

2008

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

CRIMES AMENDMENT BILL 2008

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
Simon Corbell MLA

Crimes Amendment Bill 2008

Outline

In 1993, Mr Terence Connolly, the then Attorney General, referred 'the law relating to behaviour in public places and the right of freedom of public assembly' to the Community Law Reform Commission (CLRC). The CLRC report, which dealt extensively with street offences, was eventually tabled in the Assembly on 25 September 1997.

This Bill is part of a package that modernises and builds on the provisions adopted in the Legislative Assembly. This Bill is accompanied by two regulations — the Magistrates Court (Crimes Infringement Notices) Regulation 2008 and the Magistrates Court (Liquor Infringement Notices) Regulation 2008.

The Bill amends a set of street offences in order to make them appropriate for the infringement notice scheme including making them strict liability offences. A regulation pursuant to Part 3.8 of the *Magistrates Court Act 1930* will allow police officers to issue infringement notices for the offences of 'Urinate in a public place', and 'Noise abatement direction'. Police officers and city rangers will be authorised to issue infringement notices for 'Mark premises — summary offence'. A separate regulation will allow police officers and inspectors of licensed premises under the Liquor Act 1975 to issue infringement notices for the offence of 'Consume liquor in certain public places'.

Part 3.8 of the Magistrates Court Act provides for the modern infringement notice mirrored in road transport legislation. Section 441 of the Crimes Act is an outdated and inadequate framework for infringement notices. Offences that will be made open to the service of infringement notices have been constructed in such a way that the circumstances in which the behaviour is alleged to have occurred are clear and straightforward. This includes making the offence strict liability thereby removing the requirement to prove a fault element, such as intention or recklessness.

Offences incorporating strict liability elements are carefully considered when developing legislation. Amending offences in a manner appropriate for an infringement notice scheme and the imposition of strict liability was one of the primary considerations when preparing this Bill.

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Detail

PART 1: PRELIMINARY

Clause 1 — Name of Act

This is a technical clause that names the Act. The name of the Act would be the *Crimes Amendment Act 2008*.

Clause 2 — Commencement

The Act commences on the day after its notification day.

PART 2 — CHILDREN AND YOUNG PEOPLE ACT 1999

Clause 3 — Legislation amended — pt 2

This clause identifies the Act to be amended, namely the *Children and Young People Act 1999*.

Clause 4 — New Section 77 (4) to (8)

Clause 4 amends section 77 of the *Children and Young People Act 1999* to make an exception to when a child or young person is taken to be “under restraint” within the meaning of that section. A person aged between 16 and 18 and years will not be taken to be under restraint where police are questioning them with a view to issuing them with an infringement notice for the offences listed in the section.

The concept of being “under restraint” engages certain procedural safeguards in Division 6.2.2 of that the Children and Young People Act. These safeguards are intended to assist in ensuring that any admissions or statements made by a child or young person during the course of an investigation are made voluntarily and are reliable, and to ensure the integrity of other evidence obtained from the child or young person in the course of an investigation.

However, given that the issuing of an infringement notices can only be issued for relatively minor offences, they can't be issued to children or young people aged under 16, and the issuing of an infringement notice does not involve the arrest or custody of a young person, it is not considered that circumstances involving police talking to a young person with a view to issuing an infringement notice warrant the procedural safeguards that being “under restraint” affords. This is in line with other exceptions contained in section 77(3) of the Act.

The clause makes it clear that if, whilst talking to the young person, police form the view that proceeding by way of infringement notice is not appropriate, or police form the view that they may need to question the person in relation to another offence, then the young person will be taken to be under restraint within the meaning of section 77 of the Act.

PART 3: CRIMES ACT 1900

Clause 5 — Legislation amended — pt 2

This clause identifies the Act to be amended, namely the *Crimes Act 1900*.

Clause 6 — Offences against Act — application of Criminal Code etc Section 7A, note 1, new dot points

Clause 6 inserts a new section into the Act to apply the Criminal Code to the offences in the Act that have been redrafted in this Bill. Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies.

Clause 7 — Section 119

Clause 7 deal with the offence of ‘Defacing premises’

Section 119 redrafts the existing offence — ‘Defacing premises’. The amendments simply modernise the offence and do not alter the nature of the offence. Subsection (3) defines ‘public property’ in similar terms to the current offence and incorporates the dictionary definition of ‘public road’ in the *Roads and Public Places Act 1937*.

The maximum penalty in subsections 119(1) and (2) have been increased from ‘10 penalty units, imprisonment for 6 months or both’ to ‘50 penalty units, imprisonment for 6 months or both’ to bring the offence into line with other offences that carry a maximum period of imprisonment of 6 months.

Section 120 creates a new offence of ‘Defacing Premises — strict liability’. The new offence is a subset of the existing offence of ‘Defacing premises’ in section 119. The offence is limited to the marking with chalk, paint or any other material on private premises or public property. The new offence is aimed at less serious incidents deemed by police officers to warrant the prosecution of the summary offence. The new offence is cast in straightforward and objective criteria so that a police officer can make a reliable assessment of whether the offending behaviour has occurred. As the offence is only concerned with the conduct described, and not any degree of moral blameworthiness, consequently subsection (3) provides that the offence is a strict liability offence.

