of aggravation if the person wilfully exposes his or her genitals so as to offend or embarrass someone else.

Currently, one of the grounds upon which a person can be declared a vagrant is to, without lawful excuse, wilfully expose '*his or her person in view of any person in any public place*': s 4(1)(g)(iv). The onus of proving 'lawful excuse' is on the person. This 'reverse onus' is removed in cl 9.

The *Explanatory Notes* to the Bill state that a clear differentiation is created in cl 9 between situations where a person wilfully exposes their genitals to urinate when they have tried but failed to find somewhere out of public view to do so (when the maximum \$150 fine applies) and the situation where a person exposes their genitals for shock value or sexual gratification (when the \$300 maximum fine or one year imprisonment applies).⁶⁷

It has been argued that if there is no private space for a person to retreat to in order to urinate, particularly if that person is homeless, then the fact that they urinate in

⁶⁵ T Walsh, 'Who is the 'Public' in 'Public Space'?', pp 82-83.

⁶⁶ See *Police Offences Act 1935* (Tas), s 8; *Summary Offences Act 1953* (SA), s 12; *Summary Offences Act* (NT), s 56; *Vagrancy Act 1966* (Vic), ss 6(1)(d), 7.

⁶⁷ Summary Offences Bill 2004 (Qld), *Explanatory Notes*, p 5.

or near a public place out of necessity may provide a ‘reasonable excuse’.⁶⁸ Thus, it would seem that public urination is not to be equated with ‘wilful exposure’ in most circumstances.

Note also that ‘urinating in view of another in a public place’ is given as an example of a ‘public nuisance’ in cl 6 which carries a maximum penalty of \$750 or six months in prison. There is no ‘reasonable excuse’ provision for this offence.⁶⁹

3.3.1 Other Jurisdictions

Indecent exposure is an offence in most jurisdictions. For example, in NSW it is an offence for a person in, or within view of a public place or school, to obscenely expose his or her person.⁷⁰ Under s 24 of the South Australian *Summary Offences Act 1953*, urinating or defecating in a public case incurs a fine of up to \$250.

3.4 PUBLIC DRUNKENNESS

Clause 10 replaces s 164 of the *Liquor Act 1992* and provides that a person must not be drunk in a public place or they will be liable to a fine of up to \$150.

Many of the homeless respondents to the RIPS survey reported that they had little choice but to drink in public as they had nowhere else to go. The homeless will engage in behaviours that other people are able to do in private, such as drinking alcohol.⁷¹ Some did consider that a person should be dealt with if they are drunk but not just because they were drinking in public. One of the service provider respondents pointed out that the issue was one of class – a person can legally consume alcohol at an outdoor restaurant but what if the person cannot afford to go to such a place or is homeless?⁷² Some researchers and advocates for the homeless and other users of public space point out that it is essentially a double standard if

⁶⁸ T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, p 86.

⁶⁹ See Scrutiny of Legislation Committee, p 33.

⁷⁰ *Summary Offences Act 1988* (NSW), s 5. For other examples, see *Police Offences Act 1935* (Tas), s 8(1A); *Summary Offences Act* (NT), s 50; *Crimes Act 1900* (ACT) s 393.

⁷¹ T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, p 84, citing other research.

⁷² T Walsh, ‘Who is the ‘Public’ in ‘Public Space’?’, p 83.

homeless and Indigenous people are stopped from drinking in a public space when tourists do it without rebuke in the same areas.⁷³

Some commentators argue that alcoholism needs to be dealt with through health and social welfare policies and other measures rather than through the criminal justice system.⁷⁴ Drug and alcohol misuse is prevalent among homeless people.⁷⁵

Under the Tasmanian *Police Offences Act 1935*, a police officer can take a person into custody if the officer believes on reasonable grounds that the person in a public place is intoxicated and is behaving in a manner likely to cause injury or damage or is incapable of protecting himself or herself from harm. The police officer may release such a person into a place of safety (as declared in the *Gazette*) or care of another person, or if there is no such alternative, hold the person in custody for no longer than 8 hours. During that time, the person is not to be questioned, photographed or fingerprinted but can be searched (subject to safeguards) to enable safekeeping of the person's valuables and to keep the person safe from items likely to cause that person or another person harm.⁷⁶ South Australia, ACT and New South Wales have similar legislative provisions.⁷⁷

Public drunkenness has been a problem in the Townsville area for some time. It has been reported that visitors to the Strand area have been confronted with abuse and threats, where a number of 'park people' drink and have set up camps.⁷⁸ As recently as March 2004, it was reported that persons have moved into Townsville's West End cemetery where it is alleged that they have been urinating and defecating on grave sites and setting up camps but move on before the police catch up with them. In addition, it has been claimed that a junior athletics club had to stop using a park for training because itinerant users of the park had littered the ground with broken glass making it unsafe for children to train.⁷⁹

⁷³ T Walsh, 'Who is the 'Public' in 'Public Space'?', p 84.