Clause 8 — New section 393A

Clause 8 inserts in the Crimes Act a new offence of ‘Urinating in public place’. Persons alleged to have committed this act, depending on the circumstances, are currently charged under either ‘Offensive behaviour’ or ‘Indecent exposure’. As the offence is only concerned with the doing of the act, subsection 393A(2) provides that the offence of urinating in public is a strict liability offence.

It is envisaged that people charged under this offence may seek to raise the defence of sudden or extraordinary emergency in section 41 of the Criminal Code 2002. The defence applies if the defendant reasonably believes that:

- circumstances of sudden or extraordinary emergency exist; and
- committing the offence is the only reasonable way to deal with the emergency; and
- the conduct is a reasonable response to the emergency.

The term “sudden or extraordinary emergency” is not defined in the code. ‘Emergency’ is defined in the Macquarie Dictionary to include “an unforeseen occurrence; a sudden and urgent occasion for action”.¹

It is envisaged that if, for example, a person was in the bush or away from the urban interface and was overcome by a need to urinate, this would constitute a “sudden and urgent occasion for action”, and a person would be entitled to reasonably believe that circumstances of sudden or extraordinary emergency exist. Further, if no toilet facilities were immediately available, a strong argument could be made that discretely urinating in a public place would be a reasonable response to the emergency — it would be unreasonable to expect a person to endure the pain and discomfort of refraining from such action for any significant period of time. In such circumstances, it is arguable that the defence would be made out.

Clause 9 — Noise abatement directions Section 394 (2) and (3)

Clause 9 amends part of section 394. A change to the existing offence is that the term of imprisonment associated with subsection (2) has been removed. As the offence in subsection (2) is only concerned with the failure to follow the direction, the subsection has been made strict liability.

Police officers will still be able to pursue the more serious charge in subsections (3A) and (3B). Alternatively, police will continue to be able to seize anything suspected on reasonable grounds was used in, or in connection with, committing the offence.

The maximum penalty in subsections (3A) and (3B) have been increased from ‘10 penalty units, imprisonment for 6 months or both’ to ‘50 penalty units, imprisonment for 6 months or both’ to bring the offence into line with other offences that carry a maximum period of imprisonment of 6 months.

Clause 10 — Section 394 (5) and (6)

This clause is a consequential amendment to give effect to the amendment in clause 7.

Clause 11 — Section 441

Clause 11 omits section 441 of the Crimes Act originally inserted in 1997. The provisions in Section 441 — Offence notices, are superseded by the infringement notice scheme in Part 3.8 of the Magistrates Court Act. Part 3.8 contains the framework provisions for the issuing of infringement notices in relation to offences specified by regulation. These provisions provide for how regulations may apply the standard provisions to specified offences, for the service, content, payment and withdrawal of infringement notices and the issuance of reminder notices. The provisions also deal with disputing liability and miscellaneous issues.

PART 3: LIQUOR ACT 1975

Clause 12 — Legislation amended — pt 2

This clause identifies the Act to be amended, namely the *Liquor Act 1975*.

Clause 13 — New section 5

Clause 13 inserts a new section into the Act to apply the Criminal Code to the offences in the Act that have been redrafted in this Bill. Chapter 2 of the Criminal

¹ The Macquarie Dictionary, 3rd Edition, page 617

Code sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies.

Clause 14 — Consumption of liquor in certain public places
Section 139 (1) and (2)

Clause 14 amends section 139 (1) and (2) of the Liquor Act. The effect of the provision is unchanged except to expressly provide at subsection (2A) that the offence of consuming liquor in a prescribed public place is a strict liability offence. As the offence is only concerned with physical act of consuming liquor in the prescribed place, there is no mental element to the offence.

Clause 15 — Liquor
Section 159 (5)

Clause 15 amends section 159, in Part 11 — Evidence, to the effect that section 139(1) is included in the presumption set out in section 159. The section provides that proceedings for an offence against the Liquor Act, a beverage in a container labelled as containing alcohol, that beverage is taken to be liquor within the meaning of the relevant offence provision unless the contrary is established by the defendant on the balance of probabilities. By amending the section to apply to subsection 139(1) provides that where the offence is alleged to have occurred, and the label on the container indicates that the beverage contains 0.5% alcohol or more, there will be no requirement to prove by forensic analysis that the beverage contains the requisite percentage of ethyl alcohol.

PART 4 — MAGISTRATES COURT ACT 1930

Clause 16 — Legislation amended — pt 4

This clause identifies the Act to be amended, namely the *Magistrates Court Act 1930*.

Clause 17 — New Section 120 (1A)

Clause 17 creates a specific regulation making power to apply to when an authorised person is, or is not, taken to have reasonable grounds for a belief that an infringement notice offence has been committed.