⁷⁴ T Walsh, 'Who is the 'Public' in 'Public Space'?', p 85.

⁷⁵ *Working Towards a National Homeless Strategy - Response to Consultations*, p 9.

⁷⁶ *Public Offences Act 1935* (Tas), ss 4A-4C. It is also an offence to, in a public place be drunk while in charge of a vehicle or in possession of a dangerous weapon: s 4.

⁷⁷ *Public Intoxication Act 1984* (SA), s 7; *Intoxicated Persons Act 1979* (NSW), ss 5-6; *Police Administration Act* (NT), s 128; *Intoxicated Persons (Care and Protection) Act 1994* (ACT) s 3.

⁷⁸ Editorial, 'Words, how about action?' *Townsville Bulletin*, 20 November 2003, p 8.

⁷⁹ Editorial, 'Wilson throws down the gauntlet', *Townsville Bulletin*, 16 March 2004, p 8.

The Townsville City Council's request that the Queensland Government assist it in tackling the problem of alcoholism and attendant violence in certain Townsville streets and parks prompted a number of recommendations made at the Ministerial Summit on Public Drunkenness held in May 2003. Those recommendations resulted in a number of changes that have recently been made to the *Vagrants Act*, such as the 'public nuisance' offences in s 7AA, and the introduction of the Bill currently before the Parliament. In the wake of the Summit, the Government also announced a range of initiatives to tackle the Townsville issue on a practical level such as improved rehabilitation and detoxification facilities, community patrols, and 'safe places' for the intoxicated.⁸⁰

The Queensland Government has committed funding of \$300,000 over three years towards a Homeless – Public Drunkenness Project in Townsville. A major part of this project is the Community Patrol program, which began in June 2003, to provide assistance to people who might otherwise have created a public nuisance or be held in custody. Such assistance is in the form of escort to private residences or to a local Diversionary Centre. Around 1,149 people have been assisted by the Community Patrol program since its commencement.⁸¹

4 OFFENCES INVOLVING PRESENCE ON PROPERTY

Part 2, Division 2 deals with offences involving presence on property (cls 11-14). In substance, these recast, with some modification, ss 4A-4B of the *Vagrants Act*.

Clause 11 appears to be a new **trespass** provision making it an offence for a person to unlawfully enter or remain in a dwelling (which includes a boat, caravan or tent) or a yard around a dwelling or a place used for a business or commercial purpose or a yard for such a place. The offence carries a maximum penalty of \$1,500 or one year in gaol. It is anticipated that this provision will operate as a pre-emptive measure against more serious offences such a burglary as there is no requirement to show an intention to commit an offence on the property in question.⁸²

The other offence provisions are similar to those currently appearing in the *Vagrants Act*. It will be an offence under **cl 12** if a person, together with other persons, unlawfully enters or remains (even if they originally entered it lawfully) in

⁸⁰ Roberta Macuso, 'Laws target drunks – police to receive grater powers', *Townsville Bulletin*, 13 September 2003, p 6.

⁸¹ Hon Liddy Clark MP, Minister for Aboriginal and Torres Strait Islander Policy, 'Community Patrols Assist More Than 1,000 Townsville People', *Ministerial Media Statement*, 16 April 2004.

⁸² Summary Offences Bill 2004 (Qld), *Explanatory Notes*, p 6.

any part of a public or private building or structure or on any land occupied or used in connection with the building or structure. It appears that this provision is targeted at demonstrations or sit-ins, particularly in or on government property.⁸³

Clause 13 deals with unlawfully entering or remaining on agricultural, horticultural or grazing land or land used for animal husbandry and, also, with leaving open gates etc. to such land.

Clause 14 updates an existing provision in the *Vagrants Act* dealing with unlawful parachuting and abseiling from buildings.

5 POSSESSION OFFENCES

Part 2, Division 3 deals with a range of possession offences (**cls 15-17**). Again, some are modelled on existing provisions in the *Vagrants Act*. **Clause 15(1)** appears to be innovative. It creates a pre-emptive offence of possessing an implement that is being used, or is to be used, for a specified range of unlawful purposes – such as burglary, unlawful entry of a vehicle, unlawful injury of a person, or damage to property. An example given on p 8 of the *Explanatory Notes* is that a person holding a car door lock scanner while standing beside a vehicle in a car park will raise suspicion that the person intends to break into the vehicle. In addition, under **cl 15(2)**, a person must not possess an implement that has been used for any of those purposes. The maximum penalty applying to both subclauses is a fine of \$1,500 or a one year prison term. However, it is a defence to a charge under cl 15(2) if the person can prove that the possession of the implement was not connected to any involvement in the preparation of the offence or in any criminal responsibility in relation thereto. For example, the person possessing a lock pick in a situation where a house has been burgled may be a locksmith who has come to fix the locks.

Note that a **proposed new s 391** will be inserted into the *Police Powers and Responsibilities Act 2000* (Qld) to apply to ‘declared offences’ under the Bill, which cover those set out in cls 15-17. If a police officer suspects that a person has committed a possession offence of the type covered by cl 15, the officer must, if reasonably practicable, give the person a reasonable opportunity to explain why the person had the implement at the relevant time. Note, however, that if the person will not provide an explanation or gives one that is not reasonable, or the person’s conduct is such as to make it not reasonably practicable for them to be given a chance to explain, the police officer may commence proceedings against the person.

⁸³ Summary Offences Bill 2004 (Qld), *Explanatory Notes*, p 6.

The offence created by **cl 16**, of unlawful possession of a thing that is reasonably suspected of having been stolen, is similar to the current s 25 of the *Vagrants Act*. In a proceeding for this offence it will not be necessary to prove that the police officer knew anything had recently been stolen or that anything had, in fact, been stolen if the circumstances in which the property was found were such as to give rise to a reasonable suspicion that the property had been stolen or unlawfully obtained: **cl 28**. Note also that the **proposed new s 391** of the *Police Powers and Responsibilities Act 2000* will allow the person to explain how they came by the thing in question.

The offence of possession of a graffiti instrument (**cl 17**) is also similar to the current s 37C of the *Vagrants Act*. It is presently the case that if the person possesses such an instrument without lawful excuse, the proof of showing such excuse lies on the person. The new provision instead provides a defence to a charge for reasonable suspicion that the instrument has been used for graffiti if the person can prove that the possession of the instrument was not connected to any involvement by the person in the preparation of the offence or in any criminal responsibility in relation to it.

6 OFFENCES RELATING TO MINORS

Part 2, Division 4 reproduces the current ss 23 and 24 of the *Vagrants Act* making it an offence to perform body piercing to the genitals or nipples of a minor (**cl 18**) or to perform tattooing on a minor (**cl 19**). The maximum penalty is \$3,000 or six months imprisonment but, in the case of body piercing, if the minor is intellectually impaired or their decision making is impaired by alcohol or a drug, the person can be liable to a fine of up to \$6,000 or a year in prison.

7 OTHER OFFENCES

Part 2, Division 5 draws into the Bill other offence provisions from the *Vagrants Act* that remain relevant to contemporary society (**cls 20-25**).

Under **cl 20** it is an offence to intentionally prevent or attempt to prevent the holding of a public meeting. An example might be the making of such a loud noise that the persons speaking at the meeting are unable to continue or are drowned out by the noise. The *Explanatory Notes* for this provision point out (at p 10) that an offence will not be committed by a mere expression of freedom of communication about political or governmental matters. Thus, all of the circumstances would need to be considered. Heckling or jeering a political candidate making a campaign speech may well, of itself, not amount to preventing or attempting to prevent a

public meeting. In most other jurisdictions, public meetings are protected from disorderly, threatening, abusive etc words or conduct.⁸⁴

Clause 23 reproduces s 37D that was recently inserted into the *Vagrants Act* to prohibit the sale or supply of potentially harmful things to another person if the seller knows or believes on reasonable grounds that the other person intends to ingest or inhale the thing or to on-sell it for that same purpose. Such 'harmful things' include glue, paint, solvent and methylated spirits. A first offence incurs a maximum penalty of a \$1,875 fine or three months in gaol and a subsequent offence, up to a \$3,750 fine or a year in prison.

The remaining offences are false advertisements and notices about a birth, death or funeral of a person, a marriage or engagement, or that employment is available when it is not (**cl 21** which is similar to the current s 37 of the *Vagrants Act*); impositions to obtain money or advantage, including using dress or apparel to seek to obtain money or advantage (**cl 22** which appears to be based on s 4(1)(n) of the *Vagrants Act* although the latter is a ground upon which a person can be declared to be a vagrant); throwing objects that may injure a person, damage property or disrupt a sporting event (**cl 24** which is mirrored on the present s 31 of the *Vagrants Act* concerning bottles in stadiums); and unlawful use of a vehicle without consent of the person in such lawful possession or where the person having the possession of the vehicle without such consent intends to temporarily or permanently deprive the person in lawful possession of the vehicle (**cl 25** which is similar to the existing s 29 of the *Vagrants Act*).

⁸⁴ For example, *Summary Offences Act 1953* (SA), s 18A; *Summary Offences Act 1966* (Vic) s 17(2)-(4); *Police Offences Act 1935* (Tas), s 20; *Crimes Act 1900* (ACT), s 482; *Public Meetings and Processions Act 1984* (WA), s 9.

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